

HOUSE BILL No. 4589

April 29, 2003, Introduced by Reps. McConico, Ward, Tobocman, Rivet, Smith, Accavitti, Paletko, Cheeks, Wojno, Condino, Hopgood, Byrum, Meisner, Elkins, Gillard, Bieda, Drolet, Sheltroun, Adamini, Brown, Vagnozzi, Williams, Palsrok, Rocca, Ruth Johnson, Kolb, Farrah, Gielegthem, Stallworth, Reeves, Hardman, Zelenko, Whitmer, Anderson, Woodward, Huizenga, Stakoe, Minore, Pastor, Waters, Gaffney and Daniels and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 8701, 8703, 8705, 8707, 8713, 8715, 8723,
8725, 8727, 8731, and 8735 (MCL 600.8701, 600.8703, 600.8705,
600.8707, 600.8713, 600.8715, 600.8723, 600.8725, 600.8727,
600.8731, and 600.8735), sections 8701, 8705, 8707, 8713, 8715,
8723, 8725, 8727, and 8731 as added by 1994 PA 12, section 8703
as amended by 1996 PA 388, and section 8735 as added by 1995 PA
54, and by adding section 8722.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 8701. As used in this chapter:

(a) "Authorized local official" means a police officer or
other personnel of a county, city, village, township, or regional
parks and recreation commission created under section 2 of ~~Act~~
~~No. 265 of the Public Acts of 1961, being section 46.352 of the~~

1 ~~Michigan Compiled Laws~~ 1961 PA 265, MCL 46.352, legally
 2 authorized to issue municipal civil infraction citations **and**
 3 **violation notices.**

4 (b) "Citation" means a written complaint or notice to appear
 5 in court upon which an authorized local official records the
 6 occurrence or existence of 1 or more municipal civil infractions
 7 by the ~~person~~ **defendant** cited.

8 (c) "Municipal civil infraction determination" means a
 9 determination that a defendant is responsible for a municipal
 10 civil infraction by 1 of the following:

11 (i) An admission of responsibility for the municipal civil
 12 infraction.

13 (ii) An admission of responsibility for the municipal civil
 14 infraction, "with explanation".

15 (iii) A preponderance of the evidence at an informal hearing
 16 or formal hearing on the question under section 8719, ~~or 8721,~~
 17 ~~respectively~~ **8721, or 8396(2).**

18 (iv) A default judgment for failing to appear as directed by
 19 a citation or other notice, at a scheduled appearance under
 20 section 8715(3)(b) or (4), at an informal hearing under
 21 section 8719, or at a formal hearing under section 8721.

22 (v) **A final decision and order of default for failing to**
 23 **appear at an administrative hearing at a municipal civil**
 24 **infractions bureau under section 8715.**

25 (d) "Violation notice" means a written notice that is not a
 26 municipal civil infraction citation, on which an authorized local
 27 official records the occurrence or existence of 1 or more

1 municipal civil infractions by the defendant cited and directs a
2 defendant to pay a civil fine for the violation or to appear at a
3 municipal civil infractions bureau or an administrative hearings
4 bureau in accordance with section 8715.

5 Sec. 8703. (1) A municipal civil infraction action is
6 commenced upon the issuance of a citation **or violation notice** as
7 provided in section 8707. The plaintiff in a municipal civil
8 infraction action is the political subdivision whose ordinance
9 has **alleged to have** been violated.

10 (2) The district court, ~~and any~~ a municipal court, ~~have~~ a
11 **municipal civil infractions bureau, or an administrative hearings**
12 **bureau has** jurisdiction over municipal civil infraction actions.

13 (3) The time specified in a citation **or violation notice** for
14 appearance shall be within a reasonable time after the citation
15 **or violation notice** is issued.

16 (4) The place specified in the citation **or violation notice**
17 for appearance shall be the court, **municipal civil infraction**
18 **bureau, or administrative hearings bureau** referred to in
19 subsection (2) that has territorial jurisdiction of the place
20 where the municipal civil infraction occurred. Venue in the
21 district court is governed by section 8312.

22 (5) **An administrative hearings bureau established under**
23 **section 8396(2) shall establish procedures for the administration**
24 **and adjudication of municipal civil infractions in accordance**
25 **with this chapter.**

26 Sec. 8705. (1) Each citation shall be numbered
27 consecutively, be in a form as approved by the state court

1 administrator, and consist of the following parts:

2 (a) The original, which is a complaint and notice to appear
3 by the authorized official and shall be filed with the court in
4 which the appearance is to be made.

5 (b) The first copy, which shall be retained by the ordinance
6 enforcement agency.

