

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 6447

(As passed the House, December 3, 2002)

(As amended by the Senate, December 11, 2002)

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A bill to amend 1961 PA 236, entitled "Revised judiciary act of 1961," by amending sections 8001, 8003, 8005, and 8011 (MCL 600.8001, 600.8003, 600.8005, and 600.8011), as added by 2001 PA 262, and by adding section 2962a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

SEC. 2962A. (1) AS USED IN THIS SECTION:

(A) "TELECOMMUNICATIONS SERVICE" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(B) "TELECOMMUNICATIONS SERVICE PROVIDER" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(C) "TELECOMMUNICATIONS SYSTEM" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(D) "UNAUTHORIZED CONNECTION" MEANS ANY PHYSICAL, ELECTRICAL, MECHANICAL, ACOUSTICAL, OR OTHER CONNECTION TO A TELECOMMUNICATIONS SYSTEM, WITHOUT THE SPECIFIC AUTHORITY OF THE TELECOMMUNICATIONS SERVICE PROVIDER. AN UNAUTHORIZED CONNECTION DOES NOT INCLUDE ANY OF THE FOLLOWING:

(i) AN INTERNAL CONNECTION MADE BY A PERSON WITHIN HIS OR HER RESIDENCE FOR THE PURPOSE OF RECEIVING AUTHORIZED TELECOMMUNICATIONS SERVICE.

(ii) THE PHYSICAL CONNECTION OF A CABLE OR OTHER DEVICE BY A PERSON LOCATED WITHIN HIS OR HER RESIDENCE WHICH WAS INITIALLY PLACED THERE BY THE TELECOMMUNICATIONS SERVICE PROVIDER.

(iii) THE PHYSICAL CONNECTION OF A CABLE OR OTHER DEVICE BY A PERSON LOCATED WITHIN HIS OR HER RESIDENCE WHICH THE PERSON HAD REASON TO BELIEVE WAS AN AUTHORIZED CONNECTION.

(E) "UNAUTHORIZED RECEIPT OF TELECOMMUNICATIONS SERVICE" MEANS THE INTERCEPTION OR RECEIPT BY ANY MEANS OF A TELECOMMUNICATIONS SERVICE OVER A TELECOMMUNICATIONS SYSTEM WITHOUT THE SPECIFIC AUTHORIZATION OF THE TELECOMMUNICATIONS SERVICE PROVIDER.

(F) "UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(2) A TELECOMMUNICATIONS SERVICE PROVIDER MAY BRING AN ACTION TO ENJOIN A PERSON FROM THE UNAUTHORIZED RECEIPT OF ANY TELECOMMUNICATIONS SERVICE. USING AN UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE, OR THE MAKING OF AN UNAUTHORIZED CONNECTION. AND MAY SEEK 1 OR MORE OF THE FOLLOWING DAMAGES: (A) ACTUAL DAMAGES.

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(B) EXEMPLARY DAMAGES OF NOT MORE THAN \$1,000.00.

(C) IF THE PERSON'S ACTS WERE FOR DIRECT OR INDIRECT COMMERCIAL ADVANTAGE OR FINANCIAL GAIN, EXEMPLARY DAMAGES OF NOT MORE THAN \$50,000.00.

(D) REASONABLE ATTORNEY FEES AND COSTS.

(3) A PERSON INJURED BY A VIOLATION OF SECTIONS 219A, 540C, AND 540G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A, 750.540C, AND 750.540G, MAY BRING A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION. THE COURT MAY DO ANY OF THE FOLLOWING:

(A) GRANT PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT OR RESTRAIN THE VIOLATIONS.

(B) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE IMPOUNDING, ON TERMS AS THE COURT CONSIDERS REASONABLE, OF ANY TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE THAT IS IN THE CUSTODY OR CONTROL OF THE ALLEGED VIOLATOR AND THAT THE COURT HAS REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION.

(C) AWARD DAMAGES AS PROVIDED UNDER SUBDIVISION (F).

(D) IN ITS DISCRETION, AWARD REASONABLE ATTORNEY FEES AND COSTS, INCLUDING, BUT NOT LIMITED TO, COSTS FOR INVESTIGATION, TESTING, AND EXPERT WITNESS FEES.

(E) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A VIOLATION, ORDER THE MODIFICATION OR DESTRUCTION OF ANY TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE VIOLATION.

