

# HOUSE BILL No. 4504

March 22, 1989, Introduced by Reps. Perry Bullard, Miller, Weeks, Pitoniak, DeMars, Power, Profit, Wallace, Murphy, Gubow, Ciaramitaro, Stabenow, Fitzgerald, Bandstra, Martin, Bennane, Strand, Stupak and Palamara and referred to the Committee on Judiciary.

A bill to amend sections 8401, 8402, 8408, 8410, 8411, and 8424 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

sections 8401, 8402, 8408, and 8424 as amended by Act No. 278 of the Public Acts of 1984, being sections 600.8401, 600.8402, 600.8408, 600.8410, 600.8411, and 600.8424 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 8401, 8402, 8408, 8410, 8411, and 8424  
2 of Act No. 236 of the Public Acts of 1961, sections 8401, 8402,  
3 8408, and 8424 as amended by Act No. 278 of the Public Acts of  
4 1984, being sections 600.8401, 600.8402, 600.8408, 600.8410,  
5 600.8411, and 600.8424 of the Michigan Compiled Laws, are amended  
6 to read as follows:

1        Sec. 8401. ~~(1)~~ A small claims division is created in each  
2 district as a division of the district court. A judge of the  
3 district court shall sit as judge of the small claims division.  
4 The jurisdiction of the small claims division shall be confined  
5 to cases for the recovery of money only when the amount claimed  
6 does not exceed ~~\$1,000.00~~ \$2,000.00.

7        ~~(2) On and after January 1, 1986, the jurisdiction of the~~  
8 ~~small claims division shall be confined to cases for the recovery~~  
9 ~~of money only when the amount claimed does not exceed \$1,500.00.~~

10        Sec. 8402. (1) An action shall be commenced in the small  
11 claims division by filing with the clerk or a deputy clerk of the  
12 district court an affidavit and 1 copy of the affidavit for each  
13 defendant to be served. The form and contents of the affidavit  
14 shall be as prescribed by statute and the state court  
15 administrator. On the same form as the affidavit there shall be  
16 printed a notice directing the defendant to appear and answer as  
17 prescribed in section 8404.

18        (2) The full and correct name of the plaintiff shall be  
19 given, and the affidavit shall state whether the plaintiff is a  
20 corporation, partnership, sole proprietorship, or individual. If  
21 the plaintiff was acting under an assumed name or business name  
22 at the time the claim arose, the assumed name or business name  
23 shall be given.

24        (3) THE AFFIDAVIT, IN BOLDFACE TYPE, SHALL INFORM BOTH PAR-  
25 TIES OF THE RIGHT TO REMOVAL BEFORE TRIAL FROM MAGISTRATE JURIS-  
26 DICTION, IF APPLICABLE, AND REMOVAL BEFORE TRIAL TO THE GENERAL

1 CIVIL DIVISION. THE AFFIDAVIT SHALL INFORM THE PARTIES OF RIGHTS  
2 WAIVED IF THEY CHOOSE TO REMAIN IN THE SMALL CLAIMS DIVISION.

3       Sec. 8408. (1) An attorney at law, except on the attorney's  
4 own behalf, a collection agency or agent or employee of a collec-  
5 tion agency, or a person other than the plaintiff and defendant,  
6 except as is otherwise provided in this chapter, shall not take  
7 part in the filing, prosecution, or defense of litigation in the  
8 small claims division.

9       (2) A sole proprietorship, partnership, or corporation as  
10 plaintiff or defendant may be represented by an officer or  
11 employee who has direct and personal knowledge of facts in  
12 dispute. If the officer or employee who has direct and personal  
13 knowledge of facts in dispute is no longer employed by the  
14 defendant or plaintiff or is medically unavailable, the represen-  
15 tation may be made by that person's supervisor, or by the sole  
16 proprietor, a partner, or an officer or a member of the board of  
17 directors of a corporation.

18       (3) A county, city, village, or township as plaintiff or  
19 defendant may be represented only by an elected or appointed  
20 officer or an employee who has direct and personal knowledge of  
21 the facts in dispute. If the officer or employee who has direct  
22 and personal knowledge of the facts in dispute is no longer an  
23 officer or employee of the plaintiff or defendant, the represen-  
24 tation may be made by that officer's successor or that employee's  
25 supervisor, or by a member of the governing body of the county,  
26 city, village, or township. In addition, a person may not  
27 represent a county, city, village, or township in the small

1 claims division unless authorized to appear in the case by the  
2 governing body of the county, city, village, or township.

