

HOUSE BILL No. 4998

September 21, 2011, Introduced by Rep. Heise and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 5732 and 5739 (MCL 600.5732 and 600.5739),
section 5739 as amended by 2006 PA 147, and by adding section 5736.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5732. (1) Pursuant to applicable court rules, **AND EXCEPT**
2 **AS PROVIDED BY LAW,** a court ~~having~~**THAT HAS** jurisdiction over
3 summary proceedings may provide for pleadings and motions, issue
4 process and subpoenas, compel the attendance and testimony of
5 witnesses, enter and set aside defaults and default judgments,
6 allow amendments to pleadings, process, motions, and orders, order
7 adjournments and continuances, make and enforce all other writs and
8 orders, and do all other things necessary to hear and determine
9 summary proceedings.

10 (2) A COURT, MAGISTRATE, DISTRICT COURT CLERK, OR OTHER COURT

1 EMPLOYEE SHALL NOT LIMIT THE NUMBER OF SUMMARY PROCEEDINGS THAT MAY
2 BE SET FOR A HEARING AT THE SAME TIME ON THE SAME DATE OR THAT A
3 PERSON MAY CONCURRENTLY FILE OR SCHEDULE FOR HEARING AT ANY 1 TIME.

4 SEC. 5736. A COPY OF A SUMMONS AND COMPLAINT IN A SUMMARY
5 PROCEEDING, INCLUDING ANY CLAIM DESCRIBED IN SECTION 5739 IF THE
6 CLAIM DOES NOT EXCEED THE AMOUNT OVER WHICH THE SMALL CLAIMS
7 DIVISION HAS JURISDICTION UNDER SECTION 8401, MAY BE SERVED ON THE
8 DEFENDANT BY DOING BOTH OF THE FOLLOWING:

9 (A) MAILING THE SUMMONS AND COMPLAINT TO THE DEFENDANT. UNLESS
10 THE COURT MAILES THE SUMMONS AND COMPLAINT AND KEEPS A RECORD, THE
11 PLAINTIFF SHALL MAIL THE SUMMONS AND COMPLAINT BY FIRST-CLASS MAIL
12 AND OBTAIN A CERTIFICATE OF MAILING. THE CERTIFICATE OF MAILING IS
13 PROOF OF SERVICE.

14 (B) ONE OF THE FOLLOWING:

15 (i) SERVING THE DEFENDANT BY ANY METHOD PROVIDED IN COURT RULES
16 FOR THE SERVICE OF PROCESS IN A CIVIL ACTION.

17 (ii) AFTER 3 ATTEMPTS AT PERSONAL SERVICE HAVE BEEN MADE,
18 SECURELY ATTACHING THE PAPERS TO THE MAIN ENTRANCE OF THE
19 DEFENDANT'S DWELLING UNIT. A RETURN OF SERVICE MADE UNDER THIS
20 SUBPARAGRAPH SHALL LIST THE ATTEMPTS AT PERSONAL SERVICE. SERVICE
21 UNDER THIS SUBPARAGRAPH IS EFFECTIVE ONLY IF A RETURN OF SERVICE IS
22 FILED SHOWING THAT, AFTER 3 ATTEMPTS, PERSONAL SERVICE COULD NOT BE
23 MADE.

24 Sec. 5739. (1) Except as provided by court rules, a party to
25 summary proceedings may join claims and counterclaims for money
26 judgment for damages attributable to wrongful entry, detainer, or
27 possession, for breach of the lease or contract under which the

1 premises were held, or for waste or malicious destruction to the
2 premises. The court may order separate summary disposition of the
3 claim for possession, without prejudice to any other claims or
4 counterclaims. A claim or counterclaim for money judgment shall not
5 exceed the amount in controversy that otherwise limits the
6 jurisdiction of the court.

7 **(2) A CLAIM FOR RENT DUE BECAUSE OF BREACH OF A LEASE OR**
8 **CONTRACT UNDER WHICH THE PREMISES WERE HELD INCLUDED IN A CLAIM FOR**
9 **MONEY JUDGMENT SHALL INCLUDE ALL RENT DUE THROUGH THE END OF THE**
10 **RENTAL PERIOD AT THE TIME OF TRIAL. THE AMOUNT DUE FOR RENT SHALL**
11 **NOT BE PRORATED THROUGH THE DATE OF THE TRIAL.**

12 **(3) ~~(2)~~**—If the court awards damages for physical injury to the
13 premises under subsection (1) by making an award for or based on
14 the cost of repairs, the court shall award damages for labor
15 expended by a landlord or property manager in repairing the
16 premises in the same manner as it would if the repairs were
17 performed by a third party. A landlord's or property manager's
18 labor under this subsection shall be compensated at a rate the
19 court determines to be reasonable based on usual and customary
20 charges for the repairs.

21 **(4) ~~(3)~~**—If the court determines that the landlord breached the
22 lease or contract under which the premises were held by failing to
23 repair the premises and awards damages under subsection (1) by
24 making an award for or based on the cost of repairs, the court
25 shall award damages for labor expended by the tenant in repairing
26 the premises in the same manner as it would if the repairs were
27 performed by a third party. A tenant's labor under this subsection

- 1 shall be compensated at a rate the court determines to be
- 2 reasonable based on usual and customary charges for the repairs.