

Act No. 192  
Public Acts of 1991  
Approved by the Governor  
December 30, 1991  
Filed with the Secretary of State  
December 30, 1991

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1991**

Introduced by Rep. Perry Bullard

# **ENROLLED HOUSE BILL No. 4776**

AN ACT to amend sections 8401, 8402, 8407, 8408, 8409, 8410, 8411, 8415, and 8424 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," sections 8401, 8402, 8408, and 8424 as amended by Act No. 278 of the Public Acts of 1984 and sections 8407 and 8415 as amended by Act No. 272 of the Public Acts of 1984, being sections 600.8401, 600.8402, 600.8407, 600.8408, 600.8409, 600.8410, 600.8411, 600.8415, and 600.8424 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 8401, 8402, 8407, 8408, 8409, 8410, 8411, 8415, and 8424 of Act No. 236 of the Public Acts of 1961, sections 8401, 8402, 8408, and 8424 as amended by Act No. 278 of the Public Acts of 1984 and sections 8407 and 8415 as amended by Act No. 272 of the Public Acts of 1984, being sections 600.8401, 600.8402, 600.8407, 600.8408, 600.8409, 600.8410, 600.8411, 600.8415, and 600.8424 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 8401. A small claims division is created in each district as a division of the district court. A judge of the district court shall sit as judge of the small claims division. The jurisdiction of the small claims division shall be confined to cases for the recovery of money only when the amount claimed does not exceed \$1,750.00.

Sec. 8402. (1) An action shall be commenced in the small claims division by filing with the clerk or a deputy clerk of the district court an affidavit and 1 copy of the affidavit for each defendant to be served. The form and contents of the affidavit shall be as prescribed by statute and the state court administrator. On the same form as the affidavit there shall be printed a notice directing the defendant to appear and answer as prescribed in section 8404.

(2) The full and correct name of the plaintiff shall be given, and the affidavit shall state whether the plaintiff is a corporation, partnership, sole proprietorship, or individual. If the plaintiff was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall be given.

(3) The affidavit, in boldface type, shall inform both parties of the right to removal before trial from magistrate jurisdiction, if applicable, and removal before trial to the general civil division. The affidavit shall inform the parties of rights waived if they choose to remain in the small claims division.

Sec. 8407. (1) A claim shall not be filed or prosecuted in the small claims division by an assignee of a claim or by a third party beneficiary under a third party beneficiary contract.

(2) Within a district court district a person shall not file more than 5 claims in the small claims division in 1 week.

(3) A person shall not file a claim on behalf of a sole proprietorship or a partnership unless that person is the proprietor, a partner in the plaintiff partnership, or a full-time salaried employee of the plaintiff having knowledge of the facts surrounding the complaint. A person shall not file a claim on behalf of a corporation unless that person is a full-time, salaried employee having knowledge of the facts surrounding the complaint. A person shall not file a claim on behalf of a county, city, village, township, or local or intermediate school district unless that person is an elected or appointed officer or an employee of the county, city, village, township, or local or intermediate school district who has knowledge of the facts surrounding the complaint and who is authorized by the governing body of the county, city, village, township, or local or intermediate school district to file the claim.

Sec. 8408. (1) An attorney at law, except on the attorney's own behalf, a collection agency or agent or employee of a collection agency, or a person other than the plaintiff and defendant, except as is otherwise provided in this chapter, shall not take part in the filing, prosecution, or defense of litigation in the small claims division.

(2) A sole proprietorship, partnership, or corporation as plaintiff or defendant may be represented by an officer or employee who has direct and personal knowledge of facts in dispute. If the officer or employee who has direct and personal knowledge of facts in dispute is no longer employed by the defendant or plaintiff or is medically unavailable, the representation may be made by that person's supervisor, or by the sole proprietor, a partner, or an officer or a member of the board of directors of a corporation.

(3) A county, city, village, township, or local or intermediate school district as plaintiff or defendant may be represented only by an elected or appointed officer or an employee who has direct and personal knowledge of the facts in dispute. If the officer or employee who has direct and personal knowledge of the facts in dispute is no longer an officer or employee of the plaintiff or defendant, the representation may be made by that officer's successor or that employee's supervisor, or by a member of the governing body of the county, city, village, township, or local or intermediate school district. In addition, a person may not represent a county, city, village, township, or local or intermediate school district in the small claims division unless authorized to appear in the case by the governing body of the county, city, village, township, or local or intermediate school district.

(4) Before commencement of a trial, the plaintiff or defendant may, upon demand, require that the trial be conducted before a district court judge and not a magistrate, or may remove the case from the small claims division to the general civil division of the district court. If the parties commence a trial of the case in the small claims division, both parties waive all rights mentioned in section 8412.

