

SENATE BILL No. 1103

September 5, 2018, Introduced by Senator JONES and referred to the Committee on Regulatory Reform.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 8401a, 8402, 8403, 8404, 8405, 8406, 8409, 8412, 8420, and 8423 (MCL 600.8401a, 600.8402, 600.8403, 600.8404, 600.8405, 600.8406, 600.8409, 600.8412, 600.8420, and 600.8423), section 8401a as amended by 1998 PA 547, sections 8402 and 8409 as amended by 1991 PA 192, sections 8404 and 8412 as amended by 1984 PA 278, section 8405 as amended by 1996 PA 579, and section 8420 as amended by 2005 PA 151.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8401a. (1) The state court administrator shall prepare
2 ~~instruction sheets~~ **INSTRUCTIONS** clearly explaining in plain English
3 how the small claims division functions and how to commence and

1 defend an action in the small claims division. ~~A copy of the~~
2 ~~instruction sheet~~ **THE INSTRUCTIONS** must be given to the claimant
3 ~~upon filing a claim. Copies of the instruction sheets shall be made~~
4 ~~available at the office of each clerk and deputy clerk of the~~
5 ~~district court and a copy of the defendant's instruction sheet~~
6 ~~shall be sent by the~~ **AVAILABLE AT EACH DISTRICT COURT AND**
7 **ELECTRONICALLY. THE** clerk or deputy clerk **OF THE DISTRICT COURT**
8 **SHALL SEND THE INSTRUCTIONS** to the defendant along with the copy of
9 the affidavit ~~STATEMENT OF CLAIM~~ served upon the defendant under
10 section 8404.

11 (2) In addition to general ~~instruction sheets,~~ **INSTRUCTIONS,**
12 the state court administrator shall prepare ~~instruction sheets~~
13 **INSTRUCTIONS** under subsection (1) specifically for an action under
14 section 73109 of the natural resources and environmental protection
15 act, 1994 PA 451, MCL 324.73109.

16 Sec. 8402. (1) An action ~~shall be~~ **IS** commenced in the small
17 claims division by filing with the clerk or a deputy clerk of the
18 district court ~~an affidavit~~ **A STATEMENT OF CLAIM** and 1 copy of the
19 ~~affidavit~~ **STATEMENT OF CLAIM** for each defendant to be served. The
20 form and contents of the affidavit ~~shall~~ **STATEMENT OF CLAIM MUST** be
21 as prescribed by statute and the state court administrator. On the
22 same form as the affidavit ~~STATEMENT OF CLAIM~~ there ~~shall~~ **MUST** be
23 printed a notice directing the defendant to appear and answer as
24 prescribed in section 8404.

25 (2) The full and correct name of the plaintiff ~~shall~~ **MUST** be
26 given, and the affidavit ~~shall~~ **STATEMENT OF CLAIM MUST** state
27 whether the plaintiff is a corporation, partnership, sole

1 proprietorship, or individual. If the plaintiff was acting under an
2 assumed name or business name ~~at the time~~ **WHEN** the claim arose, the
3 assumed name or business name ~~shall~~ **MUST** be given.

4 (3) The ~~affidavit, in boldface type, shall~~ **STATEMENT OF CLAIM**
5 **MUST** inform both parties of the right to removal before trial from
6 magistrate jurisdiction, if applicable, and removal before trial to
7 the general civil division. The ~~affidavit shall~~ **STATEMENT OF CLAIM**
8 **MUST** inform the parties of rights waived if they choose to remain
9 in the small claims division.

10 Sec. 8403. ~~Printed affidavit~~ **STATEMENT OF CLAIM** forms for the
11 ~~commencement of~~ **COMMENCING** actions in the small claims division
12 ~~shall~~ **MUST** be available at the office of each clerk and deputy
13 clerk of the district court. ~~who~~ **THE CLERK OR DEPUTY CLERK** shall
14 prepare ~~such affidavit~~ **THE STATEMENT OF CLAIM** for a claimant upon
15 request.

16 Sec. 8404. (1) Upon the filing of the ~~affidavit,~~ **STATEMENT OF**
17 **CLAIM,** the clerk or deputy clerk shall cause a copy of the
18 ~~affidavit~~ **STATEMENT OF CLAIM** to be served upon each defendant with
19 a notice directing the defendant to appear and answer before a
20 judge of the small claims division. The notice ~~shall~~ **MUST** be in a
21 form prescribed by the state court administrator and ~~shall~~ **MUST**
22 inform the defendant of all of the following:

23 (a) When and where to appear.

24 (b) That the defendant and the plaintiff are to bring all
25 books, papers, and witnesses needed to establish any claim or
26 defense.

27 (c) That failure to appear may result in a judgment against

1 the defendant of up to the applicable jurisdictional amount as
2 prescribed by section 8401, or the amount ~~of the claim~~ stated in
3 the affidavit, ~~STATEMENT OF CLAIM~~, whichever is less, together with
4 costs of the action.

5 (d) That if settlement of the dispute is made before or at the
6 hearing, the defendant may be charged with costs incurred by the
7 plaintiff in initiating the action.

