

HOUSE BILL No. 5069

October 9, 2013, Introduced by Rep. Heise and referred to the Committee on Criminal Justice.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 2918, 5711, and 5714 (MCL 600.2918, 600.5711, and 600.5714), section 5714 as amended by 2012 PA 139.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2918. (1) Any person who is ejected or put out of any
2 lands or tenements in a forcible and unlawful manner, or being out
3 is afterwards held and kept out, by force ~~, if he prevails,~~ is
4 entitled to recover 3 times the amount of his **OR HER** actual damages
5 or \$200.00, whichever is greater, in addition to recovering
6 possession.

7 (2) Any tenant in possession of premises whose possessory
8 interest has been unlawfully interfered with by the owner, lessor,
9 **OR** licensor ~~, or their agents shall be~~ **BY AN AGENT OF THE OWNER,**

1 LESSOR, OR LICENSOR IS entitled to recover the amount of his OR HER
 2 actual damages or \$200.00, whichever is greater, for each
 3 occurrence and, ~~where~~ IF possession has been lost, to recover
 4 possession. Unlawful interference with a possessory interest ~~shall~~
 5 ~~include~~ INCLUDES ALL OF THE FOLLOWING:

6 (a) The use of force or threat of force.

7 (b) The removal, retention, or destruction of personal
 8 property of the possessor.

9 (c) A change, alteration, or addition to the locks or other
 10 security devices on the property without ~~forthwith~~ IMMEDIATELY
 11 providing keys or other unlocking devices AND ANY NECESSARY
 12 INSTRUCTIONS to the person in possession.

13 (d) ~~The boarding~~ BOARDING of the premises ~~which~~ THAT prevents
 14 or deters entry.

15 (e) The removal of doors, windows, or locks.

16 (f) Causing, by action or omission, the termination or
 17 interruption of a service procured by the tenant or which the
 18 landlord is ~~under an existing duty~~ OBLIGATED to furnish, which
 19 service is so essential that its termination or interruption would
 20 constitute constructive eviction, including heat, running water,
 21 hot water, electric, or gas service.

22 (g) Introduction of noise, odor, or other nuisance.

23 (3) ~~The provisions of subsection (2) shall~~ SUBSECTION (2) DOES
 24 not apply ~~where~~ IF the owner, lessor, OR licensor, ~~or their agents~~
 25 ~~can establish that he~~ AN AGENT OF THE OWNER, LESSOR, OR LICENSOR
 26 ESTABLISHES 1 OR MORE OF THE FOLLOWING:

27 (a) ~~Acted~~ THAT HE OR SHE ACTED pursuant to court order. ~~or~~

1 (b) ~~Interfered~~ **THAT HE OR SHE INTERFERED** temporarily with
2 possession only as necessary to make needed repairs or inspection
3 and only as provided by law. ~~or~~

4 (c) ~~Believed~~ **THAT HE OR SHE BELIEVED** in good faith **THAT** the
5 tenant had abandoned the premises, and after diligent inquiry had
6 reason to believe **THAT** the tenant ~~does~~ **DID** not intend to return,
7 and current rent ~~is~~ **WAS** not paid.

8 **(D) THAT THE TENANT TOOK POSSESSION OF THE PREMISES BY MEANS**
9 **OF A FORCIBLE ENTRY, HOLDS POSSESSION OF THE PREMISES BY FORCE**
10 **AFTER A PEACEABLE ENTRY, OR CAME INTO POSSESSION OF THE PREMISES BY**
11 **TRESPASS WITHOUT COLOR OF TITLE OR OTHER POSSESSORY INTEREST.**

12 (4) A person who has lost possession or whose possessory
13 interest has been unlawfully interfered with may, if that person
14 does not peacefully regain possession, bring an action for
15 possession pursuant to section 5714(1)(d) ~~of this act~~ **5714(1)(F)** or
16 bring a claim for injunctive relief in ~~the appropriate~~ circuit
17 court. A claim for damages ~~pursuant to~~ **UNDER** this section may be
18 joined with the claims for possession and for injunctive relief or
19 may be brought in a separate action.

20 (5) The provisions of this section may not be waived.

21 (6) An action to regain possession of the premises under this
22 section shall be commenced within 90 days from the time the cause
23 of action arises or becomes known to the plaintiff. An action for
24 damages under this section shall be commenced within 1 year from
25 the time the cause of action arises or becomes known to the
26 plaintiff.

27 Sec. 5711. **(1)** A person ~~may~~ **SHALL** not make any entry into or

1 upon premises unless the entry is permitted by law. ~~If~~

2 (2) **SUBJECT TO SUBSECTION (3), IF** entry is permitted by law,
3 ~~he~~**THE PERSON** shall not enter with force but only in a peaceable
4 manner.

