



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1103 (as introduced 9-5-18)
Sponsor: Senator Rick Jones
Committee: Regulatory Reform

Date Completed: 11-28-18

CONTENT

The bill would amend Chapter 84 (Small Claims Divisions) of the Revised Judicature Act to do the following:

- **Require a copy of the instructions for commencing or defending an action in small claims court to be available electronically.**
- **Delete a provision prohibiting a fee or charge from being collected for the taking of affidavits for use in connection with any action commenced under Chapter 84.**
- **Delete a provision requiring a defendant in a small claims action to file with a district court clerk or deputy clerk an affidavit setting forth the commencement of an action against the plaintiff if the defendant had a claim against the plaintiff that was for an amount over the jurisdiction of the small claims court, but of a nature that would be subject to counterclaim.**

Small Claims Court Instructions

Under Chapter 84, the State Court Administrator must prepare instructions clearly explaining in plain English how the small claims division of district court functions, and how to commence and defend an action in small claims court. A copy of the instructions must be given to the claimant upon filing a claim. Copies of the instructions must be available at the office of each district court clerk and deputy clerk, and a copy of the defendant's instructions must be sent to the defendant along with a copy of the affidavit served to the defendant.

Under the bill, the instructions only would have to be available at each district court and electronically.

Affidavit

Chapter 84 requires an affidavit, in boldface type, to inform both parties to an action of the right to removal before trial from magistrate jurisdiction, if applicable, and removal before trial to the general civil division. The bill would delete the requirement that the affidavit be in boldface type.

Also, the bill would change all references to affidavit to *statement of claim*.

Fees

Chapter 84 requires a fee of the following amount, as applicable, to be charged and collected for the filing of an affidavit for the commencement of any action:

- \$25, if the amount in controversy does not exceed \$600.
- \$45, if the amount in controversy exceeds \$600, but does not exceed \$1,750.
- \$65, if the amount in controversy exceeds \$1,750.

A fee in an amount equal to the prevailing postal rate for the service provided must be charged and collected for each defendant to whom a copy of an affidavit is mailed by a district court clerk. A \$15 fee must be charged and collected for the issuance of a writ of execution, attachment, or garnishment, and for the issuance of a judgment debtor discovery subpoena.

Except as otherwise provided in Chapter 84, a fee or charge may not be collected by an officer for any service rendered under Chapter 84 or for the taking of affidavits for use in connection with any action commenced under Chapter 84. The bill would delete the provision prohibiting a fee or charge from being collected for taking affidavits for use in connection with any action commenced under Chapter 84.

Counterclaim

Under Chapter 84, if a defendant in a small claims action has a claim against the plaintiff that is for an amount over the jurisdiction of the small claims court, but of a nature that would be subject to counterclaim in accordance with the rules of the Michigan Supreme Court, the defendant may commence an action against the plaintiff in a court of competent jurisdiction.

If the defendant commenced an action, at or before the time set for trial of the small claims action, he or she must file with the district court clerk or deputy clerk where the plaintiff has commenced his or her action, an affidavit in a form prescribed by the Michigan Supreme Court setting forth the commencement of the defendant's action. The defendant must attach to the affidavit a copy of the complaint filed by the defendant against the plaintiff, pay a \$1 transmittal fee, and mail to the plaintiff a copy of the complaint.

The bill would delete the provision requiring a defendant to file with the district court clerk or deputy clerk an affidavit in a form prescribed by the Michigan Supreme Court setting forth the fact of the commencement of the defendant's action. The defendant only would have to file a copy of the complaint with the clerk or deputy clerk, pay the transmittal fee, and mail a copy of the complaint to the plaintiff.

MCL 600.8401 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

Fiscal Analyst: Abbey Frazier

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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.