(F) AWARD DAMAGES COMPUTED AS 1 OF THE FOLLOWING UPON THE ELECTION OF THE COMPLAINING PARTY AT ANY TIME BEFORE FINAL JUDGMENT:

(i) THE ACTUAL DAMAGES SUFFERED BY THE COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF THIS SECTION AND ANY PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES. IN DETERMINING THE VIOLATOR'S PROFITS, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY THE VIOLATOR'S GROSS REVENUE, AND THE VIOLATOR SHALL BE REQUIRED TO PROVE ANY DEDUCTIBLE EXPENSES AND THE ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE VIOLATION.

(ii) DAMAGES OF BETWEEN \$250.00 TO \$10,000.00 FOR EACH TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE ACTION, WITH THE AMOUNT OF THE DAMAGES TO BE DETERMINED BY THE COURT. WHERE THE COURT FINDS THAT THE VIOLATION OF THIS SECTION WAS COMMITTED WILLFULLY AND FOR COMMERCIAL ADVANTAGE OR FINANCIAL GAIN, THE COURT MAY INCREASE THE AWARD OF DAMAGES BY AN AMOUNT OF NOT MORE THAN \$50,000.00 FOR EACH TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE ACTION.

(4) IT IS NOT A NECESSARY PREREQUISITE TO BRING AN ACTION UNDER THIS SECTION THAT THE TELECOMMUNICATIONS SERVICE PROVIDER OR OTHER INJURED PARTY HAS SUFFERED ACTUAL DAMAGES OR THAT THE DEFENDANT HAS BEEN CONVICTED OF ANY VIOLATIONS OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.1 TO 750.568.

(5) AN ACTION UNDER THIS SECTION IS IN ADDITION TO ANY OTHER PENALTIES OR REMEDIES PROVIDED BY LAW.

(6) EACH ACT PROHIBITED BY THIS SECTION IS A SEPARATE CAUSE OF ACTION.

1       Sec. 8001. (1) The cyber court is created and is a court of  
2 record.

3       (2) The purpose of the cyber court is to do all of the

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4 following:

5       (a) Establish judicial structures that will help to  
6 strengthen and revitalize the economy of this state.

7       (b) Allow BUSINESS OR COMMERCIAL disputes ~~between business~~

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8 ~~and commercial entities~~ to be resolved with the expertise,  
9 technology, and efficiency required by the information age  
10 economy.

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1 (c) Assist the judiciary in responding to the rapid  
2 expansion of information technology in this state.

3 (d) Establish a technology-rich system to serve the needs of  
4 a judicial system operating in a global economy.

5 (e) Maintain the integrity of the judicial system while  
6 applying new technologies to judicial proceedings.

7 (f) Supplement other state programs designed to make the  
8 state attractive to technology-driven companies.

9 (g) Permit alternative dispute resolution mechanisms to ben-  
10 efit from the technology changes.

11 (h) Establish virtual courtroom facilities, and allow the  
12 conducting of court proceedings electronically and the electronic  
13 filing of documents.

14 (3) The cyber court shall be located in 1 or more counties  
15 as determined by the supreme court. The cyber court shall sit in  
16 facilities designed to allow all hearings and proceedings to be  
17 conducted by means of electronic communications, including, but  
18 not limited to, video and audio conferencing and internet  
19 conferencing.

20 (4) The cyber court shall hold session and shall schedule  
21 hearings or other proceedings to accommodate parties or witnesses  
22 who are located outside of this state. A cyber court facility is  
23 open to the public to the same extent as a circuit court  
24 facility. When technologically feasible, and at the discretion  
25 of the judge, pursuant to the court rules, all proceedings of the  
26 cyber court shall be broadcast on the internet.

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1 (5) The cyber court shall maintain its staff and support  
2 services at the seat of government.

3 (6) The cyber court shall be funded from annual appropria-  
4 tions to the supreme court.

5 Sec. 8003. (1) The supreme court shall assign to the cyber  
6 court persons who have been elected to and served as judges in  
7 this state and who have requested to be considered for that  
8 assignment. In making assignments to the cyber court, the  
9 supreme court shall consider a person's experience in presiding  
10 over commercial litigation and his or her experience and interest  
11 in the application of technology to the administration of  
12 justice. The supreme court shall endeavor to reflect the ethnic  
13 and racial diversity of the state population and the statewide  
14 judicial bench when making the assignments under this  
15 subsection.

