

SENATE BILL No. 434

May 1, 2003, Introduced by Senator SWITALSKI and referred to the Committee on Appropriations.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 8727, 8729, 8731, 8733, 8735, 8827, 8829,
and 8835 (MCL 600.8727, 600.8729, 600.8731, 600.8733, 600.8735,
600.8827, 600.8829, and 600.8835), sections 8727, 8729, 8731, and
8733 as added by 1994 PA 12 and sections 8735, 8827, 8829, and
8835 as added by 1995 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (2) If a defendant is determined to be responsible or
5 responsible "with explanation" for a municipal civil infraction,
6 the judge or district court magistrate may order the defendant to
7 pay a civil fine, costs as provided in subsection (3), **the**

1 **justice system assessment as provided in subsection (4)**, and, if
 2 applicable, damages and expenses as provided in section 8733(2).
 3 In the order of judgment, the judge or district court magistrate
 4 may grant a defendant permission to pay a civil fine, costs,
 5 **assessment**, and damages and expenses within a specified period of
 6 time or in specified installments. Otherwise, the civil fine,
 7 costs, **assessment**, and damages and expenses are due immediately.

8 (3) If a defendant is ordered to pay a civil fine under
 9 subsection (2), the judge or district court magistrate shall
 10 summarily tax and determine the costs of the action, which are
 11 not limited to the costs taxable in ordinary civil actions and
 12 may include all expenses, direct and indirect, to which the
 13 plaintiff has been put in connection with the municipal civil
 14 infraction, up to the entry of judgment. Costs of not ~~less than~~
 15 ~~\$9.00 or~~ more than \$500.00 shall be ordered. **Until**
 16 **September 30, 2003, the amount of costs ordered shall be not less**
 17 **than \$9.00.** Except as otherwise provided by law, costs shall be
 18 payable to the general fund of the plaintiff.

19 (4) **Effective October 1, 2003, in addition to any fine or**
 20 **cost ordered to be paid under subsection (2), the judge or**
 21 **district court magistrate shall order the defendant to pay a**
 22 **justice system assessment of \$10.00. Upon payment of the**
 23 **assessment, the clerk of the court shall transmit the assessment**
 24 **collected to the state treasurer for deposit in the justice**
 25 **system fund created in section 181.**

26 (5) ~~-(4)-~~ In addition to ordering the defendant to pay a
 27 civil fine, costs, **a justice system assessment**, and damages and

1 expenses, the judge or district court magistrate may issue a writ
2 or order under section 8302.

3 **(6)** ~~—(5)—~~ A district court magistrate shall impose the
4 sanctions permitted under subsections (2) and ~~—(4)—~~ **(5)** only to
5 the extent expressly authorized by the chief judge or only judge
6 of the district court district.

7 **(7)** ~~—(6)—~~ Each district of the district court and each
8 municipal court may establish a schedule of civil fines, ~~—and~~
9 costs, **and assessments** to be imposed for municipal civil
10 infractions that occur within the district or city. If a
11 schedule is established, it shall be prominently posted and
12 readily available for public inspection. A schedule need not
13 include all municipal civil infractions. A schedule may exclude
14 cases on the basis of a defendant's prior record of municipal
15 civil infractions.

16 **(8)** ~~—(7)—~~ A default in the payment of a civil fine, costs,
17 **assessment**, or damages or expenses ordered under subsection (2),
18 ~~—or—~~ (3), **or (4)** or an installment of the fine, costs,
19 **assessment**, or damages or expenses may be collected by a means
20 authorized for the enforcement of a judgment under chapter 40 or
21 chapter 60.

22 **(9)** ~~—(8)—~~ If a defendant fails to comply with an order or
23 judgment issued pursuant to this section within the time
24 prescribed by the court, the court may proceed under section
25 8729, 8731, or 8733, as applicable.

26 **(10)** ~~—(9)—~~ A defendant who fails to answer a citation or
27 notice to appear in court for a municipal civil infraction is

1 guilty of a misdemeanor.

