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BILL



ANALYSIS

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Senate Bill 333 (as enrolled)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 6-27-17

RATIONALE

Public Act 333 of 2012 amended the Revised Judicature Act to establish business courts. The Act required circuit courts with three or more judges to create a specialized business court docket, and allowed circuit courts with fewer than three judges to have a business court. While many believe that the business court system has facilitated more timely resolution of business cases, some contend that there are jurisdictional issues that have become apparent since the courts were established. To address these issues, it has been suggested that the jurisdictional scope of the business courts be modified.

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- Specify that a business court would have jurisdiction over business and commercial disputes in which equitable or declaratory relief was sought or in which the matter otherwise met circuit court jurisdictional requirements.**
- Modify the definition of "business and commercial dispute".**

The bill would take effect 90 days after its enactment.

Currently, a business court has jurisdiction over business and commercial disputes in which the amount in controversy exceeds \$25,000. Under the bill, a business court would have jurisdiction over business and commercial disputes in which equitable or declaratory relief was sought or in which the matter otherwise met circuit court jurisdictional requirements.

"Business or commercial dispute" means any of the following: a) an action in which all of the parties are business enterprises; b) an action in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships; c) an action in which one of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances; or d) an action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

Under the bill, "business or commercial dispute" would mean any of the following: a) an action in which all of the parties are business enterprises, unless the only claims asserted are expressly excluded under the Act; b) an action in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, or competitors, and the claims arise out of those relationships; or c) an action in which one of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.

Business or commercial disputes include a variety of types of actions, including those arising out

of commercial transactions, or involving commercial real property or the internal organization of business entities. Under the bill, business or commercial disputes also would include actions involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise. Notwithstanding the above, business or commercial disputes expressly exclude certain actions, including proceedings to enforce judgments of any kind. Under the bill, this would include supplementary hearings. The Act also excludes from business or commercial disputes land contracts or mortgage foreclosure matters involving residential property. Under the bill, this exclusion would extend to construction and condominium lien foreclosure matters and actions involving the enforcement of condominium and homeowners association governing documents. In addition, business or commercial disputes do not include actions related to motor vehicle insurance coverage under the Insurance Code, except where two or more parties to the action are insurers. The bill would remove that exception.

The bill would apply to actions commenced on or after its effective date.

MCL 600.8031 & 600.8035

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The business courts have been successful at resolving complex business disputes, have improved the efficiency of Michigan courts, and are generally well regarded within the legal community. For instance, according to Judiciary Committee testimony, an increasing number of business contracts in Michigan include forum selection clauses specifically selecting the business courts as the required forum to settle disputes between the parties. However, certain jurisdictional issues have arisen since the enactment of the legislation creating the business courts.

First, under current law, for jurisdiction to be properly before the business court, a business or commercial dispute requires an amount in controversy of more than \$25,000. However, many commercial disputes request the court to issue a declaratory judgment addressing a particular issue or issues, or to award an injunction or some other equitable remedy. The bill would allow those business or commercial disputes to be brought in a business court.

The bill would modify the meaning of "members" in the context of who may be a party to a business or commercial dispute. Currently, business or commercial disputes include "an action in which one or more of the parties is a business enterprise and the other parties are its or their present or former...members." Generally, within the context of business enterprises, the term "members" refers to the members (owners) of a limited liability company (LLC). After the business courts were established, however, credit unions started to bring actions against their members (depositors) for collection in business courts. The bill would make it clear that "members" refers to members of an LLC.

Also, the bill would remove from business courts' jurisdiction actions related to construction and condominium lien foreclosure matters and the enforcement of condominium and homeowners association governing documents, as these disputes are essentially matters involving residential property.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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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.