



**House
Legislative
Analysis
Section**

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CYBER COURTS

**House Bill 6447 (Substitute H-1)
First Analysis (12-3-02)**

**Sponsor: Rep. Marc Shulman
Committee: Civil Law and the Judiciary**

THE APPARENT PROBLEM:

Public Act 262 of 2001 created a state “cyber court” for cases involving technology and high-tech businesses, where the cases are tried via computer rather than in a physical courtroom. When it was enacted, it was said that the act would make Michigan the leader in applying information technology to a critical part of the judicial system, namely, business litigation: briefs may be filed online; evidence viewed by streaming video; oral arguments delivered by teleconferencing; and conferences held by e-mail. Lawyers do not have to be in Michigan or even be licensed to practice in the state. Cases can be “heard” at any time, and judges are being trained to understand the complex issues involved in technology disputes.

The cyber court appears to have been enthusiastically received. For example, in testimony before the House committee, the legal counsel to the Michigan Supreme Court acknowledged its benefits: Normally, he said, much of an attorney’s time is consumed in going to court, and waiting there. This, of course, runs up the cost of doing business. However, he recently had the opportunity to take a deposition from a defendant by means of television. That procedure lasted only one hour. It has been generally recognized for years that getting through the state’s courts often takes too much time and money. Now, the hope is that the cyber court may ease these problems.

However, when the cyber court legislation was introduced, it was intended that the proposed cyber court have a limited scope – cases involving technology and high-tech business—thought it was intended that its scope would be extended as the state gained experience in conducting such a court. Tort actions, including personal injury cases; landlord/tenant matters; employee/employer disputes; administrative agency, tax, zoning, and other appeals; proceedings to enforce any type of judgment; and criminal matters were excluded from the court’s jurisdiction. However, by excluding all tort actions, it has now been revealed that cases which should rightfully be heard by the cyber court were

inadvertently left out, under Public Act 262. Consequently, legislation has been introduced to more clearly define the types of cases the court may or may not address. In addition, the proposed legislation would resolve county clerks’ concerns over their role in cyber courts. The legislation would also clarify how a party can challenge the cyber court’s jurisdiction and have an action removed to circuit court.

THE CONTENT OF THE BILL:

Chapter 80 of the Revised Judicature Act specifies that a “cyber court” is a court of record with concurrent jurisdiction over business and commercial actions involving more than \$25,000. Among other provisions, the stated purpose of the cyber court is to “allow disputes between business and commercial entities to be resolved with the expertise, technology, and efficiency required by the information age economy.” House Bill 6447 would amend the act to establish the county clerk of the county in which the cyber court sits as the clerk for the cyber court. House Bill 6447 would also clarify which types of actions would be under the cyber court’s jurisdiction.

County Clerks. At present, the act specifies that the supreme court is to assign the clerk of the cyber court. House Bill 6447 would specify, instead, that the county clerk of the county in which the cyber court sits would be the clerk for the cyber court, and that he or she would deputize staff designated by the supreme court to receive all pleadings filed in the cyber court.

Business and Commercial Enterprises. The bill would define “business enterprise” to mean a sole proprietorship, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, for-profit or not-for-profit corporation or professional corporation, business trust, real estate investment trust, or any other entity in which a business may lawfully be conducted within its

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jurisdiction. The definition would exclude an ecclesiastical or religious organization.

Cyber Court Jurisdiction. Currently, the act limits “business and commercial actions” to disputes arising between business owners, associates, or competitors or between a business entity and its customers. These include, but are not limited to, disputes involving information technology, software, or website development; those involving the internal organization of business entities and the rights or obligations of shareholders and others; those arising out of contractual agreements or other business dealings; those arising out of commercial transactions; those arising out of business or commercial insurance policies and those involving commercial real property other than landlord/tenant disputes. The bill would include landlord/tenant disputes within the cyber court’s jurisdiction.

House Bill 6447 would redefine “business and commercial actions.” (The bill would refer to “business or commercial *disputes*,” rather than “business or commercial *actions*.”) Further, the bill would expand the types of business or commercial disputes for which actions could be brought to include any of the following:

- An action in which all of the parties were business enterprises.
- An action in which one or more of the parties was a business enterprise and the other parties were its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, customers, or competitors, and the claims arose out of those relationships.
- An action in which one of the parties was a nonprofit organization and the claims arose out of organizational structure, governance, or finances.
- An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

Actions excluded from Cyber Court Jurisdiction. The act currently excludes the following types of disputes: tort actions, including, but not limited to, personal injury, wrongful death, or medical malpractice matters; landlord/tenant matters; employee/employer disputes; administrative agency, tax, zoning, and other appeals; criminal matters; and proceedings to enforce judgments of any type. House Bill 6447 would specify, instead, that the following

types of actions would be excluded from business or commercial disputes:

- Personal injury actions involving only physical injuries to one or more individuals, including wrongful death and malpractice actions against any health care provider.
- Product liability actions in which any of the claimants were individuals.
- Matters within the Family Division of the Circuit Court’s jurisdiction.
- Proceedings under the Probate Code (MCL 710.21 to 712A.21).
- Proceedings under the Estates and Protected Individuals Code (MCL 700.1101 to 700.8102).
- Criminal matters.
- Condemnation matters.
- Appeals from lower courts or any administrative agency.
- Proceedings to enforce judgments of any kind.
- Landlord-tenant matters involving only residential property.