2 Sec. 8729. (1) If a defendant defaults in the payment of a
3 civil fine, costs, **assessment**, or, if applicable, damages or
4 expenses as provided in section 8733(2) if applicable, or any
5 installment, as ordered pursuant to section 8727, the court, upon
6 the motion of the plaintiff or upon its own motion, may require
7 the defendant to show cause why the defendant should not be held
8 in civil contempt and may issue a summons, **an** order to show
9 cause, or a bench warrant of arrest for the defendant's
10 appearance.

11 (2) If a corporation or an association is ordered to pay a
12 civil fine, costs, **assessment**, or damages or expenses, the
13 individuals authorized to make disbursement shall pay the fine,
14 costs, **assessment**, or damages or expenses, and their failure to
15 do so shall be civil contempt unless they make the showing
16 required in this section.

17 (3) Unless the defendant shows that the default was not
18 attributable to an intentional refusal to obey the order of the
19 court or to a failure on his or her part to make a good faith
20 effort to obtain the funds required for payment, the court shall
21 find that the default constitutes a civil contempt and may order
22 the defendant committed until all or a specified part of the
23 amount due is paid.

24 (4) If it appears that the default in the payment of a fine,
25 costs, **assessment**, or damages or expenses does not constitute
26 civil contempt, the court may enter an order allowing the
27 defendant additional time for payment, reducing the amount of

1 payment or of each installment, or revoking the fine, costs,
2 **assessment**, or damages or expenses.

3 (5) The term of imprisonment on civil contempt for nonpayment
4 of a civil fine, costs, **assessment**, or damages or expenses shall
5 be specified in the order of commitment ~~—~~ and shall not exceed
6 1 day for each \$30.00 due. A person committed for nonpayment of
7 a civil fine, costs, **assessment**, or damages or expenses shall be
8 given credit toward payment for each day of imprisonment and each
9 day of detention in default of recognizance before judgment at
10 the rate of \$30.00 per day.

11 (6) A defendant committed to imprisonment for civil contempt
12 for nonpayment of a civil fine, costs, **assessment**, or damages or
13 expenses shall not be discharged from custody until 1 of the
14 following occurs:

15 (a) The defendant is credited with the amount due pursuant to
16 subsection (5).

17 (b) The amount due is collected through execution of process
18 or otherwise.

19 (c) The amount due is satisfied pursuant to a combination of
20 subdivisions (a) and (b).

21 (7) The civil contempt shall be purged upon discharge of the
22 defendant pursuant to subsection (6).

23 Sec. 8731. (1) If a defendant does not pay a civil fine,
24 ~~or~~ costs, **or assessment** or an installment ordered under section
25 8727 within 30 days after the date on which payment is due under
26 section 8727 in a municipal civil infraction action brought for a
27 violation involving the use or occupation of land or a building

1 or other structure, the plaintiff may obtain a lien against the
2 land, building, or structure involved in the violation by
3 recording a copy of the court order requiring payment of the
4 ~~fine and~~ **fin**es, costs, **and assessment** with the register of
5 deeds for the county in which the land, building, or structure is
6 located. The court order shall not be recorded unless a legal
7 description of the property is incorporated in or attached to the
8 court order. The lien is effective immediately upon recording of
9 the court order with the register of deeds.

10 (2) The court order recorded with the register of deeds shall
11 constitute notice of the pendency of the lien. In addition, a
12 written notice of the lien shall be sent by the plaintiff by
13 first-class mail to the owner of record of the land, building, or
14 structure at the owner's last known address.

15 (3) The lien may be enforced and discharged by a county,
16 city, village, or township in the manner prescribed by its
17 charter, by the general property tax act, ~~Act No. 206 of the~~
18 ~~Public Acts of 1893, being sections 211.1 to 211.157 of the~~
19 ~~Michigan Compiled Laws~~ **1893 PA 206, MCL 211.1 to 211.157**, or by
20 an ordinance duly passed by the governing body of the county,
21 city, village, or township. However, property is not subject to
22 sale under section 60 of ~~Act No. 206 of the Public Acts of 1893,~~
23 ~~being section 211.60 of the Michigan Compiled Laws~~ **the general**
24 **property tax act, 1893 PA 206, MCL 211.60**, for nonpayment of a
25 civil fine, ~~or~~ costs, **or assessment** or an installment ordered
26 under section 8727 unless the property is also subject to sale
27 under section 60 of ~~Act No. 206 of the Public Acts of 1893~~ **the**

1 **general property tax act, 1893 PA 206, MCL 211.60**, for delinquent
2 property taxes.

