

Act No. 326
Public Acts of 2005
Approved by the Governor
December 27, 2005
Filed with the Secretary of State
December 27, 2005
EFFECTIVE DATE: December 27, 2005

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Senator Cropsey

ENROLLED SENATE BILL No. 448

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 303d, 321, 410, 601, 810, 841, 859, 871, 1701, 8321, 8322, 8331, 8344, and 8507 (MCL 600.303d, 600.321, 600.410, 600.601, 600.810, 600.841, 600.859, 600.871, 600.1701, 600.8321, 600.8322, 600.8331, 600.8344, and 600.8507), section 303d as amended by 2004 PA 448, section 321 as amended by 2005 PA 151, section 410 as added and sections 601 and 841 as amended by 2002 PA 678, sections 859 and 8331 as amended by 1986 PA 308, section 1701 as amended by 1987 PA 99, section 8322 as amended by 1996 PA 388, section 8344 as amended by 1992 PA 192, and section 8507 as amended by 1994 PA 5, and by adding sections 411 and 8808; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 303d. (1) To effectuate the transition from 3 districts having a total of 24 judges to 4 districts having a total of 28 judges, the following special provisions apply:

(a) The judgeship in district 1 filled on October 13, 1993 by an incumbent whose term expires January 1, 1995 and who is not eligible to seek reelection shall terminate January 1, 1995 and shall not be filled by election in 1994.

(b) To provide 7 judges in districts 3 and 4:

(i) In district 3, 4 new judgeships shall be filled by election in 1994. The candidate receiving the highest number of votes is elected for a term of 10 years, the candidates receiving the second and third highest number of votes are elected for terms of 8 years each, and the candidate receiving the fourth highest number of votes is elected for a term of 6 years.

(ii) In district 4, 1 new judgeship shall be filled by election in 1994. The candidate receiving the highest number of votes is elected for a term of 6 years.

(2) A judge of the court of appeals who is elected or appointed to a first term that begins on or after January 1, 1994 shall maintain offices only in the principal court of appeals offices in the district in which he or she was elected or appointed or in another office located in the municipality where the principal court of appeals facilities are located.

Sec. 321. (1) The following fees shall be paid to the clerk of the court of appeals and may be taxed as costs where costs are allowed by order of the court:

(a) The sum of \$375.00 for an appeal as of right, for an application for leave to appeal, or for an original proceeding. This fee shall be paid only once for appeals that are taken by multiple parties from the same lower court order or judgment and can be consolidated.

(b) Upon the entry of any motion except a motion described in subdivision (c) upon the motion docket, the sum of \$100.00. Beginning October 1, 2007, the fee required under this subdivision is \$75.00.

(c) Upon the entry of a motion for immediate consideration or a motion to expedite appeal upon the motion docket, the sum of \$200.00. This fee shall be paid only once regardless of the number of lower court files involved in the appeal. A prosecuting attorney is exempt from paying a fee under this subdivision when filing a motion for immediate consideration or a motion to expedite appeal with regard to an appeal arising out of a criminal proceeding. Beginning October 1, 2007, the fee required under this subdivision is \$150.00.

(2) The clerk of the court of appeals shall be allowed the sum of 50 cents per page for certified copies of entries or papers in any action or proceedings when required for any other purpose than one connected with the progress or disposition of the action or proceeding.

(3) The clerk shall charge the sum of 50 cents per page for all uncertified copies of opinions, except those sent to 1 counsel representing each party in the case, for which no charge shall be made.

(4) If a person is unable to pay the fees required by this section, the person, by motion, accompanied by the person's affidavit stating facts showing that inability, may ask the court to waive the fees and the court or a judge of the court may waive payment of the fees.

(5) Each month the clerk of the court of appeals shall deposit with the state treasurer all fees collected, securing and filing a receipt for the fees deposited.

(6) Costs shall be awarded in the discretion of the court.

