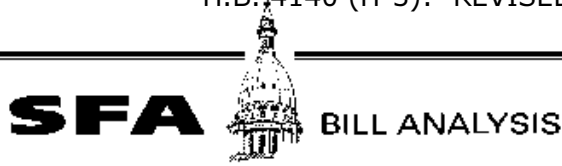


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House Bill 4140 (Substitute H-3 as passed by the House)
Sponsor: Representative Marc Shulman
House Committee: Civil Law and the Judiciary
Senate Committee: Judiciary

Date Completed: 12-6-01

CONTENT

The bill would add Chapter 80 ("The Cyber Court") to the Revised Judicature Act. The bill would create the Cyber Court to resolve certain disputes between business and commercial entities in a setting that allowed proceedings to be conducted by means of electronic communication. The bill would do all of the following:

- Specify the purpose of the Cyber Court.**
- Provide for the assignment of judges to the Cyber Court.**
- Specify that the Cyber Court would have jurisdiction over business and commercial actions in which the amount in dispute exceeded \$25,000.**
- Provide that a Cyber Court case would be heard without a jury, and establish other procedures for Cyber Court cases, including filing, removal to circuit court, appeals, and alternative dispute resolution.**
- Provide for legislative oversight of the Cyber Court.**
- Require the Supreme Court to adopt rules to implement Chapter 80.**

The sections of the bill requiring the adoption of rules for its implementation and creating a legislative oversight committee would take effect on January 1, 2002. The remainder of the bill would take effect on October 1, 2002.

Creation & Purpose

The bill would create the Cyber Court as a court of record. Its purpose would be to do all of the following:

- Establish judicial structures that would help to strengthen and revitalize Michigan's economy.
- Allow disputes between commercial and business entities to be resolved with the "expertise, technology, and efficiency required by the information age economy".
- Assist the judiciary in responding to the rapid expansion of information technology in Michigan.
- Establish a technology-rich system that would serve the needs of a judicial system operating in a global economy.
- Maintain the integrity of Michigan's judicial system, while applying new technologies to judicial proceedings.
- Supplement other State programs designed to make Michigan attractive to technology-driven companies.
- Allow alternative dispute resolution mechanisms to benefit from changes in technology.
- Establish "virtual" courtroom facilities, and allow the conducting of court proceedings electronically as well as the electronic filing of documents.

The Cyber Court would be located in one or more Michigan counties, as determined by the

Supreme Court. The Cyber Court would have to sit in facilities that were designed to allow hearings and other proceedings to be conducted by electronic communication, including video and audio conferencing and Internet conferencing.

The court would have to hold session and schedule hearings or other proceedings to accommodate parties or witnesses who were located outside of Michigan. A Cyber Court facility would be open to the public to the same extent as a circuit court facility. When technologically feasible, and at the discretion of the judge and pursuant to court rules, Cyber Court proceedings would have to be broadcast on the Internet.

The Cyber Court would have to maintain its staff and support services at the seat of government, and would be funded from annual appropriations to the Supreme Court.

Judicial Assignment

The Supreme Court would have to assign to the Cyber Court elected judges who requested to be considered for the assignment. In assigning judges to the court, the Supreme Court would have to consider a judge's experience in presiding over commercial litigation and his or her experience and interest in the application of technology to the administration of justice. In making the assignments, the Supreme Court would have to "endeavor to reflect the ethnic and racial diversity of the state population and the statewide judicial bench".

The total number of judges assigned to the Cyber Court would have to reflect reasonably the caseload of the court. The duration of a judge's assignment would have to be at least three years. The Supreme Court also would have to appoint the clerk of the Cyber Court.

The Michigan Judicial Institute would have to provide appropriate training for judges who were assigned as judges of the Cyber Court.

Jurisdiction

The Cyber Court would have concurrent jurisdiction over business and commercial actions in which the amount in controversy exceeded \$25,000. "Business and commercial actions" would mean disputes arising between business owners, associates, or competitors or between a business entity and its customers. Business and commercial actions would include, but would not be limited to, the following types of disputes:

- Those involving information technology, software, or website development, maintenance, or hosting.
- Those involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
- Those arising out of contractual agreements or other business dealings, including licensing, trade secret, noncompete, nonsolicitation, and confidentiality agreements.
- Those arising out of commercial transactions, including commercial bank transactions.
- Those arising out of business or commercial insurance policies.
- Those involving commercial real property other than landlord-tenant disputes.

Business and commercial actions expressly would exclude the following types of disputes:

- Tort actions, including personal injury, wrongful death, or medical malpractice matters.
- Landlord-tenant matters.
- Employee-employer disputes.
- Administrative agency, tax, zoning, and other appeals.
- Criminal matters.
- Proceedings to enforce judgments of any type.