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

5 (a) The other lien is a lien for taxes or special
6 assessments.

7 (b) The other lien is created before ~~the effective date of~~
8 ~~the amendatory act that added this section~~ **May 1, 1994**.

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

10 (d) The other lien is recorded before the lien under this
11 section is recorded.

12 (5) A political subdivision may institute an action in a
13 court of competent jurisdiction for the collection of the ~~fin~~
14 ~~and costs~~ **judgment** imposed by a court order for a municipal
15 civil infraction. However, an attempt by a county, city,
16 village, or township to collect the ~~fin~~ ~~or costs~~ **judgment** by
17 any process does not invalidate or waive the lien upon the land,
18 building, or structure.

19 (6) A lien provided for by this section shall not continue
20 for a period longer than 5 years after a copy of the court order
21 imposing a fine, ~~or~~ costs, **or assessment** is recorded, unless
22 within that time an action to enforce the lien is commenced.

23 Sec. 8733. (1) An authorized local official may seize and
24 impound a vehicle operated in the commission of a trailway
25 municipal civil infraction. Upon impoundment, the vehicle is
26 subject to a lien, subordinate to a prior lien of record, in the
27 amount of any fine, ~~and~~ costs, **or assessment** that the defendant

1 may be ordered to pay under section 8727 and any expenses
2 described in subsection (2) that the defendant may be ordered to
3 pay under section 8727. The defendant or a person with an
4 ownership interest in the vehicle may post with the court a cash
5 or surety bond in the amount of \$750.00. If such a bond is
6 posted, the vehicle shall be released from impoundment. The
7 vehicle shall also be released, and the lien shall be discharged,
8 upon a judicial determination that the defendant is not
9 responsible for the trailway municipal civil infraction or upon
10 payment of the fine, costs, **assessment**, and damages and
11 expenses.

12 (2) In a trailway municipal civil infraction action, an order
13 under section 8727 may require the defendant to pay 1 or both of
14 the following:

15 (a) The amount of damages to any land, water, wildlife,
16 vegetation, or other natural resource or to any facility damaged
17 by the violation of the ordinance. Money collected under this
18 subdivision shall be distributed to the governmental entity that
19 has jurisdiction over the recreational trailway.

20 (b) The reasonable expense of impoundment under subsection
21 ~~—(2)—~~ (1). Money collected under this subdivision shall be
22 distributed to the governmental entity employing the authorized
23 local official who impounded the vehicle involved in the trailway
24 municipal civil infraction.

25 (3) If the court determines that the defendant is responsible
26 for the trailway municipal civil infraction and the defendant
27 defaults in the payment of the fine, costs, **assessment**, or

1 damages or expenses, or in any installment, as ordered pursuant
2 to section 8727, any bond posted under subsection (1) shall be
3 forfeited and applied to the fine, costs, **assessment**, damages,
4 expenses, or installment. The court shall certify any remaining
5 unpaid amount to the attorney for the governmental entity whose
6 ordinance was violated. The attorney for the governmental entity
7 may enforce the lien by a foreclosure sale. The foreclosure sale
8 shall be conducted in the manner provided and subject to the same
9 rights as apply in the case of execution sales under sections
10 6031, 6032, 6041, 6042, and 6044 to 6047. ~~of the revised~~
11 ~~judicature act of 1961, Act No. 236 of the Public Acts of 1961,~~
12 ~~being sections 600.6031, 600.6032, 600.6041, 600.6042, and~~
13 ~~600.6044 to 600.6047 of the Michigan Compiled Laws.~~

14 (4) Not less than 21 days before the foreclosure sale, the
15 attorney for the governmental entity whose ordinance was violated
16 shall by certified mail send written notice of the time and place
17 of the foreclosure sale to each person with a known ownership
18 interest in or lien of record on the vehicle. In addition, not
19 less than 10 days before the foreclosure sale, the attorney shall
20 twice publish notice of the time and place of the foreclosure
21 sale in a newspaper of general circulation in the county in which
22 the vehicle was seized. The proceeds of the foreclosure sale
23 shall be distributed in the following order of priority:

24 (a) To discharge any lien on the vehicle that was recorded
25 prior to the creation of the lien under subsection (1).