Removal to Circuit Court. Currently, the act specifies that a defendant can have an action removed to circuit court within 14 days of the deadline for filing an answer to a complaint. House Bill 6447 would specify, instead, that a defendant in an action commenced in the cyber court, a plaintiff against whom a counterclaim was filed in that action, or any party added by motion of the original parties as a plaintiff, defendant, or third-party defendant, could cause the entire case to be transferred to the circuit court, in a county in which venue was proper, by filing a notice of transfer with the clerk of the cyber court within 28 days after the date on which the party had been served with the pleading that gave it the right to transfer. The bill would also specify that any determination by a cyber court judge made under the following provisions would be final and could not be reviewed or altered by the circuit court to which a case had been transferred:

- Within 14 days after the filing of an answer to a complaint or a motion by a defendant for summary disposition, whichever was earlier, the judge to whom the case had been assigned could make a determination, based solely upon the complaint and

answer or the motion, whether the case was primarily a business or commercial dispute. If the judge determined that it was not, the court would have to notify the plaintiff of that decision, and the plaintiff would have 14 days after the court's notification to transfer the case to circuit court in a county that had proper venue. If the plaintiff did not transfer the case to the circuit court, the judge of the cyber court could do so. Subject to the bill's conditions for actions in which parties or claims may be added or deleted, if the judge determined that it was primarily a business or commercial dispute, the case would proceed in cyber court.

- If at the time of, or after the filing of, the defendant's answer or motion for summary disposition, parties or claims were added or deleted, the judge to whom the case had been assigned would -- with 14 days after the answer or motion had been filed -- again make a determination, based solely upon the pleadings as they then existed, whether the case was then primarily a business or commercial dispute. Should the judge determine that it was not, the court would have to notify the plaintiff of that decision, and the plaintiff would have 14 days after service of the court's notification to transfer the case to the circuit court in a county in which venue was proper. If the plaintiff did not transfer the case to the circuit court, the cyber court judge would have to do so. If the judge determined that it was primarily a business or commercial dispute, the case would proceed in cyber court. However, if parties or claims were later added or deleted, then the procedures outlined under the bill for those actions would apply.

- If a defendant in an action commenced in cyber court, a plaintiff against whom a counterclaim had been filed in such an action, or any party added by motion of the original parties as a plaintiff, defendant, or third-party defendant, transferred the action to the circuit court, or if it were determined that the case was not primarily a business or commercial dispute and was transferred to the circuit court, as provided under the bill, then the clerk of the cyber court would be required to forward to the circuit court, as a filing fee, a portion of the filing fee paid at the commencement of the action in the cyber court that was equal to the filing fee otherwise required in the circuit court.

MCL 600.8001 et al.

BACKGROUND INFORMATION:

The cyber court builds on other developments, both in society and in the judicial system: many courts

allow for the electronic filing of initiatives, some use distance video for criminal arraignments, and many maintain judicial documents in some kind of electronically accessible form. The public, too, is becoming more familiar with and increasingly uses information technology. Michigan took the additional step of creating a completely electronic business court.

The reason the state established a cyber court was due, in part, to rising caseloads and pressure to improve efficiency and effectiveness in court administration and the delivery of justice. The Internet already provides a wide range of legal information, and the benefit of having information provided this way is that it can be kept up-to-date as the law changes. The Internet can assist in legal research and can also assist in court processes generally, for example in trial preparation and in the courtroom throughout the hearing.

An abstract entitled "Cyber Courts: Using the Internet to Assist Court Processes" (Allison Stanfield, Queensland Law Foundation Technology Service Pty Ltd, Brisbane, Australia. April, 1998) investigates the ways in which the Internet can be used, and how technology can improve, a legal system. The author notes that lawyers are typically voracious users of documentation, and that documentation means volumes of text that require collecting, indexing, and a means of retrieval. All of this is made easier by using the Internet.

In the United Kingdom (U.K.), people will be able to use a cyber court service to make claims for amounts under 100,000 pounds (approximately \$170,000) by 2005. Rather than having to turn up at a court office during working hours to file several copies of a paper form, users will be able to log on to a secure website, register a user ID and password, and pay the court with a credit or debit card. The claim will be sent electronically to a central store, and claimants will receive a reference number to allow them to check the progress of their cases online. However, the claimant will still have to go to a courtroom if an online claim is disputed. The Health Service and the Inland Revenue in the U.K. are already online, and the government plans on having all services online by 2005.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state. (11-20-02)

ARGUMENTS:**For:**

When legislation establishing the state cyber court was enacted, some provisions were inadvertently left out of the act. Specifically, while it was intended that “slip and fall” type torts actions be excluded from the cyber court’s jurisdiction, it *was* intended that the cyber court have jurisdiction over several other types of torts between businesses. However, as written, the act is overly vague regarding which types of torts are included. (For example, the act specifies that the court’s jurisdiction is limited to “disputes arising between business owners, associates, or competitors, or between a business entity and its customers.”)

The act is even vague as to what constitutes a “business enterprise.” The bill would clarify these provisions, and also more clearly define actions that are excluded from the cyber court’s jurisdiction. The bill would also establish rules governing third party issues, for example how and when an action can be removed from cyber court to circuit court.

In addition, the bill would resolve an issue that has concerned county clerks. Reportedly, the county clerks were concerned about having a role in the cyber courts, since, under the act, the clerk was to be appointed by the supreme court. Negotiations were carried out with the supreme court, and it has been decided that the county clerk of the county in which the cyber court sits is to be the clerk for the cyber court, and he or she will deputize staff designated by the supreme court. Finally, the bill would delete the current provision that bars a determination made by a cyber court judge from being reviewed by an appeal court.

POSITIONS:

The Michigan Association of County Clerks supports the bill. (11-21-02)

The Michigan Manufacturers Association supports the bill. (11-22-02)

The legal counsel to the Michigan Supreme Court testified before the House committee in support of the bill. (11-13-02)

The Michigan Trial Lawyers Association has no position on the bill. (11-21-02)

The State Bar of Michigan has no position on the bill. (11-21-02)

The Michigan Judges Association (MJA) supports the bill. (11-26-02)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.