8 (e) That, even if the defendant does not have a legal defense,
9 the defendant may appear to request installment payments pursuant
10 ~~to~~ ~~UNDER~~ section 8410.

11 (2) The ~~clerk shall~~ **INSTRUCTIONS UNDER SECTION 8401A MUST**
12 inform the plaintiff and defendant that evening and Saturday court
13 hours may be made available upon written request and need shown.

14 Sec. 8405. Except as otherwise provided in this section,
15 service of the affidavit ~~STATEMENT OF CLAIM~~ and notice to appear
16 and answer ~~shall~~ **MUST** be made upon the defendant by certified mail,
17 return receipt requested and deliverable to the addressee only, by
18 personal service, or upon a showing that service of process cannot
19 reasonably be made as provided by this section, the court may, by
20 order, permit service of process to be made in any other manner
21 reasonably calculated to give the defendant actual notice of the
22 proceedings and an opportunity to be heard. ~~Where~~ **IF** service by
23 certified mail is made, it ~~shall~~ **MUST** be made by the clerk and the
24 receipt of mailing together with the return card signed by the
25 defendant ~~shall~~ constitute proof of service.

26 Sec. 8406. (1) The date for the appearance of the defendant
27 provided in the notice ~~shall~~ **MUST** not be less than 15 days nor more

1 than 45 days after the date of the notice. The person filing the
2 claim shall receive from the clerk a copy of the ~~affidavit~~
3 **STATEMENT OF CLAIM** and notice of hearing. The plaintiff shall
4 appear on the date shown in the notice of hearing and have all
5 books, papers, and witnesses necessary to prove the claim. If the
6 notice is not served upon the defendant at least 7 days before the
7 appearance date, the plaintiff may apply to the clerk or deputy
8 clerk for a new notice setting a new date for the appearance of the
9 defendant ~~which shall~~**THAT MUST** be not less than 15 days nor more
10 than 30 days after the date of ~~the issuance of~~**ISSUING** the new
11 notice.

12 (2) If a defendant is not personally served or did not sign
13 the certified mail return receipt at least 7 days before the
14 appearance date, there ~~shall~~**IS** not be jurisdiction to render
15 judgment, unless the defendant appears on the appearance date and
16 does not request a continuance. If the defendant was not served
17 within the minimum time specified, the matter, upon request of
18 either party, ~~shall~~**MUST** be continued for not less than 7 days.

19 Sec. 8409. (1) Attachment or garnishment ~~shall~~**MUST** not issue
20 from the small claims division ~~prior to~~**BEFORE** judgment but
21 execution may issue in the manner prescribed by law and the
22 judgment may be enforced in any other manner provided by law and
23 not prohibited under ~~the provisions of~~ this chapter.

24 (2) The state court administrator shall prepare ~~instruction~~
25 ~~sheets~~**INSTRUCTIONS** clearly explaining in plain English how, and
26 under what circumstances, a plaintiff in whose favor a judgment has
27 been entered may request the court to issue execution, attachment,

1 or garnishment to enforce payment of the judgment. A copy of the
2 ~~instruction sheet shall~~ **INSTRUCTIONS MUST** be offered to the
3 plaintiff at the same time as a copy of the judgment is given to
4 the plaintiff under section 8410. Additional copies of the
5 ~~instruction sheets,~~ **INSTRUCTIONS**, and forms for writs of
6 garnishment, ~~shall~~ **MUST** be made available at the office of each
7 clerk and deputy clerk of the district court.

8 Sec. 8412. Unless a party removes a small claims action to the
9 district court ~~pursuant to~~ **UNDER** section 8408(4), all parties to an
10 action in the small claims division ~~shall be considered to have~~
11 waived the right to counsel, the right to trial by jury, the right
12 to recover more than the applicable jurisdictional amount as
13 prescribed by section 8401, and any right of appeal, except that if
14 the action is heard before a district court magistrate ~~pursuant to~~
15 **UNDER** section 8427, the parties have a right to an appeal to the
16 small claims division of the district court as provided by section
17 8427. The ~~affidavit~~ **STATEMENT OF CLAIM** prescribed in section 8402
18 ~~shall~~ **MUST** contain a statement that the plaintiff understands that
19 he or she has waived these rights.

20 Sec. 8420. (1) A fee of the following amount, as applicable,
21 ~~shall~~ **MUST** be charged and collected for the filing of the ~~affidavit~~
22 **STATEMENT OF CLAIM** for the commencement of any action:

23 (a) \$25.00, if the amount in controversy does not exceed
24 \$600.00.

25 (b) \$45.00, if the amount in controversy exceeds \$600.00 but
26 does not exceed \$1,750.00.

27 (c) \$65.00, if the amount in controversy exceeds \$1,750.00.