5 (3) **IF THE OCCUPANT TOOK POSSESSION OF THE PREMISES BY MEANS**
6 **OF A FORCIBLE ENTRY, HOLDS POSSESSION OF THE PREMISES BY FORCE**
7 **AFTER A PEACEABLE ENTRY, OR CAME INTO POSSESSION OF THE PREMISES BY**
8 **TRESPASS WITHOUT COLOR OF TITLE OR OTHER POSSESSORY INTEREST, THE**
9 **OWNER, LESSOR, OR LICENSOR OR AN AGENT THEREOF MAY ENTER THE**
10 **PREMISES AND SUBSECTION (2) DOES NOT APPLY TO THE ENTRY.**

11 Sec. 5714. (1) A person entitled to **POSSESSION OF** premises may
12 recover possession ~~of the premises~~ by summary proceedings in the
13 following circumstances:

14 (a) When a person holds over premises after failing or
15 refusing to pay rent due under the lease or agreement by which the
16 person holds the premises within 7 days from the service of a
17 written demand for possession for nonpayment of the rent due. For
18 the purpose of this subdivision, rent due does not include any
19 accelerated indebtedness ~~by reason~~**BECAUSE** of a breach of the lease
20 under which the premises are held.

21 (b) When a person holds over premises for 24 hours following
22 service of a written demand for possession for termination of the
23 lease pursuant to a clause in the lease providing for termination
24 because a tenant, a member of the tenant's household, or other
25 person under the tenant's control has unlawfully manufactured,
26 delivered, possessed with intent to deliver, or possessed a
27 controlled substance on the leased premises. This subdivision

1 applies only if a formal police report has been filed alleging that
2 the person has unlawfully manufactured, delivered, possessed with
3 intent to deliver, or possessed a controlled substance on the
4 leased premises. For purposes of this subdivision, "controlled
5 substance" means a substance or a counterfeit substance classified
6 in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the
7 public health code, 1978 PA 368, MCL 333.7211 to 333.7216.

8 (c) When a person holds over premises in 1 or more of the
9 following circumstances:

10 (i) After termination of the lease, pursuant to a power to
11 terminate provided in the lease or implied by law.

12 (ii) After the term for which the premises are demised to the
13 person or to the person under whom he or she holds.

14 (iii) After the termination of the person's estate by a notice
15 to quit as provided by section 34 of 1846 RS 66, MCL 554.134.

16 (d) When the person in possession willfully or negligently
17 causes a serious and continuing health hazard to exist on the
18 premises, or causes extensive and continuing physical injury to the
19 premises, which was discovered or should reasonably have been
20 discovered by the party seeking possession not earlier than 90 days
21 before the institution of proceedings under this chapter and when
22 the person in possession neglects or refuses for 7 days after
23 service of a demand for possession of the premises to deliver up
24 possession of the premises or to substantially restore or repair
25 the premises.

26 (e) When a person holds over premises for 7 days following
27 service of a written notice to quit for termination of the lease

1 after the tenant, a member of the tenant's household, or a person
2 under the tenant's control, on real property owned or operated by
3 the tenant's landlord, has caused or threatened physical injury to
4 an individual. This subdivision applies only if the police
5 department with jurisdiction has been notified that the person, on
6 real property owned or operated by the tenant's landlord, caused or
7 threatened physical injury to an individual. This subdivision does
8 not apply in either of the following cases:

9 (i) The individual who was physically injured or threatened is
10 the tenant or a member of the tenant's household.

11 (ii) Application would result in a violation of federal housing
12 regulations.

13 (f) When a person takes possession of premises by means of a
14 forcible entry, holds possession of premises by force after a
15 peaceable entry, or comes into possession of premises by trespass
16 without color of title or other possessory interest. **THIS REMEDY IS**
17 **IN ADDITION TO THE REMEDY OF ENTRY PERMITTED UNDER SECTION 5711(3).**

18 (g) When a person continues in possession of premises sold by
19 virtue of a mortgage or execution, after the time limited by law
20 for redemption of the premises.

21 (h) When a person continues in possession of premises sold and
22 conveyed by a personal representative under license from the
23 probate court or under authority in the will.

24 (2) A tenant or occupant of housing operated by a city,
25 village, township, or other unit of local government, as provided
26 in 1933 (Ex Sess) PA 18, MCL 125.651 to 125.709c, is not considered
27 to be holding over under subsection (1)(b) or (c) unless the

1 tenancy or agreement has been terminated for just cause, as
2 provided by lawful rules of the local housing commission or by law.

3 (3) A tenant of a mobile home park is not considered to be
4 holding over under subsection (1)(b) or (c) unless the tenancy or
5 lease agreement is terminated for just cause pursuant to chapter
6 57a.