16 (2) The total number of judges assigned to the cyber court  
17 shall reasonably reflect the caseload of the cyber court.

18 (3) The duration of a judge's assignment to the cyber court  
19 shall be at least 3 years.

20 (4) ~~The supreme court shall appoint the clerk of the cyber~~  
21 ~~court.~~ THE COUNTY CLERK OF THE COUNTY IN WHICH THE CYBER COURT  
22 SITS SHALL BE THE CLERK FOR THE CYBER COURT. THE CYBER COURT  
23 CLERK SHALL DEPUTIZE STAFF DESIGNATED BY THE SUPREME COURT TO  
24 RECEIVE ALL PLEADINGS FILED IN THE CYBER COURT.

25 (5) The Michigan judicial institute shall provide appropri-  
26 ate training for judges who are assigned as judges of the cyber  
27 court.

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1           Sec. 8005. (1) The cyber court has concurrent jurisdiction  
2 over business ~~and~~ OR commercial ~~actions~~ DISPUTES in which the  
3 amount in controversy exceeds \$25,000.00.

4           (2) AN ACTION THAT INVOLVES A BUSINESS OR COMMERCIAL DISPUTE  
5 MAY BE MAINTAINED IN THE CYBER COURT ALTHOUGH IT ALSO INVOLVES  
6 CLAIMS THAT ARE NOT BUSINESS OR COMMERCIAL DISPUTES.

7           (3) ~~(2)~~ For purposes of this section: ~~—, "business and~~

8           (A) "BUSINESS ENTERPRISE" MEANS A SOLE PROPRIETORSHIP, PART-  
9 NERSHIP, LIMITED PARTNERSHIP, JOINT VENTURE, LIMITED LIABILITY  
10 COMPANY, LIMITED LIABILITY PARTNERSHIP, FOR-PROFIT OR  
11 NOT-FOR-PROFIT CORPORATION OR PROFESSIONAL CORPORATION, BUSINESS  
12 TRUST, REAL ESTATE INVESTMENT TRUST, OR ANY OTHER ENTITY IN WHICH  
13 A BUSINESS MAY LAWFULLY BE CONDUCTED IN THE JURISDICTION IN WHICH  
14 THE BUSINESS IS BEING CONDUCTED. BUSINESS ENTERPRISE DOES NOT  
15 INCLUDE AN ECCLESIASTICAL OR RELIGIOUS ORGANIZATION.

16           (B) "BUSINESS OR commercial ~~actions~~ DISPUTE" means  
17 ~~disputes arising between business owners, associates, or compet-~~  
18 ~~itors or between a business entity and its customers.~~ ANY OF THE  
19 FOLLOWING ACTIONS:

20           (i) AN ACTION IN WHICH ALL OF THE PARTIES ARE BUSINESS  
21 ENTERPRISES.

22           (ii) AN ACTION IN WHICH 1 OR MORE OF THE PARTIES IS A BUSI-  
23 NESS ENTERPRISE AND THE OTHER PARTIES ARE ITS OR THEIR PRESENT OR  
24 FORMER OWNERS, MANAGERS, SHAREHOLDERS, MEMBERS, DIRECTORS, OFFI-  
25 CERS, AGENTS, EMPLOYEES, SUPPLIERS, CUSTOMERS, OR COMPETITORS,  
26 AND THE CLAIMS ARISE OUT OF THOSE RELATIONSHIPS.

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1           (iii) AN ACTION IN WHICH 1 OF THE PARTIES IS A NONPROFIT  
2 ORGANIZATION, AND THE CLAIMS ARISE OUT OF THAT PARTY'S  
3 ORGANIZATIONAL STRUCTURE, GOVERNANCE, OR FINANCES.

4           (iv) AN ACTION INVOLVING THE SALE, MERGER, PURCHASE, COMBI-  
5 NATION, DISSOLUTION, LIQUIDATION, ORGANIZATIONAL STRUCTURE, GOV-  
6 ERNANCE, OR FINANCES OF A BUSINESS ENTERPRISE.

7           (4) Business ~~and~~ OR commercial ~~actions~~ DISPUTES include,  
8 but are not limited to, the following types of ~~disputes~~  
9 ACTIONS:

10           (a) Those involving information technology, software, or  
11 website development, maintenance, or hosting.

12           (b) Those involving the internal organization of business  
13 entities and the rights or obligations of shareholders, partners,  
14 members, owners, officers, directors, or managers.