Cyber Court Cases

Filing & Removal. A party could bring an action in the Cyber Court by filing a complaint with the clerk of the Cyber Court and paying a filing fee of \$200. Each month the court clerk would have to deposit all fees collected with the State Treasurer, securing and filing a receipt for all fees deposited.

A defendant in an action filed in the Cyber Court could remove the action to the circuit court within 14 days after the deadline for filing an answer to the complaint. If the action were removed to the circuit court, it would have to be heard in a county in which venue would be proper.

If the defendant removed the action to circuit court, the clerk of the Cyber Court would have to forward to the circuit court, as a filing fee, a portion of the filing fee paid at the beginning of the action that was equal to the filing fee otherwise required in the circuit court.

Procedures. Practice and procedure in the court, the form and manner of pleadings, and the manner of service of process would have to be in accordance with special rules for the Cyber Court adopted by the Supreme Court.

All matters heard in the Cyber Court would have to be heard by means of electronic communications, including video and audio conferencing and Internet conferencing among the judge and court personnel, parties, witnesses, and other persons necessary to the proceeding.

The Cyber Court would have the same power as the circuit court to subpoena witnesses and require the production of books, papers, records, documents, electronic documents, and any other evidence, and to punish for contempt. The judge and clerk of the Cyber Court could administer oaths and affirmations and take acknowledgments of instruments by electronic means. An oath or affirmation taken from a person located outside of Michigan and pursuant to the laws of the jurisdiction in which the person was located would be considered to be an oath or affirmation authorized by Michigan law.

An action in the Cyber Court would have to be heard by the judge, without a jury. The court could grant a new trial upon the same terms and under the same conditions and for the same reasons as prevail in the case of the circuit court, in a case heard by a judge without a jury.

Unless a party removed an action filed in the Cyber Court to the circuit court, as described below, all parties to an action in the Cyber Court would be considered to have waived the right to a jury trial.

Appeals. An appeal from the Cyber Court would be to the Court of Appeals, as prescribed by Supreme Court rules. The clerk of the Cyber Court immediately would have to furnish the parties to every action with an electronic notice of entry of any final order or judgment. The time within which an appeal as of right could be taken would be governed by Supreme Court rules.

Alternative Dispute Resolution. The Supreme Court would have to provide by rule for an alternative dispute resolution for matters before the Cyber Court.

Legislative Oversight

By October 1, 2004, the State Court Administrator would have to submit a written report to the Legislature on the operation of the Cyber Court. The report would have to include the State Court Administrator's recommendations, if any, for expanding the jurisdiction of the Cyber Court and other matters.

The bill would create a legislative oversight committee. The committee would have to consist of three members of the Senate appointed by the Majority Leader, including one who was not a member of the majority party, and three members of the House of Representatives appointed by the Speaker, including one who was not a member of the majority party. Committee members would have to be appointed or removed in the same manner as members of standing committees. Vacancies would have to be filled in the same manner as original appointments. Committee members could be reimbursed for expenses incurred in the administration of their duties.

Annually, the committee would have to elect from its membership a chairperson and alternate chairperson, who would have to be from different houses of the Legislature, with the first chairperson being from the House of Representatives. The position of chairperson would have to alternate between the Senate and the House.

Business that the committee performed would have to be conducted at a public meeting held in compliance with the Open Meetings Act. Special meetings could be held at the call of the chairperson or a majority of the committee. The committee would have to prescribe rules for its own procedure. A majority of the members would be a quorum. Any committee recommendation would require the concurrence of at least two of the three members appointed from each house of the Legislature.

The committee would have to do all of the following for the period beginning January 1, 2002, and ending December 31, 2004:

- Monitor the development of the Cyber Court.
- Consider and respond to court rules proposed or adopted by the Supreme Court to implement Chapter 80.
- In cooperation with the State Court Administrative Office, determine if further legislation was needed for the implementation of the Cyber Court or to expand its jurisdiction.

The committee would have to report on those topics, in writing, to the chairpersons of the standing committees of the Senate and House having jurisdiction over legislation pertaining to the judiciary, and could accompany the report with proposed bills to implement its recommendations.

Proposed MCL 600.8001-600.8029

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State depending on the caseload and the number of judges assigned to the Cyber Court. Costs also would include facility and equipment costs. No information has been provided to facilitate an estimate regarding the technology costs of the proposed Cyber Court. That cost would depend on the availability of space and level of technology required.

The bill would require the Cyber Court to maintain its staff and support services in Lansing. However, other than requiring the Supreme Court to appoint a Cyber Court clerk, the bill does not specify the number of new employees. Other staff might include a judicial secretary, law clerk, and a technician to operate the Cyber Court equipment.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.