

Act No. 95
Public Acts of 2003
Approved by the Governor
July 24, 2003
Filed with the Secretary of State
July 24, 2003
EFFECTIVE DATE: October 1, 2003

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senator Switalski

ENROLLED SENATE BILL No. 434

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," 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:

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

(2) If a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction, the judge or district court magistrate may order the defendant to pay a civil fine, costs as provided in subsection (3), the justice system assessment as provided in subsection (4), and, if applicable, damages and expenses as provided in section 8733(2). In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, assessment, and damages and expenses within a specified period of time or in specified installments. Otherwise, the civil fine, costs, assessment, and damages and expenses are due immediately.

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

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

(5) In addition to ordering the defendant to pay a civil fine, costs, a justice system assessment, and damages and expenses, the judge or district court magistrate may issue a writ or order under section 8302.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The lien may be enforced and discharged by a county, city, village, or township in the manner prescribed by its charter, by the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or by an ordinance duly passed by the governing body of the county, city, village, or township. However, property is not subject to sale under section 60 of the general property tax act, 1893 PA 206, MCL 211.60, for nonpayment of a civil fine, costs, or assessment or an installment ordered under section 8727 unless the property is also subject to sale under section 60 of the general property tax act, 1893 PA 206, MCL 211.60, for delinquent property taxes.

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

- (a) The other lien is a lien for taxes or special assessments.
- (b) The other lien is created before May 1, 1994.
- (c) Federal law provides that the other lien has priority.
- (d) The other lien is recorded before the lien under this section is recorded.

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

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

Sec. 8733. (1) An authorized local official may seize and impound a vehicle operated in the commission of a railway municipal civil infraction. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, or assessment that the defendant may be ordered to pay under section 8727 and any expenses described in subsection (2) that the defendant may be ordered to pay under section 8727. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of \$750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the railway municipal civil infraction or upon payment of the fine, costs, assessment, and damages and expenses.

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

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

(b) The reasonable expense of impoundment under subsection (1). Money collected under this subdivision shall be distributed to the governmental entity employing the authorized local official who impounded the vehicle involved in the railway municipal civil infraction.

(3) If the court determines that the defendant is responsible for the railway municipal civil infraction and the defendant defaults in the payment of the fine, costs, assessment, or damages or expenses, or in any installment, as ordered pursuant to section 8727, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, assessment, damages, expenses, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity whose ordinance was violated. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047.

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

- (a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).
- (b) To the clerk of the court for the payment of the fine, costs, assessment, damages, and expenses that the defendant was ordered to pay under section 8727.
- (c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).
- (d) To the owner of the vehicle.

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

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

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

(3) If a defendant is ordered to pay a civil fine under subsection (2), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment. Costs of not more than \$500.00 shall be ordered. Until September 30, 2003, the amount of costs ordered shall be not less than \$9.00. Costs in a state civil infraction action in the district court shall be distributed as provided in sections 8379 and 8381. Beginning October 1, 2003, costs ordered in a state civil infraction action shall be distributed as provided in section 8379. Costs in a state civil infraction action in a municipal court shall be paid to the county.

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

(5) A district court magistrate shall impose the sanctions permitted under subsection (2) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(6) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for state civil infractions that occur within the district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law as state civil infractions.

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

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

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

(b) The defendant has paid to the court a \$45.00 driver license reinstatement fee. If the court determines that the defendant is not responsible for any violation for which the defendant's license was not issued or renewed under this subsection, the court shall waive the driver license reinstatement fee.

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

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

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

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

(4) If it appears that the default in the payment of a fine, costs, or assessment does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs.

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

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

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

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

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

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

Sec. 8835. If the defendant in a state civil infraction action is determined responsible for a state civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 8827, may assess additional costs incurred in compelling the appearance of the defendant, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor