



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

BILL ANALYSIS



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

House Bill 5128 (Substitute H-3 as passed by the House)
Sponsor: Representative John Walsh
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-10-12

CONTENT

The bill would amend Chapter 80 of the Revised Judicature Act to provide for business courts. The bill would do the following:

- **Require each circuit with at least three judges to have a business court.**
- **Allow circuits with fewer than three judges to submit an administrative order for a business court to the Supreme Court and the State Court Administrative Office (SCAO) for review as part of a concurrent jurisdiction plan.**
- **Provide that a business court would have jurisdiction over business disputes and commercial disputes in which the amount in controversy exceeded \$25,000.**
- **Require an action to be assigned to a business court if all or part of it included a business or commercial dispute.**
- **Require an action to be assigned to a business court judge by blind draw.**
- **Require a business court action to be filed electronically, whenever possible.**
- **Require a business court to meet minimum standards determined by the SCAO.**
- **Provide that fees payable in civil actions in circuit court would apply to business court cases.**
- **Require the Michigan Judicial Institute to provide training for business court judges.**
- **Provide that any case pending on a pilot business court docket on January 1, 2013, would remain on that docket and assigned to the same judge until its completion.**

The bill also would repeal sections of Chapter 80 that provide for a cyber court (MCL 600.8001-600.8027).

The bill would take effect on January 1, 2013.

Business Court Establishment; Purpose

The bill would require every circuit with at least three circuit judges to have a business court, and to submit a plan for operation of the business court to the State Court Administrative Office and the Supreme Court for approval.

A circuit other than one with at least three circuit judges would be permitted to submit an administrative order for the operation of a business court to the SCAO and the Supreme Court for review as part of a concurrent jurisdiction plan.

The purpose of a business court would be to do all of the following:

- Establish judicial structures that would help all court users by improving the efficiency of the courts.
- Allow business or commercial disputes to be resolved with the expertise, technology, and efficiency required by the information age economy.
- Enhance the accuracy, consistency, and predictability of decisions in business and commercial cases.

Jurisdiction; Venue; Assignment of Actions

A business court would have jurisdiction over business disputes and commercial disputes in which the amount in controversy exceeded \$25,000. Venue of a suit in the business court would be as provided in Chapter 16 of the Act.

An action would have to be assigned to a business court if all or part of it included a business or commercial dispute. An action involving such a dispute that was filed in a court with a business docket would have to be maintained in a business court although it also involved claims that were not business or commercial disputes, including those excluded under the bill's definition of "business or commercial dispute".

If an action did not initially include a business or commercial dispute but subsequently included such a dispute as a result of a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action, the action could be reassigned by blind draw to a business court after the action was modified to include a business or commercial dispute. Reassignment would be within the discretion of the assigned judge.

The bill would require an action to be assigned to a business court judge by blind draw, unless the jurisdiction and venue of the case lay in a county with fewer than three circuit judges.

An action assigned to a business court judge, within his or her discretion, could be reassigned by blind draw to another judge if the action ceased to include a business or commercial dispute.

Upon a party's motion, the chief judge of the judicial circuit could review the assignment of an action to a business court and the assignment of an action to a business court judge, for abuse of discretion.

Business or Commercial Dispute

Definition. The bill would define "business or commercial dispute" as any of the following:

- An action in which all of the parties are business enterprises.
- An action in which at least one of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.
- An action in which one of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances.
- An action involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

Included Disputes. The bill specifies that business or commercial disputes would include, but not be limited to, the following types of actions:

- Those involving information technology, software, or website development, maintenance, or hosting.
- Those involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
- Those arising out of commercial transactions, including commercial bank transactions.
- Those arising out of business or commercial insurance policies.
- Those involving commercial real property.

In addition, business or commercial disputes would include those arising out of contractual agreements or other business dealings, including licensing, trade secret, intellectual property, antitrust, securities, noncompete, nonsolicitation, and confidentiality agreements if all available administrative remedies, including alternative dispute resolution processes prescribed in the agreements, were completely exhausted.

Excluded Disputes. The bill specifies that business or commercial disputes would expressly exclude the following types of actions:

- Personal injury actions, including wrongful death and malpractice actions.
- Product liability actions in which any claimant is an individual.
- Matters within the jurisdiction of the family court.
- Proceedings under the Probate Code.
- Proceedings under the Estates and Protected Individuals Code.
- 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.
- Land contract or mortgage foreclosure matters involving residential property.
- Motor vehicle insurance coverage under the Insurance Code, except where two or more parties are insurers.
- Insurance coverage disputes in which an insured or an alleged insured is an individual consumer.
- Employment discrimination.
- Civil rights, including an action brought under the Elliott-Larsen Civil Rights Act, the Persons with Disabilities Civil Rights Act, or Chapter XXI (Civil Rights) of the Michigan Penal Code.
- Wrongful discharge, except for actions involving corporate officers or directors.
- Worker's compensation claims.

Business Enterprise. The bill would define "business enterprise" as 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 in the jurisdiction in which the business is being conducted. The term would not include an ecclesiastical or religious organization.

Business Court Judges

Except as provided below for a concurrent jurisdiction plan, a business court would consist of sitting circuit judges assigned by the Supreme Court in a number reasonably reflecting the caseload of the business court. While sitting as a business court judge, a circuit judge could exercise the jurisdiction of the business court as provided by law.

A circuit judge assigned to the business court would be assigned for a term of six years, and could be reassigned when his or her term expired. The term of a business court judge would expire on April 1, 2019, and on April 1 of every sixth year after that.

If a circuit judge designated to sit as a business court judge before whom a case had been tried or a motion heard were disabled or absent from the place where the court was held, another circuit judge designated to sit as the judge of a business court could continue to hear, determine, and sign all matters that his or her predecessor could have heard, determined, and signed.

If a circuit judge designated to sit as a business court judge left office for any reason before signing a judgment and after a finding of fact or rendering an opinion upon proof submitted and argument of counsel disposing of all or part of the issues in the case, a successor business court judge could proceed with that action in a manner consistent with the finding of fact or opinion.

If a circuit judge left office while sitting as a business court judge, the Supreme Court could assign a circuit judge to serve for the remainder of the judge's term on the business court.

A concurrent jurisdiction plan adopted under Chapter 4 of the Act and approved by the Supreme Court could provide that one or more probate judges or district court judges within the circuit could exercise the power and jurisdiction of the business court.

The Michigan Judicial Institute would have to provide appropriate training for all circuit judges serving as business court judges.

Commencement of Action; Procedures; Fees

Whenever possible, an action commenced in a business court would have to be filed by electronic communications.

A business court would have to meet minimum standards as determined by the SCAO, which could include electronic filing, telephone or video conference, and early alternative dispute resolution intervention.

All written opinions in business court cases would have to be made available on an indexed website.

The practice and procedure of a business court not otherwise governed by the provisions of the bill would be governed by practices and procedures prescribed for the circuit court. The Supreme Court could adopt rules governing practice and procedure in the business court.

The fees payable in civil actions in circuit court would apply to cases in a business court, unless otherwise provided by law.

Appeals

An appeal from a business court would have to be to the Court of Appeals, as prescribed by Supreme Court rules. The time within which an appeal as of right from a business court could be taken would be governed by Supreme Court rules concerning appeals from the circuit court.

Proposed MCL 600.8031-600.8047

BACKGROUND

Public Act 262 of 2001 added Chapter 80 to the Revised Judicature Act to establish the cyber court, which would have concurrent jurisdiction with the circuit court over business and commercial actions in which the amount in dispute exceeded \$25,000. All cyber court actions were to be heard by a judge, without a jury, and were to be conducted by means of electronic communications.

Although Chapter 80, as amended by Public Act 663 of 2002, remains in the statute, it was never implemented.

At present, the circuit courts in Macomb, Kent, and Oakland Counties have instituted specialized business dockets.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a minor, perhaps negligible, fiscal impact on State and local government. Although the bill would create a "new" court in at least 17 circuits, the court would be run by one (or more) of the current judges and current staff, meaning the cost of carving out this new specialization would be minor and only of an administrative nature. (Seventeen circuits have at least three judges, meaning their participation would be mandatory; courts with fewer than three judges could choose to participate under an application for concurrent jurisdiction but business courts in those circuits would not be mandated.)

The bill also would call for the Michigan Judicial Institute to provide training for judges assigned to preside over the new business courts. The cost of this training would depend on the quantity of training required for each judge assigned and also upon how many circuits adopted business courts (in addition to those that would be mandated to do so).

Fiscal Analyst: Dan O'Connor

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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.