15           (c) Those arising out of contractual agreements or other  
16 business dealings, including licensing, trade secret, noncompete,  
17 nonsolicitation, and confidentiality agreements.

18           (d) Those arising out of commercial transactions, including  
19 commercial bank transactions.

20           (e) Those arising out of business or commercial insurance  
21 policies.

22           (f) Those involving commercial real property. ~~other than~~  
23 ~~landlord/tenant disputes.~~

24           (5) ~~(3)~~ Notwithstanding ~~subsection (2)~~ SUBSECTIONS (3)  
25 AND (4), business ~~and~~ OR commercial ~~actions~~ DISPUTES  
26 expressly exclude the following types of ~~disputes~~ ACTIONS:

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1 ~~(a) Tort actions, including, but not limited to, personal~~  
2 ~~injury, wrongful death, or medical malpractice matters.~~

3 ~~(b) Landlord/tenant matters.~~

4 ~~(c) Employee/employer disputes.~~

5 ~~(d) Administrative agency, tax, zoning, and other appeals.~~

6 ~~(e) Criminal matters.~~

7 ~~(f) Proceedings to enforce judgments of any type.~~

8 (A) PERSONAL INJURY ACTIONS INVOLVING ONLY PHYSICAL INJURIES  
9 TO 1 OR MORE INDIVIDUALS, INCLUDING WRONGFUL DEATH AND MALPRAC-  
10 TICE ACTIONS AGAINST ANY HEALTH CARE PROVIDER.

11 (B) PRODUCT LIABILITY ACTIONS IN WHICH ANY OF THE CLAIMANTS  
12 ARE INDIVIDUALS.

13 (C) MATTERS WITHIN THE JURISDICTION OF THE FAMILY DIVISION  
14 OF CIRCUIT COURT.

15 (D) PROCEEDINGS UNDER THE PROBATE CODE OF 1939, 1939 PA 288,  
16 MCL 710.21 TO 712A.32.

17 (E) PROCEEDINGS UNDER THE ESTATES AND PROTECTED INDIVIDUALS  
18 CODE, 1998 PA 386, MCL 700.1101 TO 700.8102.

19 (F) CRIMINAL MATTERS.

20 (G) CONDEMNATION MATTERS.

21 (H) APPEALS FROM LOWER COURTS OR ANY ADMINISTRATIVE AGENCY.

22 (I) PROCEEDINGS TO ENFORCE JUDGMENTS OF ANY KIND.

23 (J) LANDLORD-TENANT MATTERS INVOLVING ONLY RESIDENTIAL  
24 PROPERTY.

25 Sec. 8011. (1) ~~A defendant in an action filed in the cyber~~  
26 ~~court may remove the action to the circuit court not later than~~  
27 ~~14 days after the deadline for filing an answer to the~~

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1 ~~complaint. If the action is removed to the circuit court, the~~  
2 ~~action shall be heard in the circuit court in a county in which~~  
3 ~~venue would be proper.~~ A DEFENDANT IN AN ACTION COMMENCED IN THE  
4 CYBER COURT, A PLAINTIFF AGAINST WHOM A COUNTERCLAIM IS FILED IN  
5 THAT ACTION, OR ANY PARTY ADDED BY MOTION OF THE ORIGINAL PARTIES  
6 AS A PLAINTIFF, DEFENDANT, OR THIRD-PARTY DEFENDANT, MAY CAUSE  
7 THE ENTIRE CASE TO BE TRANSFERRED TO THE CIRCUIT COURT IN A  
8 COUNTY IN WHICH VENUE IS PROPER BY FILING A NOTICE OF TRANSFER  
9 WITH THE CLERK OF THE CYBER COURT WITHIN 28 DAYS AFTER THE DATE  
10 ON WHICH THE PARTY WAS SERVED WITH THE PLEADING THAT GIVES IT THE  
11 RIGHT TO TRANSFER.

