



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

Small claims court offers a way for people to legally settle relatively minor financial disputes without the expense of retaining an attorney or the cumbersomeness of formal procedure. At present, the small claims court limit — that is, the maximum amount for which an action can be brought in small claims court — is \$1,500. That amount, raised from \$1,000 on January 1, 1986, is considered by many to be too low: if small claims court is to be a forum for disputes not worth hiring an attorney for, then litigants might be better served by raising the limit, given the way attorney fees can mount.

Another problem faced by those who would use small claims is the difficulty some have experienced using the court for actions under the Consumer Protection Act. Statute forbids actions of fraud from being brought in small claims court, and some jurisdictions have interpreted this to include complaints under the Consumer Protection Act. Consumer advocates have pointed out that consumer matters are well within the proper purview of the court, and have suggested that consumer actions be sanctioned by statute.

Once a person wins an action in small claims court, he or she faces what probably is the best-known problem with the court: the difficulty in collecting judgements. Although the court is empowered to enforce judgements through attachment or garnishment, there is no requirement for the court to inquire regarding a defendant's assets at the time the judgement is entered. With adequate discovery procedures at the time the defendant is likely to be present, the success rate of collecting judgements may be improved.

THE CONTENT OF THE BILL:

The bill would make the following amendments to the portion of the Revised Judicature Act that deals with small claims court:

- The small claims court limit would be increased from \$1,500 to \$2,000.
- If a defendant was present at the time a judgement was entered requiring him or her to pay a sum of money, the judge would have to require the defendant to disclose in writing, under oath, the amount and location of his or her assets. If the defendant was not present, the court would notify the defendant that failure to pay could result in having to appear for an examination of his or her assets. (The bill would delete language that requires this latter notification to be part of the judgement; the judgement would continue to have to warn that failure to pay could result in an execution against one's property.)
- Actions under the Consumer Protection Act would explicitly be allowed in small claims court.
- At present, the affidavit filed to commence a small claims action informs both parties of the right to removal before trial to general civil jurisdiction and of the rights waived

SMALL CLAIMS COURT

House Bill 4504 (Substitute H-1)
First Analysis (4-12-89)

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Sponsor: Rep. Perry Bullard
Committee: Judiciary

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if they choose to remain in small claims division. The bill would in addition require the district judge or magistrate to inform both parties, orally or in writing, of these matters prior to commencing a small claims trial.

- Public Act 272 of 1984 allowed counties, cities, villages, and townships to be parties to small claims court actions. The bill would allow a local or intermediate school district to be a party in the same way that a municipality may be.

The bill would take effect July 1, 1990.

MCL 600.8401 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would make several improvements to small claims court statute. Through an increase in the limit and explicit authorization for consumer complaints, it would offer the streamlined, attorney-free procedures to more people. Additional protection for all parties would be provided by reminding them before trial of the rights waived, such as the rights to an attorney, a jury trial, and appeal, if they choose to continue in small claims court rather than civil court. The bill's warning would be in addition to the notice provided on the affidavit filed to commence a small claims action, which not everyone reads or can read. By effecting discovery of a defendant's assets at the time a decision is made, thereby minimizing the need for a separate hearing, the bill would improve collections on small claims judgements. The bill would help to make small claims court what it is supposed to be: a place where a person can walk in with a relatively straightforward complaint, present his or her case, and walk away with his or her money.

Against:

The bill's procedures for discovery of a losing defendant's assets are too invasive. Under the bill, a defendant who is responsible enough to appear in court must disclose under oath the amount and location of his or her assets. In contrast, a defendant who was not present when the judgment was entered only risks this disclosure if he or she fails to satisfy the judgment. The bill thus puts those who show up to contest a judgment at a special disadvantage; it would be unfair to require a person to disclose assets before he or she has even had a real chance to pay. More importantly, there is no need to delve so deeply into a defendant's financial picture. Enforcement needs would be met by ascertaining the location of bank accounts and employment.

Against:

By raising the small claims limit, the bill makes small claims court more of a place where businesses can collect bills, rather than where the citizenry can settle disputes.

H.B. 4504 (4-12-89)

Response: A person cannot initiate more than five small claims actions a week within a given court district. If it appears that the court's resources are getting monopolized by big business, additional restrictions could be developed as necessary. In the meantime, there is nothing wrong with the court being used by small enterprises to collect on past-due bills.

For:

The bill would extend to school districts the advantages offered to other local units of government by Public Act 272 of 1984. That act recognized that municipalities can and should benefit from small claims procedures when the amounts involved are too small to make more formal legal action worth the expense.

POSITIONS:

The State Bar of Michigan supports the bill as introduced which did not include provision for school districts. The state bar does not have a position on the substitute bill at this time; however, according to a representative of the state bar, no opposition is anticipated. (4-11-89)

The Michigan Association of School Boards supports making provision for school districts. (4-11-89)

The Michigan Consumers Council has no position on making provision for school districts or on raising the small claims limit, but supports the rest of the bill. (4-11-89)