7 (c) The second copy, which shall be issued to the alleged
8 violator if the violation is a misdemeanor.

9 (d) The third copy, which shall be issued to the alleged
10 violator if the violation is a municipal civil infraction.

11 (2) With the prior approval of the state court administrator,
12 the citation may be modified as to content or number of copies to
13 accommodate law enforcement and local court procedures and
14 practices. Use of this citation for violations other than
15 municipal civil infractions is optional.

16 (3) A citation for a municipal civil infraction signed by an
17 authorized local official shall be treated as made under oath if
18 the violation alleged in the citation occurred in the presence of
19 the authorized local official signing the complaint and if the
20 citation contains the following statement immediately above the
21 date and signature of the official: "I declare under the
22 penalties of perjury that the statements above are true to the
23 best of my information, knowledge, and belief.".

24 (4) A violation notice to appear at an administrative
25 hearings bureau for a municipal civil infraction signed by an
26 authorized local official shall be treated as made under oath if
27 the violation alleged in the notice occurred in the presence of

1 the authorized local official signing the violation notice and if
2 the notice contains the following statement immediately above the
3 date and signature of the official: "I declare under the
4 penalties of perjury that the statements above are true to the
5 best of my information, knowledge, and belief.".

6 Sec. 8707. (1) An authorized local official who witnesses a
7 person violate an ordinance a violation of which is a municipal
8 civil infraction shall prepare and subscribe, as soon as possible
9 and as completely as possible, an original and 3 copies of a
10 citation, except as provided in subsection (6).

11 (2) An authorized local official may issue a citation to a
12 person if, based upon investigation, the official has reasonable
13 cause to believe that the person is responsible for a municipal
14 civil infraction. An authorized local official may issue a
15 citation to a person if, based upon investigation of a complaint
16 by someone who allegedly witnessed the person violate an
17 ordinance a violation of which is a municipal civil infraction,
18 the official has reasonable cause to believe that the person is
19 responsible for a municipal civil infraction and if the
20 prosecuting attorney or other attorney for the political
21 subdivision employing the authorized local official approves in
22 writing the issuance of the citation.

23 (3) Except as otherwise provided under subsection (4), the
24 authorized local official shall personally serve the third copy
25 of the citation upon the alleged violator.

26 (4) In a municipal civil infraction action involving the use
27 or occupancy of land or a building or other structure, a copy of

1 the citation need not be personally served upon the alleged
2 violator but may be served upon an owner or occupant of the land,
3 building, or structure by posting the copy on the land or
4 attaching the copy to the building or structure. In addition, a
5 copy of the citation shall be sent by first-class mail to the
6 owner of the land, building, or structure at the owner's last
7 known address.

8 (5) A citation served under subsection (4) for a violation
9 involving the use or occupancy of land or a building or other
10 structure shall be processed in the same manner as a citation
11 served personally upon a defendant ~~pursuant to~~ **under** subsection
12 (1) or (2).

13 (6) Except under the circumstances described in
14 section 8709(5)(a) or (b), if a county, city, village, or
15 township has established a municipal ordinance violations bureau
16 **or administrative hearings bureau**, an authorized local official
17 of the county, city, village, or township may issue and serve a
18 municipal ordinance violation notice, instead of a citation,
19 under the same circumstances and upon the same persons as
20 provided in this section for the service of a citation.

21 (7) If an authorized local official issues and serves a
22 municipal ordinance violation notice and if an admission of
23 responsibility is not made and the civil fine and costs, if any,
24 prescribed by ordinance for the violation are not paid at the
25 municipal ordinance violations bureau, a citation may be filed
26 with the court described in section 8703(4) and a copy of the
27 citation may be served by first-class mail upon the alleged

1 violator at his or her last known address. The citation filed
2 with the court pursuant to this subsection need not comply in all
3 particulars with sections 8705 and 8709 but shall consist of a
4 sworn complaint containing the allegations stated in the
5 municipal ordinance violation notice and shall fairly inform the
6 defendant how to respond to the citation. A citation issued
7 under this subsection shall be processed in the same manner as a
8 citation issued personally to a defendant ~~pursuant to~~ **under**
9 subsection (1) or (2). As used in this subsection, "municipal
10 ordinance violation notice" means a notice, other than a
11 citation, directing a person to appear at a municipal ordinance
12 violations bureau **or an administrative hearings bureau** in the
13 city, village, township, or county in which the notice is issued
14 and to pay the fine and costs, if any, prescribed by ordinance
15 for the violation of the ordinance.

