



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 895 (as introduced 4-28-20)  
Sponsor: Senator Jim Runestad  
Committee: Judiciary and Public Safety

Date Completed: 9-16-20

### **CONTENT**

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

- **Allow a party to seek relief from a circuit court judgment based on a jury verdict more than 21 days after the entry of the judgment under certain circumstances.**
- **Require a person seeking relief from a judgment under the bill to demonstrate by clear and convincing evidence that the person was entitled to relief and support the request for relief by describing all grounds justifying the relief and demonstrating a prima facie case for relief.**
- **Grant the party opposing a request for relief the right to an evidentiary hearing.**
- **Require the requesting party to pay the opposing party's costs and reasonable attorney fees if the reviewing panel denied a request for relief.**
- **Specify that an order granting relief from judgment would be subject to an immediate appeal of right to the Michigan Court of Appeals.**
- **Require an action to be reassigned to a judge who had not participated in previous proceedings in the action if a reviewing panel entered an order granting relief from judgment and ordered a new trial.**
- **Specify that the bill would not apply to certain civil actions.**

The bill would apply retroactively to actions in which a request for relief from judgment was filed after May 31, 2019.

### **Remedial Trial**

The bill would apply only to circumstances in which a party sought relief from a circuit court judgment based on a jury verdict more than 21 days after entry of the judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect; of newly discovered evidence; of fraud, misrepresentation, or other misconduct of an adverse party; or that the judgment was void; or for another reason that the party believed justified relief from the operation of the judgment. (Generally, circuit courts handle all civil cases with claims of more than \$25,000 and all felony criminal cases.)

To obtain relief from a judgment under the bill, a person would have to do both of the following:

- Demonstrate by clear and convincing evidence that the person was entitled to relief.
- Support the request for relief by describing all grounds justifying the relief, with affidavits or documentary evidence supporting each ground, and demonstrating a prima facie case for relief.

A request for relief under the bill would have to be reviewed and adjudicated by a three-judge panel of the circuit court or, for a circuit in where there were fewer than three judges, by as many judges as practical. The panel would have to deny the request for relief unless two or more judges found clear and convincing evidence justifying relief.

The party opposing a request for relief from judgment would have the right to an evidentiary hearing. The evidentiary hearing would have to be limited to the grounds set out in the request for relief. After the hearing was completed, the reviewing panel would have to issue detailed finding of facts and conclusions of law supporting its decision.

If the reviewing panel denied a request for relief, the requesting party would have to pay the costs and reasonable attorney fees incurred by the party opposing the request for relief.

An order granting relief from judgment would be subject to an immediate appeal of right to the Court of Appeals. Action in the circuit court would have to be stayed while the matter was on appeal.

If a reviewing panel entered an order granting relief from judgment and ordered a new trial, it would be against the public policy of the State to enforce a contract provision that required a party that prevailed in the original trial to pay the costs or attorney fees of a party that did not prevail in the original action, even if the result were different in the subsequent trial.

If a reviewing panel entered an order granting relief from judgment and ordered a new trial, the action would have to be reassigned to a judge who had not participated in previous proceedings in the action.

If a reviewing panel entered an order granting relief from judgment and ordered a new trial, the fact that a request for relief was made and granted, and the findings of the reviewing panel, would not be admissible in evidence and could not be presented at the new trial. This provision would not prohibit the admission of the factual evidence underlying the request for relief, if otherwise admission.

The bill would not apply to an action to which Section 6098 applied. (That section requires a judge presiding over an action alleging medical malpractice to review each verdict to determine if the limitation on noneconomic damages applies. If the limitation applies, the court must set aside any amount of noneconomic damages in excess of the amount allowed. Section 6098 also requires a judge presiding over a personal injury action to review each verdict returned by a jury and do one of the following: a) concur with the award; b) order a new trial within 21 days of the judgment, upon motion by any party; c) order a new trial within 21 days on its own initiative; or order a new trial within 14 days if it finds that the only error in the trial is the inadequacy or effectiveness of the verdict.)

#### Legislative Intent

The bill states that the Legislature finds all of the following:

- The right to trial by jury as preserved by the Michigan Constitution is sacrosanct and the decisions of juries should not be discarded lightly.
- It is the public policy of Michigan that litigants afforded the highest possible degree of certainty that jury verdicts will be respected and enforced.
- The bill is intended to be remedial.

Proposed MCL 600.1473

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bill could have a significant negative fiscal impact on State and local circuit courts.

The bill would add an additional appellate procedure to circuit court litigation in which a jury trial renders a verdict. According to the 2019 Court Caseload Report issued by the State Court Administrative Office, there were 1,478 jury verdicts in circuit courts statewide for that calendar year (39 of which were medical malpractice jury verdicts; these are exempted in the language of the bill). As such, the bill could allow for nearly 1,500 additional post-judgment requests for relief from jury verdicts annually which, under the bill's language, also could include an evidentiary hearing for each one and a right of immediate appeal to the State Court of Appeals.

Fifteen hundred additional filings in the Court of Appeals annually would exceed its caseload management capability. In 2019, for example, there were 783 new filings in the Court of Appeals; of these, 287 were criminal and 496 were civil, according to the 2019 Caseload Report. The Court of Appeals currently has 25 judges with combined appropriations for Court operations and salaries at just over \$30.0 million. Although an exact amount cannot be determined, the Court of Appeals would need additional appropriations, likely in excess of \$10.0 million, to handle the additional work that could come with 1,500 extra annual filings.

Regarding local circuit courts, the largest expenses associated with the bill would come from evidentiary hearings, the use of a panel of at least three circuit judges, and, for those new trial motions that were granted, the relitigation of completed trials. Of the 57 circuit courts in the State, 36 have fewer than three circuit judges. It is unclear from the bill's language whether this would mean circuit judges from larger, or neighboring, districts would need to come to the aid of the smaller districts to fill a three-judge panel for these reviews. It also is not clear whether those panels would have to be fully present and seated to hear the evidentiary hearings described in the bill. Lastly, for those motions for new trials that were granted, circuit courts would have to sustain the costs of a second trial for those cases, including, for example, the processes of jury selection, discovery, and pretrial motions.

It also should be noted that, for both circuit court criminal and civil matters, the Michigan Court Rules (MCR) allow for motions for new trials, and provide an existing framework and set of procedures to accommodate those motions. For civil trials, MCR 2.611 permits any party to move for a new trial, or to amend a judgment, within 21 days after the entry of a judgment under a variety of circumstances, including new evidence, jury misconduct, error of law or fact, and other reasons. A sitting judge also may order a new trial on his or her own initiative if he or she feels it is warranted. For criminal trials, defendants have at least six months to file a motion for a new trial under MCR 6.431. A motion under MCR 6.431 may be granted for any reason that an appellate court may reverse a conviction, or simply because the circuit court judge believes the verdict resulted in a miscarriage of justice.

Fiscal Analyst: Michael Siracuse

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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.