26 (b) To the clerk of the court for the payment of the fine,
27 costs, **assessment**, damages, and expenses that the defendant was

1 ordered to pay under section 8727.

2 (c) To discharge any lien on the vehicle that was recorded
3 after the creation of the lien under subsection (1).

4 (d) To the owner of the vehicle.

5 Sec. 8735. If the defendant in a municipal civil infraction
6 action is determined responsible for a municipal civil
7 infraction, the judge or district court magistrate, in addition
8 to any fine, ~~and~~ costs, **and assessment** imposed under section
9 8727, may assess additional costs incurred in compelling the
10 appearance of the defendant, which additional costs shall be
11 returned to the general fund of the unit of government incurring
12 the costs.

13 Sec. 8827. (1) A state civil infraction is not a lesser
14 included offense of a criminal offense.

15 (2) If a defendant is determined to be responsible or
16 responsible "with explanation" for a state civil infraction, the
17 judge or district court magistrate may order the defendant to pay
18 a civil fine as provided by law and costs as provided in
19 subsection (3) **and the justice system assessment provided in**
20 **subsection (4)**. In the order of judgment, the judge or district
21 court magistrate may grant a defendant permission to pay a civil
22 fine, ~~and~~ costs, **and assessment** within a specified period of
23 time or in specified installments. Otherwise, the civil fine,
24 ~~and~~ costs, **and assessment** are payable immediately.

25 (3) If a defendant is ordered to pay a civil fine under
26 subsection (2), the judge or district court magistrate shall
27 summarily tax and determine the costs of the action, which are

1 not limited to the costs taxable in ordinary civil actions and
 2 may include all expenses, direct and indirect, to which the
 3 plaintiff has been put in connection with the state civil
 4 infraction, up to the entry of judgment. Costs of **not more than**
 5 **\$500.00 shall be ordered. Until September 30, 2003, the amount**
 6 **of costs ordered shall be** not less than \$9.00. ~~shall be~~
 7 ~~ordered. Costs shall not be ordered in excess of \$500.00.~~ Costs
 8 in a state civil infraction action in the district court shall be
 9 distributed as provided in sections 8379 and 8381. **Beginning**
 10 **October 1, 2003, costs ordered in a state civil infraction action**
 11 **shall be distributed as provided in section 8379.** Costs in a
 12 state civil infraction action in a municipal court shall be paid
 13 to the county.

14 **(4) Effective October 1, 2003, in addition to any fine or**
 15 **cost ordered to be paid under subsection (2) or (3), the judge or**
 16 **district court magistrate shall order the defendant to pay a**
 17 **justice system assessment of \$10.00. Upon payment of the**
 18 **assessment, the clerk of the court shall transmit the assessment**
 19 **collected to the state treasurer for deposit in the justice**
 20 **system fund created in section 181.**

21 **(5) ~~-(4)-~~** A district court magistrate shall impose the
 22 sanctions permitted under subsection (2) only to the extent
 23 expressly authorized by the chief judge or only judge of the
 24 district court district.

25 **(6) ~~-(5)-~~** Each district of the district court and each
 26 municipal court may establish a schedule of civil fines, ~~and~~
 27 costs, **and assessments** to be imposed for state civil infractions

1 that occur within the district or city. If a schedule is
 2 established, it shall be prominently posted and readily available
 3 for public inspection. A schedule need not include all
 4 violations that are designated by law as state civil
 5 infractions.

6 **(7) —(6)—** A default in the payment of a civil fine, ~~or~~
 7 costs, **or assessment** ordered under subsection (2), ~~or~~ (3), **or**
 8 **(4)** or an installment of the fine, ~~or~~ costs, **or assessment** may
 9 be collected by a means authorized for the enforcement of a
 10 judgment under chapter 40 or chapter 60.