3 (4) Before commencement of a trial, the plaintiff or  
4 defendant may, upon demand, require that the trial be conducted  
5 before a district court judge and not a magistrate, or may remove  
6 the case from the small claims division to the general civil  
7 division of the district court. ~~The affidavit form, in boldface~~  
8 ~~type, shall inform both parties of the right to removal before~~  
9 ~~trial from magistrate jurisdiction, if applicable, and removal~~  
10 ~~before the trial to the general civil division and also inform~~  
11 ~~the parties of the rights waived if they choose to remain in the~~  
12 ~~small claims division.~~ If the parties commence a trial of the  
13 case in the small claims division, both parties waive all rights  
14 mentioned in section 8412.

15 Sec. 8410. (1) Before or at the hearing the parties may  
16 make a settlement upon those terms as they may agree. The set-  
17 tlement shall be in writing and signed by both parties. Upon  
18 filing of the settlement with the court, the judge shall review  
19 the settlement and may enter it as the judgment of the court or  
20 may require that a full hearing take place.

21 (2) The judge shall order that a judgment in the small  
22 claims division shall be satisfied by payment to the clerk or the  
23 plaintiff either in a lump sum or in installments in amounts and  
24 at times as the judge considers just and reasonable under the  
25 circumstances. The judge shall also provide for a stay of fur-  
26 ther proceedings to collect the judgment while the defendant is  
27 in compliance with the order of the court.

1 (3) For good cause shown, the judge may reinstate an  
2 installment payment judgment previously not performed or the  
3 judge may alter the amount of installment payments and the time  
4 of payment of the judgment and shall authorize execution, attach-  
5 ment, or garnishment to issue where it appears that the defendant  
6 has not paid according to the terms of the judgment.

7 (4) The judgment shall include a warning that the  
8 defendant's failure to pay the judgment pursuant to its terms or  
9 any installment payment ordered may result in execution against  
10 the defendant's property. ~~and that the defendant may be com-~~  
11 ~~pelled to appear for an examination of the defendant's assets.~~

12 (5) IF THE DEFENDANT IS PRESENT AT THE TIME THE JUDGMENT IS  
13 ENTERED, THE JUDGE SHALL REQUIRE THE DEFENDANT TO DISCLOSE IN  
14 WRITING, UNDER OATH, THE AMOUNT AND LOCATION OF THE DEFENDANT'S  
15 ASSETS.

16 (6) IF THE DEFENDANT IS NOT PRESENT WHEN THE JUDGMENT IS  
17 ENTERED, THE COURT SHALL NOTIFY THE DEFENDANT THAT FAILURE TO  
18 SATISFY THE JUDGMENT AS ORDERED BY THE COURT MAY RESULT IN THE  
19 DEFENDANT BEING COMPELLED TO APPEAR FOR AN EXAMINATION OF THE  
20 DEFENDANT'S ASSETS.

21 (7) A copy of the judgment shall be given in court, deliv-  
22 ered, or mailed immediately to each plaintiff and defendant fol-  
23 lowing entry of the judgment.

24 Sec. 8411. (1) PRIOR TO THE COMMENCEMENT OF A TRIAL IN THE  
25 SMALL CLAIMS DIVISION, THE DISTRICT COURT JUDGE OR MAGISTRATE  
26 SHALL INFORM, ORALLY OR IN WRITING, BOTH PARTIES OF THE RIGHT TO  
27 REMOVAL BEFORE TRIAL TO THE GENERAL CIVIL DIVISION AND OF ALL

1 RIGHTS WAIVED IF THEY CHOOSE TO REMAIN IN THE SMALL CLAIMS  
2 DIVISION.

3 (2) In hearings before the small claims division, witnesses  
4 shall be sworn. The judge shall conduct the trial in an informal  
5 manner so as to do substantial justice between the parties  
6 according to the rules of substantive law but shall not be bound  
7 by the statutory provisions or rules of practice, procedure,  
8 pleading, or evidence, except provisions relating to privileged  
9 communications, the sole object of such trials is to dispense  
10 expeditious justice between the parties. There shall be no jury  
11 nor shall a verbatim record of such proceedings be made.

12 Sec. 8424. (1) Actions of fraud, except for actions under  
13 section 2952 OR THE MICHIGAN CONSUMER PROTECTION ACT, ACT NO. 331  
14 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 445.901 TO 445.922 OF  
15 THE MICHIGAN COMPILED LAWS, and actions of libel, slander,  
16 assault, battery, or other intentional torts shall not be insti-  
17 tuted in the small claims division.

18 (2) Except as provided in subsection (3), the state, a  
19 political subdivision of the state, or any other governmental  
20 agency shall not be a party to an action in the small claims  
21 division.

22 (3) A county, city, village, or township may file an action  
23 in the small claims division. An action may be filed in the  
24 small claims division against a county, city, village, or town-  
25 ship, but a party may not assert a claim with respect to which  
26 the county, city, village, or township has immunity.

1       Section 2. This amendatory act shall take effect July 1,  
2 1990.