

Legislative Analysis



REQUIRE AWARD OF LATE PAYMENT FEES IN EVICTION SUMMARY PROCEEDINGS

Phone: (517) 373-8080
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House Bill 5566 as reported from committee
Sponsor: Rep. Pat Outman
Committee: Judiciary
Complete to 3-17-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5566 would amend Chapter 57 (Summary Proceedings to Recover Possession of Premises) of the Revised Judicature Act to allow a plaintiff in an eviction summary proceeding to collect late payment fees for nonpayment of rent from a defendant.

FISCAL IMPACT: The bill would have no fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

Tenants currently sign leases with landlords that can include late fees for late rent payments. Additionally, a landlord can generally evict a tenant for nonpayment of rent. During an eviction proceeding, a judge may create a judgment requiring the evicted tenant to pay all or some of the unpaid rent. However, courts generally do not include in the judgment any late fees that are in the lease. Some believe that Michigan courts should consider these fees during an eviction proceeding and require an evicted tenant to pay any late fees owed to the landlord.

THE CONTENT OF THE BILL:

Currently, when a judge or jury finds that a plaintiff in an eviction summary proceeding is entitled to recover possession of the premises due to nonpayment of any money due under the tenancy or executory contract for purchase of the premises, the judge or jury must state in the judgment the amount due at the time of the trial. In determining that amount, the judge or jury must deduct any portion of the rent that was found to be lawfully withheld from the plaintiff due to the plaintiff's breach of the lease or of certain statutory covenants under section 39 of Chapter 66 of the Revised Statutes of 1846,¹ such as fitness for intended use.

Under the bill, in addition to deducting the above amount, the judge or jury would have to add to the plaintiff's judgment any fee for late payment of rent that was expressly provided for and specified in the lease. However, this added amount could not exceed a monthly fee of the greater of \$50 or 10% of the rental amount, unless the lessor demonstrated that a higher late fee specified in the lease was reasonable.

Additionally, the act currently allows the plaintiff obtaining a judgment for possession of any premises under Chapter 57 to bring a civil action against the defendant for damages from the time of forcible entry or detainer, trespass, notice of forfeiture, notice to quit, or demand for possession.

¹ MCL 554.139: <http://legislature.mi.gov/doc.aspx?mcl-554-139>

Under the bill, these damages could also include any fees for late payment of rent in the same amount as allowed in the plaintiff's judgment, as described above.

The bill would take effect 90 days after being enacted.

MCL 600.5741 and 600.5750

BACKGROUND INFORMATION:

House Bill 5566 is substantively identical to House Bill 4587 of the 2019-20 legislative session as that bill was passed by the House of Representatives.

ARGUMENTS:

For:

Supporters of the bill argue that landlords often require timely rental payments from tenants to be able to stay solvent on the property expenses, such as a mortgage, taxes, and utilities. Additionally, landlords may depend on timely rental payments from tenants as a main source of income. To help recoup any losses from late rent payments, late fees are commonly included in lease agreements. Supporters argue that when courts do not include these late fees in the final judgment for the evicted tenant to pay back, the landlord is unfairly harmed.

Against:

Critics of the bill argue that late payments of rent resulting in eviction occur because the tenant is struggling to afford the rent. If a court requires the evicted tenant to pay all of the rent due as well as additional late fees, then an evicted tenant struggling to make timely rental payments is going to struggle even more in having to make past due rental payments plus late fees. To account for this, judgments for evictions are often negotiated between the landlord and evicted tenant to an agreed-upon judgment that the evicted tenant can afford to pay back. This judgment can be less than what is actually owed, but it is often a more manageable amount that the evicted tenant can pay so that the landlord can recoup something. Opponents argue that the bill would prevent these negotiations and result in judgments that evicted tenants cannot afford to pay. If an evicted tenant is unable to afford the judgment, the landlord will not be able to collect any past rental payments and will continue to be harmed.

POSITIONS:

A representative of the Property Management Association of Michigan testified in support of the bill (2-15-22).

The following entities indicated support for the bill (2-15-22):

- Apartment Association of Michigan
- Rental Property Owners Association of Michigan
- Greystar and Pine Ridge Apartments
- Princeton Enterprises
- AMP Residential, LLC
- Smart Moves, LLC
- Midwest Capital Group, LLC

- Wilson White Company
- Granger Group – Reserve Flats
- Legacy, LLC
- The Associated Management Company
- Village Green Management Company
- Group Five Management Company
- Intrepid Professional Group

The Michigan Poverty Law Program testified in opposition to the bill. (2-15-22)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.