

# HOUSE BILL No. 4776

May 1, 1991, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill 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

"Revised judicature act 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.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 8401, 8402, 8407, 8408, 8409, 8410,  
2 8411, 8415, and 8424 of Act No. 236 of the Public Acts of 1961,  
3 sections 8401, 8402, 8408, and 8424 as amended by Act No. 278 of  
4 the Public Acts of 1984 and sections 8407 and 8415 as amended by  
5 Act No. 272 of the Public Acts of 1984, being sections 600.8401,

1 600.8402, 600.8407, 600.8408, 600.8409, 600.8410, 600.8411,  
2 600.8415, and 600.8424 of the Michigan Compiled Laws, are amended  
3 to read as follows:

4       Sec. 8401. ~~-(1)-~~ A small claims division is created in each  
5 district as a division of the district court. A judge of the  
6 district court shall sit as judge of the small claims division.  
7 The jurisdiction of the small claims division shall be confined  
8 to cases for the recovery of money only when the amount claimed  
9 does not exceed ~~-\$1,000.00~~ \$2,000.00.

10       ~~-(2) On and after January 1, 1986, the jurisdiction of the~~  
11 ~~small claims division shall be confined to cases for the recovery~~  
12 ~~of money only when the amount claimed does not exceed \$1,500.00.~~

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

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

1 (3) THE AFFIDAVIT, IN BOLDFACE TYPE, SHALL INFORM BOTH  
2 PARTIES OF THE RIGHT TO REMOVAL BEFORE TRIAL FROM MAGISTRATE  
3 JURISDICTION, IF APPLICABLE, AND REMOVAL BEFORE TRIAL TO THE GEN-  
4 ERAL CIVIL DIVISION. THE AFFIDAVIT SHALL INFORM THE PARTIES OF  
5 RIGHTS WAIVED IF THEY CHOOSE TO REMAIN IN THE SMALL CLAIMS  
6 DIVISION.

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

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

12 (3) A person shall not file a claim on behalf of a sole pro-  
13 prietorship or a partnership unless that person is the propri-  
14 etor, a partner in the plaintiff partnership, or a full-time sal-  
15 aried employee of the plaintiff having knowledge of the facts  
16 surrounding the complaint. A person shall not file a claim on  
17 behalf of a corporation unless that person is a full-time, sala-  
18 ried employee having knowledge of the facts surrounding the  
19 complaint. A person shall not file a claim on behalf of a  
20 county, city, village, ~~or~~ township, OR LOCAL OR INTERMEDIATE  
21 SCHOOL DISTRICT unless that person is an elected or appointed  
22 officer or an employee of the county, city, village, ~~or~~  
23 township, OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT who has knowl-  
24 edge of the facts surrounding the complaint and who is authorized  
25 by the governing body of the county, city, village, ~~or~~  
26 township, OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT to file the  
27 claim.

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

7       (2) A sole proprietorship, partnership, or corporation as  
8 plaintiff or defendant may be represented by an officer or  
9 employee who has direct and personal knowledge of facts in  
10 dispute. If the officer or employee who has direct and personal  
11 knowledge of facts in dispute is no longer employed by the  
12 defendant or plaintiff or is medically unavailable, the represen-  
13 tation may be made by that person's supervisor, or by the sole  
14 proprietor, a partner, or an officer or a member of the board of  
15 directors of a corporation.

16       (3) A county, city, village, ~~or~~ township, OR LOCAL OR  
17 INTERMEDIATE SCHOOL DISTRICT as plaintiff or defendant may be  
18 represented only by an elected or appointed officer or an  
19 employee who has direct and personal knowledge of the facts in  
20 dispute. If the officer or employee who has direct and personal  
21 knowledge of the facts in dispute is no longer an officer or  
22 employee of the plaintiff or defendant, the representation may be  
23 made by that officer's successor or that employee's supervisor,  
24 or by a member of the governing body of the county, city, vil-  
25 lage, ~~or~~ township, OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT.  
26 In addition, a person may not represent a county, city, village,  
27 ~~or~~ township, OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT in the

1 small claims division unless authorized to appear in the case by  
2 the governing body of the county, city, village, ~~or~~ township,  
3 OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT.

4 (4) Before commencement of a trial, the plaintiff or  
5 defendant may, upon demand, require that the trial be conducted  
6 before a district court judge and not a magistrate, or may remove  
7 the case from the small claims division to the general civil  
8 division of the district court. ~~The affidavit form, in boldface~~  
9 ~~type, shall inform both parties of the right to removal before~~  
10 ~~trial from magistrate jurisdiction, if applicable, and removal~~  
11 ~~before the trial to the general civil division and also inform~~  
12 ~~the parties of the rights waived if they choose to remain in the~~  
13 ~~small claims division.~~ If the parties commence a trial of the  
14 case in the small claims division, both parties waive all rights  
15 mentioned in section 8412.