16 Sec. 8713. An authorized local official who, knowing the
17 statement is false, makes a materially false statement in a
18 citation **or violation notice** issued under section 8707 is guilty
19 of perjury, a felony punishable by imprisonment for not more than
20 15 years, and in addition is in contempt of court.

21 Sec. 8715. (1) A person to whom a citation is issued under
22 section 8707 shall appear by or at the time specified in the
23 citation and, except as otherwise provided by section 8709(5),
24 may respond to the allegations in the citation as provided in
25 this section.

26 (2) If the defendant wishes to admit responsibility for the
27 municipal civil infraction, the defendant may do so by appearing

1 in person, by representation, or by mail. If appearance is made
2 by representation or mail, the court may accept the admission
3 with the same effect as though the defendant personally appeared
4 in court. Upon acceptance of the admission, the court may order
5 any of the sanctions permitted under section 8727.

6 (3) If the defendant wishes to admit responsibility for the
7 municipal civil infraction "with explanation", the defendant may
8 do so in either of the following ways:

9 (a) By appearing by mail.

10 (b) By contacting the court in person, by mail, by telephone,
11 or by representation to obtain from the court a scheduled date
12 and time for an appearance, at which time the defendant shall
13 appear in court in person or by representation.

14 (4) If a defendant admits responsibility for a municipal
15 civil infraction "with explanation" under subsection (3), the
16 court shall accept the admission as though the defendant has
17 admitted responsibility under subsection (2) and may consider the
18 defendant's explanation by way of mitigating any sanction that
19 the court may order under section 8727. If appearance is made by
20 representation or mail, the court may accept the admission with
21 the same effect as though the defendant personally appeared in
22 court, but the court may require the defendant to provide a
23 further explanation or to appear in court.

24 (5) If the defendant wishes to deny responsibility for a
25 municipal civil infraction, the defendant shall do so by
26 appearing for an informal or formal hearing. If the hearing date
27 is not specified on the citation, the defendant shall contact the

1 court in person, by representation, by mail, or by telephone, and
2 obtain a scheduled date and time to appear for an informal or
3 formal hearing. If the hearing date is specified on the
4 citation, the defendant shall appear on that date. The hearing
5 shall be an informal hearing, unless a formal hearing is
6 requested by the defendant or the plaintiff as provided by
7 section 8717. If a hearing is scheduled by telephone, the court
8 shall mail the defendant a confirming notice of that hearing by
9 regular mail to the address appearing on the citation or to an
10 address that is furnished by the defendant. An informal hearing
11 shall be conducted pursuant to section 8719, and a formal hearing
12 shall be conducted pursuant to section 8721.

13 (6) If a city has established an administrative hearings
14 bureau, a defendant to whom a violation notice has been issued
15 under section 8707 shall appear on or before the time specified
16 in the violation notice and may respond to the allegations in the
17 notice, as follows:

18 (a) If the defendant wishes to admit responsibility for the
19 municipal civil infraction, the defendant may do so by appearing
20 in person, by representation, or by mail. If appearance is made
21 by representation or mail, the administrative hearings bureau may
22 accept the admission as though the defendant personally
23 appeared. Upon acceptance of the admission, an administrative
24 officer may order any of the sanctions permitted under section
25 8727.

26 (b) If the defendant wishes to deny responsibility for the
27 municipal civil infraction, or admit responsibility with an

1 explanation, the defendant may do so by appearing in person on
2 the date scheduled for the administrative hearing for the purpose
3 of adjudicating the alleged violation.

4 (c) If the defendant fails to appear, a decision and order of
5 default may be entered.

6 (7) If an admission of responsibility is not made and the
7 civil fine and costs, if any, prescribed by ordinance for the
8 violation are not paid at the administrative hearings bureau, and
9 the defendant fails to appear at a hearing scheduled in
10 accordance with this section, a final decision and order of
11 liability in the amount of the prescribed fine and costs may be
12 issued by the administrative hearings bureau.

13 (8) The municipality establishing the administrative hearings
14 bureau may establish rules and procedures for a defendant to set
15 aside the entry of a decision and order of default.

16 Sec. 8722. (1) A municipality establishing an
17 administrative hearings bureau under section 8396(2) shall
18 establish by ordinance the jurisdiction of the bureau for making
19 municipal civil infraction determinations. The ordinance
20 establishing the bureau shall provide for adjudicatory hearings
21 by hearings officers. The authority and duties of a hearings
22 officer shall include all of the following:

23 (a) Hearing testimony and accepting evidence that is relevant
24 to the existence of the ordinance violation.

25 (b) Issuing subpoenas directing witnesses to appear and give
26 relevant testimony at the hearing, upon the request of the
27 parties or their representatives.