12 (2) WITHIN 14 DAYS AFTER THE FILING OF AN ANSWER TO A COM-  
13 PLAIN OR A MOTION BY A DEFENDANT FOR SUMMARY DISPOSITION, WHICH-  
14 EVER IS EARLIER, THE JUDGE TO WHOM THE CASE HAS BEEN ASSIGNED  
15 SHALL MAKE A DETERMINATION, BASED SOLELY UPON THE COMPLAINT AND  
16 ANSWER OR THE MOTION, WHETHER THE CASE IS PRIMARILY A BUSINESS OR  
17 COMMERCIAL DISPUTE. IF THE JUDGE DETERMINES THAT IT IS NOT, THE  
18 COURT SHALL NOTIFY THE PLAINTIFF OF THAT DECISION, AND THE PLAIN-  
19 TIFF HAS 14 DAYS AFTER SERVICE OF THE COURT'S NOTIFICATION TO  
20 TRANSFER THE CASE TO THE CIRCUIT COURT IN A COUNTY IN WHICH VENUE  
21 IS PROPER. IF THE PLAINTIFF DOES NOT TRANSFER THE CASE TO THE  
22 CIRCUIT COURT, THE JUDGE OF THE CYBER COURT SHALL DO SO. SUBJECT  
23 TO SUBSECTION (3), IF THE JUDGE DETERMINES THAT IT IS PRIMARILY A  
24 BUSINESS OR COMMERCIAL DISPUTE, THE CASE SHALL PROCEED IN CYBER  
25 COURT.

26 (3) IF, AT THE TIME OF OR AFTER THE FILING OF THE  
27 DEFENDANT'S ANSWER OR MOTION FOR SUMMARY DISPOSITION, PARTIES OR

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1 CLAIMS ARE ADDED OR DELETED, THE JUDGE TO WHOM THE CASE IS  
2 ASSIGNED, NOT LATER THAN 14 DAYS AFTER THE ANSWER OR MOTION IS  
3 FILED, SHALL AGAIN MAKE A DETERMINATION, BASED SOLELY UPON THE  
4 PLEADINGS AS THEY THEN EXIST, WHETHER THE CASE IS THEN PRIMARILY  
5 A BUSINESS OR COMMERCIAL DISPUTE. IF THE JUDGE DETERMINES THAT  
6 IT IS NOT, THE COURT SHALL NOTIFY THE PLAINTIFF OF THAT DECISION,  
7 AND THE PLAINTIFF HAS 14 DAYS AFTER SERVICE OF THE COURT'S NOTI-  
8 FICATION TO TRANSFER THE CASE TO THE CIRCUIT COURT IN A COUNTY IN  
9 WHICH VENUE IS PROPER. IF THE PLAINTIFF DOES NOT TRANSFER THE  
10 CASE TO THE CIRCUIT COURT, THE JUDGE OF THE CYBER COURT SHALL DO  
11 SO. IF THE JUDGE DETERMINES THAT IT IS PRIMARILY A BUSINESS OR  
12 COMMERCIAL DISPUTE, THE CASE SHALL PROCEED IN CYBER COURT.  
13 HOWEVER, IF PARTIES OR CLAIMS ARE LATER ADDED OR DELETED, THE  
14 PROCEDURES IN THIS SUBSECTION APPLY AGAIN.

15 (4) ANY DETERMINATION BY A JUDGE OF THE CYBER COURT MADE  
16 UNDER SUBSECTIONS (2) AND (3) IS FINAL AND MAY NOT BE REVIEWED OR  
17 ALTERED BY THE CIRCUIT COURT TO WHICH A CASE IS TRANSFERRED.

18 (5) ~~-(2) If the defendant removes the action to the circuit~~  
19 ~~court as provided in subsection (1),~~ IF A DEFENDANT IN AN ACTION  
20 COMMENCED IN CYBER COURT, A PLAINTIFF AGAINST WHOM A COUNTERCLAIM  
21 IS FILED IN SUCH AN ACTION, OR ANY PARTY ADDED BY MOTION OF THE  
22 ORIGINAL PARTIES AS A PLAINTIFF, DEFENDANT, OR THIRD-PARTY  
23 DEFENDANT TRANSFERS THE ACTION TO THE CIRCUIT COURT AS PROVIDED  
24 IN SUBSECTION (1), OR THE JUDGE DETERMINES UNDER SUBSECTION (2)  
25 OR (3) THAT THE CASE IS NOT PRIMARILY A BUSINESS OR COMMERCIAL  
26 DISPUTE AND THE CASE IS TRANSFERRED TO THE CIRCUIT COURT, the  
27 clerk of the cyber court shall forward to the circuit court, as a

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1 filing fee, a portion of the filing fee paid at the commencement  
2 of the action in the cyber court that is equal to the filing fee  
3 otherwise required in the circuit court.