Sec. 8409. (1) Attachment or garnishment shall not issue from the small claims division prior to judgment but execution may issue in the manner prescribed by law and the judgment may be enforced in any other manner provided by law and not prohibited under the provisions of this chapter.

(2) The state court administrator shall prepare instruction sheets clearly explaining in plain English how, and under what circumstances, a plaintiff in whose favor a judgment has been entered may request the court to issue execution, attachment, or garnishment to enforce payment of the judgment. A copy of the instruction sheet shall be offered to the plaintiff at the same time as a copy of the judgment is given to the plaintiff under section 8410. Additional copies of the instruction sheets, and forms for writs of garnishment, shall be made available at the office of each clerk and deputy clerk of the district court.

Sec. 8410. (1) Before or at the hearing the parties may make a settlement upon those terms as they may agree. The settlement shall be in writing and signed by both parties. Upon filing of the settlement with the court, the judge shall review the settlement and may enter it as the judgment of the court or may require that a full hearing take place.

(2) The judge shall order that a judgment in the small claims division shall be satisfied by payment to the clerk or the plaintiff either in a lump sum or in installments in amounts and at times as the judge considers just and reasonable under the circumstances. The judge shall also provide for a stay of further proceedings to collect the judgment while the defendant is in compliance with the order of the court.

(3) For good cause shown, the judge may reinstate an installment payment judgment previously not performed or the judge may alter the amount of installment payments and the time of payment of the judgment and shall authorize execution, attachment, or garnishment to issue where it appears that the defendant has not paid according to the terms of the judgment.

(4) The judgment shall include a warning that the defendant's failure to pay the judgment pursuant to its terms or any installment payment ordered may result in execution against the defendant's property and that the defendant may be compelled to appear for an examination of the defendant's assets.

(5) If the defendant is not present when the judgment is entered, or is present but does not immediately pay the full amount of the judgment when the judgment is entered, the judge shall order that the defendant, within 30 days after the date of entry of the judgment, pay the judgment in full or disclose in writing to the plaintiff and the court his or her place of employment and the location of his or her accounts in state or federally chartered banks, savings and loan associations, and credit unions.

(6) A copy of the judgment shall be given in court, delivered, or mailed immediately to each plaintiff and defendant following entry of the judgment.

Sec. 8411. (1) Before the commencement of a trial in the small claims division, the district court judge or magistrate shall inform both parties, orally or in writing, of the right to removal before trial to the general civil division and of all rights waived if they choose to remain in the small claims division.

(2) In hearings before the small claims division, witnesses shall be sworn. The judge shall conduct the trial in an informal manner so as to do substantial justice between the parties according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications, the sole object of such trials is to dispense expeditious justice between the parties. There shall be no jury nor shall a verbatim record of such proceedings be made.

Sec. 8415. (1) Except as provided in subsections (3) and (4), in districts of the first class actions in the small claims division shall be filed in the county in which the cause of action arose or in the county in which the defendant is established or resides. If there is more than 1 defendant, actions shall be filed in the county in which any defendant is established or resides.

(2) Except as provided in subsections (3) and (4), in districts of the second or third class actions in the small claims division shall be filed in the district in which the cause of action arose or in the district in which the defendant is established or resides. If there is more than 1 defendant, actions shall be filed in the district in which any defendant is established or resides.

(3) In districts of the first class actions in the small claims division against a city, village, or township shall be filed in the county in which the city, village, or township is located. In districts of the first class actions in the small claims division against a county shall be filed in that county. In districts of the second or third class actions in the small claims division against a city, village, or township shall be filed in the district in which the city, village, or township is located. In districts of the second or third class actions in the small claims division against a county shall be filed in the district in which the county seat of the county is located.

(4) In districts of the first class, actions in the small claims division against a local or intermediate school district shall be filed in the county in which the local or intermediate school district has its principal administrative office. In districts of the second or third class, actions in the small claims division against a local or intermediate school district shall be filed in the district in which the local or intermediate school district has its principal administrative office.

Sec. 8424. (1) Actions of fraud, except for actions under section 2952 or under the Michigan consumer protection act, Act No. 331 of the Public Acts of 1976, being sections 445.901 to 445.922 of the Michigan Compiled Laws, and actions of libel, slander, assault, battery, or other intentional torts shall not be instituted in the small claims division.

(2) Except as provided in subsection (3), the state, a political subdivision of the state, or any other governmental agency shall not be a party to an action in the small claims division.

(3) A county, city, village, township, or local or intermediate school district may file an action in the small claims division. An action may be filed in the small claims division against a county, city, village, township, or local or intermediate school district, but a party may not assert a claim with respect to which the county, city, village, township, or local or intermediate school district has immunity.

Section 2. This amendatory act shall take effect July 1, 1992.