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

21 (2) THE STATE COURT ADMINISTRATOR SHALL PREPARE INSTRUCTION  
22 SHEETS CLEARLY EXPLAINING IN PLAIN ENGLISH HOW, AND UNDER WHAT  
23 CIRCUMSTANCES, A PLAINTIFF IN WHOSE FAVOR A JUDGMENT HAS BEEN  
24 ENTERED MAY REQUEST THE COURT TO ISSUE EXECUTION, ATTACHMENT, OR  
25 GARNISHMENT TO ENFORCE PAYMENT OF THE JUDGMENT. A COPY OF THE  
26 INSTRUCTION SHEET SHALL BE GIVEN TO THE PLAINTIFF AT THE SAME  
27 TIME AS A COPY OF THE JUDGMENT IS GIVEN TO THE PLAINTIFF UNDER

1 SECTION 8410. ADDITIONAL COPIES OF THE INSTRUCTION SHEETS, AND  
2 FORMS FOR WRITS OF GARNISHMENT, SHALL BE MADE AVAILABLE AT THE  
3 OFFICE OF EACH CLERK AND DEPUTY CLERK OF THE DISTRICT COURT.

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

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

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

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

1 (5) IF THE DEFENDANT IS NOT PRESENT WHEN THE JUDGMENT IS  
2 ENTERED, OR IS PRESENT BUT DOES NOT IMMEDIATELY PAY THE FULL  
3 AMOUNT OF THE JUDGMENT WHEN THE JUDGMENT IS ENTERED, THE JUDGE  
4 SHALL ORDER THAT THE DEFENDANT, WITHIN 30 DAYS AFTER THE DATE OF  
5 ENTRY OF THE JUDGMENT, PAY THE JUDGMENT IN FULL OR DISCLOSE IN  
6 WRITING TO THE COURT HIS OR HER PLACE OF EMPLOYMENT AND THE LOCA-  
7 TION OF HIS OR HER ACCOUNTS IN STATE OR FEDERALLY CHARTERED  
8 BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS.

9 (6) A copy of the judgment shall be given in court, deliv-  
10 ered, or mailed immediately to each plaintiff and defendant fol-  
11 lowing entry of the judgment.

12 Sec. 8411. (1) BEFORE THE COMMENCEMENT OF A TRIAL IN THE  
13 SMALL CLAIMS DIVISION, THE DISTRICT COURT JUDGE OR MAGISTRATE  
14 SHALL INFORM BOTH PARTIES, ORALLY OR IN WRITING, OF THE RIGHT TO  
15 REMOVAL BEFORE TRIAL TO THE GENERAL CIVIL DIVISION AND OF ALL  
16 RIGHTS WAIVED IF THEY CHOOSE TO REMAIN IN THE SMALL CLAIMS  
17 DIVISION.

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

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

8       (2) Except as provided in ~~subsection~~ SUBSECTIONS (3) AND  
9 (4), in districts of the second or third class actions in the  
10 small claims division shall be filed in the district in which the  
11 cause of action arose or in the district in which the defendant  
12 is established or resides. If there is more than 1 defendant,  
13 actions shall be filed in the district in which any defendant is  
14 established or resides.

15       (3) In districts of the first class actions in the small  
16 claims division against a city, village, or township shall be  
17 filed in the county in which the city, village, or township is  
18 located. In districts of the first class actions in the small  
19 claims division against a county shall be filed in that county.  
20 In districts of the second or third class actions in the small  
21 claims division against a city, village, or township shall be  
22 filed in the district in which the city, village, or township is  
23 located. In districts of the second or third class actions in  
24 the small claims division against a county shall be filed in the  
25 district in which the county seat of the county is located.

26       (4) IN DISTRICTS OF THE FIRST CLASS, ACTIONS IN THE SMALL  
27 CLAIMS DIVISION AGAINST A LOCAL OR INTERMEDIATE SCHOOL DISTRICT



1 SHALL BE FILED IN THE COUNTY IN WHICH THE LOCAL OR INTERMEDIATE  
2 SCHOOL DISTRICT HAS ITS PRINCIPAL ADMINISTRATIVE OFFICE. IN DIS-  
3 TRICTS OF THE SECOND OR THIRD CLASS, ACTIONS IN THE SMALL CLAIMS  
4 DIVISION AGAINST A LOCAL OR INTERMEDIATE SCHOOL DISTRICT SHALL BE  
5 FILED IN THE DISTRICT IN WHICH THE LOCAL OR INTERMEDIATE SCHOOL  
6 DISTRICT HAS ITS PRINCIPAL ADMINISTRATIVE OFFICE.

7       Sec. 8424. (1) Actions of fraud, except for actions under  
8 section 2952 OR UNDER THE MICHIGAN CONSUMER PROTECTION ACT, ACT  
9 NO. 331 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 445.901 TO  
10 445.922 OF THE MICHIGAN COMPILED LAWS, and actions of libel,  
11 slander, assault, battery, or other intentional torts shall not  
12 be instituted in the small claims division.

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

17       (3) A county, city, village, ~~or~~ township, OR LOCAL OR  
18 INTERMEDIATE SCHOOL DISTRICT may file an action in the small  
19 claims division. An action may be filed in the small claims  
20 division against a county, city, village, ~~or~~ township, OR LOCAL  
21 OR INTERMEDIATE SCHOOL DISTRICT, but a party may not assert a  
22 claim with respect to which the county, city, village, ~~or~~  
23 township, OR LOCAL OR INTERMEDIATE SCHOOL DISTRICT has immunity.

24       Section 2. This amendatory act shall take effect July 1,  
25 1991.