1 (2) A fee in an amount equal to the prevailing postal rate for
2 the service provided ~~shall~~ **MUST** be charged and collected for each
3 defendant to whom a copy of the affidavit ~~STATEMENT OF CLAIM~~ is
4 mailed by the clerk. A fee of \$15.00 ~~shall~~ **MUST** be charged and
5 collected for the issuance of a writ of execution, attachment, or
6 garnishment and for the issuance of a judgment debtor discovery
7 subpoena. Except as otherwise provided in this chapter, a fee or
8 charge ~~shall~~ **MUST** not be collected by an officer for any service
9 rendered under this chapter. ~~or for the taking of affidavits for~~
10 ~~use in connection with any action commenced under this chapter.~~

11 (3) Of each filing fee under subsection (1)(a) collected
12 within the month, at the end of each month, the clerk shall
13 transmit \$11.00 to the treasurer of the district funding unit in
14 which the action was commenced, of which not less than \$5.00 ~~shall~~
15 **MUST** be used by the district funding unit to fund a drug treatment
16 court if one is planned, established, or operated in that judicial
17 district. If the entire amount attributable to the \$5.00 portion is
18 not needed for the operation of a drug treatment court, the balance
19 that is not needed for that purpose ~~shall~~ **MUST** be used for the
20 operation of the district court. If a drug treatment court is not
21 planned, established, or operated in that judicial district, all
22 \$11.00 ~~shall~~ **MUST** be used for the operation of the district court.
23 The clerk of the district court shall transmit the balance of the
24 filing fee to the state treasurer for deposit in the civil filing
25 fee fund created in section 171.

26 (4) Of each filing fee under subsection (1)(b) collected
27 within the month, at the end of each month, the clerk shall

1 transmit \$17.00 to the treasurer of the district funding unit in
2 which the action was commenced, of which not less than \$5.00 ~~shall~~
3 **MUST** be used by the district funding unit to fund a drug treatment
4 court if one is planned, established, or operated in that judicial
5 district. If the entire amount attributable to the \$5.00 portion is
6 not needed for the operation of a drug treatment court, the balance
7 that is not needed for that purpose ~~shall~~**MUST** be used for the
8 operation of the district court. If a drug treatment court is not
9 planned, established, or operated in that judicial district, all
10 \$17.00 ~~shall~~**MUST** be used for the operation of the district court.
11 The clerk of the district court shall transmit the balance of the
12 filing fee to the state treasurer for deposit in the civil filing
13 fee fund created in section 171.

14 (5) Of each filing fee under subsection (1)(c) collected
15 within the month, at the end of each month, the clerk shall
16 transmit \$23.00 to the treasurer of the district funding unit in
17 which the action was commenced, of which not less than \$5.00 ~~shall~~
18 **MUST** be used by the district funding unit to fund a drug treatment
19 court if one is planned, established, or operated in that judicial
20 district. If the entire amount attributable to the \$5.00 portion is
21 not needed for the operation of a drug treatment court, the balance
22 that is not needed for that purpose ~~shall~~**MUST** be used for the
23 operation of the district court. If a drug treatment court is not
24 planned, established, or operated in that judicial district, all
25 \$23.00 ~~shall~~**MUST** be used for the operation of the district court.
26 The clerk of the district court shall transmit the balance of the
27 filing fee to the state treasurer for deposit in the civil filing

1 fee fund created in section 171.

2 (6) If the ~~affidavit~~ **STATEMENT OF CLAIM** and notice to appear
3 and answer are served by personal service, the person serving the
4 process is entitled to the same fee and mileage as for the service
5 of a summons and complaint out of the district court.

6 Sec. 8423. (1) If a defendant in a small claims action has a
7 claim against the plaintiff, ~~which claim~~ **THAT** is for an amount
8 over the jurisdiction of the small claims division but of a nature
9 ~~which~~ **THAT** would be subject to counterclaim in accordance with
10 rules of the supreme court, ~~he~~ **THE DEFENDANT** may commence an action
11 against the plaintiff in a court of competent jurisdiction. ~~and~~ **IF**
12 **THE DEFENDANT COMMENCES AN ACTION, AT OR BEFORE THE TIME SET FOR**
13 **THE TRIAL OF THE SMALL CLAIMS ACTION, THE DEFENDANT SHALL** file with
14 the clerk or deputy clerk of the small claims division ~~wherein~~
15 **WHERE** the plaintiff has commenced his **OR HER** action, ~~at or before~~
16 ~~the time set for the trial of the small claims action, an affidavit~~
17 ~~in a form prescribed by the supreme court setting forth the fact of~~
18 ~~the commencement of such action by the defendant. He shall attach~~
19 ~~to the affidavit a true copy of the complaint filed by him~~ **THE**
20 **DEFENDANT** against **THE** plaintiff, ~~and~~ pay to the clerk or deputy
21 clerk the sum of \$1.00 for a transmittal fee, and ~~shall~~ mail to the
22 plaintiff a copy of the ~~affidavit and~~ complaint. ~~at or before the~~
23 ~~time above stated.~~ Thereupon the judge of the small claims division
24 shall order that the small claims action ~~shall~~ be transferred to
25 the court set forth in the ~~affidavit and~~ **COMPLAINT, THE JUDGE**
26 shall transmit all files and papers in the action to the other
27 court, and the actions ~~shall then~~ **MUST** be tried together in the

1 other court.

2 (2) The plaintiff in the small claims action shall not be
3 required to pay to the clerk of the court to which the action is
4 transferred any transmittal, appearance, or filing fee in the
5 action.