1 (c) Preserving and authenticating the record of the hearing
2 and all exhibits and evidence introduced at the hearing.

3 (d) Issuing a determination, based on the evidence presented
4 at the hearing, of whether an ordinance violation exists. The
5 determination shall be in writing and shall include written
6 findings of fact, a decision, and an order. A decision and order
7 shall not be made except upon consideration of the record as a
8 whole or a portion of the record as may be cited by any party to
9 the proceeding and as supported by and in accordance with the
10 competent, material, and substantial evidence. The decision and
11 order shall include the fine, penalty, or action with which the
12 defendant must comply.

13 (e) Imposing penalties consistent with applicable ordinance
14 provisions and assessing costs upon finding the defendant
15 responsible for the alleged violation, except, however, that in
16 no event shall the hearings officer have authority to impose a
17 penalty of incarceration or impose a fine in excess of
18 \$50,000.00. The maximum monetary fine under this subsection
19 shall be exclusive of costs of enforcement or costs imposed to
20 secure compliance with the municipality's ordinances and shall
21 not be applicable to cases to enforce the collection of any tax
22 imposed and collected by the municipality.

23 (2) Before conducting administrative adjudication
24 proceedings, administrative hearings officers shall have
25 successfully completed a formal training program which includes
26 all of the following:

27 (a) Instruction on the rules of procedure of the

1 administrative hearings which they will conduct.

2 (b) Orientation to each subject area of the ordinance
3 violations that they will adjudicate.

4 (c) Observation of administrative hearings.

5 (d) Participation in hypothetical cases, including ruling on
6 evidence and issuing final orders.

7 (3) An administrative hearings officer shall be an attorney
8 licensed to practice law in this state for at least 5 years.

9 (4) Parties shall be provided with the opportunity for a
10 hearing during which they may be represented by counsel, present
11 witnesses, and cross-examine opposing witnesses.

12 (5) A decision by a hearing officer of an administrative
13 hearings bureau is a final decision and order subject to judicial
14 review by appeal to the district court or as otherwise provided
15 by law. The final decision and order is enforceable in the same
16 manner as a judgment by a court of competent jurisdiction.

17 (6) An appeal to district court of an administrative hearing
18 shall be a review by the court of the certified record provided
19 by the administrative hearings bureau. The scope of review shall
20 be whether the hearings officer's decision and order are
21 supported by competent, material, and substantial evidence on the
22 whole record.

23 Sec. 8723. If the defendant fails to appear as directed by
24 the citation or other notice at a scheduled appearance under
25 section 8715(3)(b) or (4), at a scheduled informal hearing, or at
26 a scheduled formal hearing, or at a hearing at an administrative
27 hearings bureau, the court or administrative hearings bureau

1 shall enter a default judgment against the defendant.

2 Sec. 8725. (1) An authorized local official issuing a
3 citation **or violation notice** under this chapter for a municipal
4 civil infraction shall not accept a fee for issuing the citation
5 **or violation notice**.

6 (2) An authorized local official who violates this section is
7 guilty of misconduct in office and subject to removal from
8 office.

9 Sec. 8727. (1) A municipal civil infraction is not a lesser
10 included offense of a criminal offense or an ordinance violation
11 that is not a civil infraction.

12 (2) If a defendant is determined to be responsible or
13 responsible "with explanation" for a municipal civil infraction,
14 the judge or district court magistrate **or a hearings officer of**
15 **an administrative hearings bureau** may order the defendant to pay
16 a civil fine, costs as provided in subsection (3), and, if
17 applicable, damages and expenses as provided in section 8733(2).
18 In the order of judgment **or decision and order**, the judge, ~~or~~
19 district court magistrate, **or hearings officer** may grant a
20 defendant permission to pay a civil fine, costs, and damages and
21 expenses within a specified period of time or in specified
22 installments. Otherwise, the civil fine, costs, and damages and
23 expenses are due immediately.

24 (3) If a defendant is ordered to pay a civil fine under
25 subsection (2), the judge or district court magistrate **or**
26 **hearings officer** shall summarily tax and determine the costs of
27 the action, which are not limited to the costs taxable in

1 ordinary civil actions and may include all expenses, direct and
2 indirect, to which the plaintiff has been put in connection with
3 the municipal civil infraction, up to the entry of judgment **or**
4 **decision and order.** ~~Costs of not less than \$9.00 or more than~~
5 ~~\$500.00 shall be ordered.~~ Except as otherwise provided by law,
6 costs shall be payable to the general fund of the plaintiff.

7 (4) In addition to ordering the defendant to pay a civil
8 fine, costs, and damages and expenses, the judge or district
9 court magistrate may issue a writ or order under section 8302.