11 **(8) —(7)—** Not less than 28 days after a defendant fails to
 12 appear in response to a citation issued for, or fails to comply
 13 with an order or judgment involving, a state civil infraction,
 14 the court shall give notice by ordinary mail, addressed to the
 15 defendant's last known address, that if the defendant fails to
 16 appear or fails to comply with the order or judgment described in
 17 this subsection within 14 days after the notice is issued, the
 18 court will give to the secretary of state notice of that
 19 failure. Upon receiving notice of that failure, the secretary of
 20 state shall not issue or renew an operator's or chauffeur's
 21 license for the defendant until both of the following occur:

22 (a) The court informs the secretary of state that the
 23 defendant has resolved all outstanding matters regarding each
 24 notice or citation.

25 (b) The defendant has paid to the court a ~~\$25.00~~ **\$45.00**
 26 driver license reinstatement fee. If the court determines that
 27 the defendant is not responsible for any violation for which the

1 defendant's license was not issued or renewed under this
2 subsection, the court shall waive the driver license
3 reinstatement fee.

4 **(9)** ~~-(8)-~~ A defendant who fails to comply with an order or
5 judgment issued under this section is guilty of a misdemeanor.

6 Sec. 8829. (1) If a defendant defaults in the payment of a
7 civil fine, ~~-or-~~ costs, **or assessment** or of any installment, as
8 ordered pursuant to section 8827, the court, upon the motion of
9 the plaintiff or upon its own motion, may require the defendant
10 to show cause why the default should not be treated as in civil
11 contempt and may issue a summons, order to show cause, or a bench
12 warrant of arrest for the defendant's appearance.

13 (2) If a corporation or an association is ordered to pay a
14 civil fine, ~~-or-~~ costs, **or assessment**, the individuals authorized
15 to make disbursement shall pay the fine or costs, and their
16 failure to do so shall be civil contempt unless they make the
17 showing required in this section.

18 (3) Unless the defendant shows that the default was not
19 attributable to an intentional refusal to obey the order of the
20 court or to a failure on his or her part to make a good faith
21 effort to obtain the funds required for payment, the court shall
22 find that the default constitutes a civil contempt and may order
23 the defendant committed until all or a specified part of the
24 civil fine, costs, **or assessment**, or ~~-both-~~ **any combination of**
25 **those amounts**, is paid.

26 (4) If it appears that the default in the payment of a fine,
27 ~~-or-~~ costs, **or assessment** does not constitute civil contempt, the

1 court may enter an order allowing the defendant additional time
2 for payment, reducing the amount of payment or of each
3 installment, or revoking the fine or costs.

4 (5) The term of imprisonment on civil contempt for nonpayment
5 of a civil fine, ~~or~~ costs, **or assessment** shall be specified in
6 the order of commitment ~~—~~ and shall not exceed 1 day for each
7 \$30.00 of the fine and costs. A person committed for nonpayment
8 of a civil fine or costs shall be given credit toward payment for
9 each day of imprisonment and each day of detention in default of
10 recognizance before judgment at the rate of \$30.00 per day.

11 (6) A defendant committed to imprisonment for civil contempt
12 for nonpayment of a civil fine, ~~or~~ costs, **or assessment** shall
13 not be discharged from custody until 1 of the following occurs:

14 (a) The defendant is credited with the amount due pursuant to
15 subsection (5).

16 (b) The amount due is collected through execution of process
17 or otherwise.

18 (c) The amount due is satisfied pursuant to a combination of
19 subdivisions (a) and (b).

20 (7) The civil contempt shall be purged upon discharge of the
21 defendant pursuant to subsection (6).

22 Sec. 8835. If the defendant in a state civil infraction
23 action is determined responsible for a state civil infraction,
24 the judge or district court magistrate, in addition to any fine,
25 ~~and~~ costs, **and assessment** imposed under section 8827, may
26 assess additional costs incurred in compelling the appearance of
27 the defendant, which additional costs shall be returned to the

1 general fund of the unit of government incurring the costs.
2 Enacting section 1. This amendatory act takes effect
3 October 1, 2003.