10 (5) A district court magistrate shall impose the sanctions
11 permitted under subsections (2) and (4) only to the extent
12 expressly authorized by the chief judge or only judge of the
13 district court district.

14 (6) Each district of the district court and each municipal
15 court may establish a schedule of civil fines and costs to be
16 imposed for municipal civil infractions that occur within the
17 district or city. If a schedule is established, it shall be
18 prominently posted and readily available for public inspection.
19 A schedule need not include all municipal civil infractions. A
20 schedule may exclude cases on the basis of a defendant's prior
21 record of municipal civil infractions.

22 (7) A default in the payment of a civil fine, costs, or
23 damages or expenses ordered under subsection (2) or (3) or an
24 installment of the fine, costs, or damages or expenses may be
25 collected by a means authorized for the enforcement of a judgment
26 under chapter 40 or chapter 60.

27 (8) If a defendant fails to comply with an order or judgment

1 issued pursuant to this section within the time prescribed by the
2 court, the court may proceed under section 8729, 8731, or 8733,
3 as applicable.

4 (9) A defendant who fails to answer a citation or notice to
5 appear in court for a municipal civil infraction is guilty of a
6 misdemeanor.

7 Sec. 8731. (1) If a defendant does not pay a civil fine or
8 costs or an installment ordered under section 8727 within 30 days
9 after the date on which payment is due under section 8727 in a
10 municipal civil infraction action brought for a violation
11 involving the use or occupation of land or a building or other
12 structure, the plaintiff may obtain a lien against the land,
13 building, or structure involved in the violation by recording a
14 copy of the court order **or final decision and order** requiring
15 payment of the fine and costs with the register of deeds for the
16 county in which the land, building, or structure is located. The
17 court order **or final decision and order** shall not be recorded
18 unless a legal description of the property is incorporated in or
19 attached to the court order **or final decision and order**. The
20 lien is effective immediately upon recording of the court order
21 **or final decision and order** with the register of deeds.

22 (2) The court order **or final decision and order** recorded with
23 the register of deeds shall constitute notice of the pendency of
24 the lien. In addition, a written notice of the lien shall be
25 sent by the plaintiff by first-class mail to the owner of record
26 of the land, building, or structure at the owner's last known
27 address.

1 (3) The lien may be enforced and discharged by a county,
2 city, village, or township in the manner prescribed by its
3 charter, by the general property tax act, ~~Act No. 206 of the~~
4 ~~Public Acts of 1893, being sections 211.1 to 211.157 of the~~
5 ~~Michigan Compiled Laws 1893 PA 206, MCL 211.1 to 211.157~~, or by
6 an ordinance duly passed by the governing body of the county,
7 city, village, or township. However, property is not subject to
8 sale under section 60 of ~~Act No. 206 of the Public Acts of 1893,~~
9 ~~being section 211.60 of the Michigan Compiled Laws~~ **the general**
10 **property tax act, 1893 PA 206, MCL 211.60**, for nonpayment of a
11 civil fine or costs or an installment ordered under section 8727
12 unless the property is also subject to sale under section 60 of
13 ~~Act No. 206 of the Public Acts of 1893~~ **the general property tax**
14 **act, 1893 PA 206, MCL 211.60**, for delinquent property taxes.

15 (4) A lien created under this section has priority over any
16 other lien unless 1 or more of the following apply:

17 (a) The other lien is a lien for taxes or special
18 assessments.

19 (b) The other lien is created before the effective date of
20 the amendatory act that added this section.

21 (c) Federal law provides that the other lien has priority.

22 (d) The other lien is recorded before the lien under this
23 section is recorded.

24 (5) A political subdivision may institute an action in a
25 court of competent jurisdiction for the collection of the fines
26 and costs imposed by a court order **or final decision and order**
27 for a municipal civil infraction. However, an attempt by a

1 county, city, village, or township to collect the fines or costs
2 by any process does not invalidate or waive the lien upon the
3 land, building, or structure.

4 (6) A lien provided for by this section shall not continue
5 for a period longer than 5 years after a copy of the court order
6 **or final decision and order** imposing a fine or costs is recorded,
7 unless within that time an action to enforce the lien is
8 commenced.

9 Sec. 8735. If the defendant in a municipal civil infraction
10 action is determined responsible for a municipal civil
11 infraction, the judge or district court magistrate **or the**
12 **hearings officer of an administrative hearings bureau**, in
13 addition to any fine and costs imposed under section 8727, may
14 assess additional costs incurred in compelling the appearance of
15 the defendant, which additional costs shall be returned to the
16 general fund of the unit of government incurring the costs.