Sec. 410. A plan of concurrent jurisdiction adopted under this chapter shall not include a delegation of any of the following:

(a) A power of appointment to a public office delegated by constitution or statute to the circuit court or a circuit judge.

(b) A power of appointment to a public office delegated by constitution or statute to the probate court or a probate judge.

(c) Except as provided in section 411, a power of appointment to a public office delegated by constitution or statute to the district court or a district judge.

Sec. 411. A plan of concurrent jurisdiction may provide that a probate judge of a county described in section 810a has the jurisdiction, powers, and duties of a district judge within that county, including jurisdiction over small claims and civil infraction actions and the power of appointment to a public office delegated by constitution or statute to the district judge.

Sec. 601. (1) The circuit court has the power and jurisdiction:

(a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.

(b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.

(c) Prescribed by the rules of the supreme court.

(2) The circuit court has exclusive jurisdiction over condemnation cases commenced under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(3) In a judicial circuit in which the circuit court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the circuit court has concurrent jurisdiction with the probate court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(a) The probate court has exclusive jurisdiction over trust and estate matters.

(b) Except as provided in section 411, the district court has exclusive jurisdiction over small claims and civil infraction actions.

(4) The family division of circuit court has jurisdiction as provided in chapter 10.

Sec. 810. Except when section 809 results in an earlier effective date, a probate court district created under section 808 becomes effective upon the beginning date of the term for which an incumbent probate judge in any county in the district no longer seeks reelection to that office that occurs not less than 220 days after the vote on the question. At the general election immediately preceding that date, 1 probate judge for the district shall be elected as provided in section 808(5).

Sec. 841. (1) The probate court has jurisdiction and power as follows:

- (a) As conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.
- (b) As conferred upon it under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.
- (c) As conferred upon it under this act.
- (d) As conferred upon it under another law or compact.

(2) In a judicial circuit in which the probate court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the probate court has concurrent jurisdiction with the circuit court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(a) The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by law.

(b) The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

(c) The circuit court has exclusive jurisdiction to hear and decide matters within the jurisdiction of the court of claims under chapter 64.

(d) Except as provided in section 411, the district court has exclusive jurisdiction over small claims and civil infraction actions.

Sec. 859. (1) The following testimony before a probate judge shall be recorded:

(a) Testimony in contested matters.

(b) Testimony in matters pertaining to the admission to a hospital or other facility for mentally ill or developmentally disabled persons.

(c) Testimony in matters pertaining to persons having a contagious disease.

(d) Testimony in other matters if requested by an interested party.

(e) Testimony and other proceedings required by supreme court rule.

(2) In matters not governed by subsection (1), testimony before a probate judge, probate register, or deputy probate register may be given orally without a record being made of the testimony.

(3) The court shall keep sufficient index of the testimony and the court shall keep the index and the original notes for at least 10 years. The reporter or recorder need not transcribe the testimony unless a transcript is ordered by the court or a party. Except in those cases in which the testimony is transcribed and filed with the record of the case, notes pertaining to a hearing for the admission of any person to a hospital or other place of detention as a mentally ill or developmentally disabled person or as a person with a contagious disease shall be destroyed only after the discharge of the person from the hospital or facility.

(4) Notes may not be destroyed until after 10 years after the date of the hearing or as provided in subsection (3), whichever is longer.

Sec. 871. (1) In all decedents' estates in which proceedings are instituted for probate, the probate court shall charge and collect the following fees as an expense of administration on the value of all assets, as of the date of death of the decedent, as follows:

(a) In an estate of value of less than \$1,000.00, \$5.00 plus 1% of the amount over \$500.00.

(b) In an estate of value of \$1,000.00 or more, but less than \$3,000.00, \$25.00.

(c) In an estate of value of \$3,000.00 or more but less than \$10,000.00, \$25.00 plus 5/8 of 1% of the amount over \$3,000.00.

(d) In an estate of value of \$10,000.00 or more but less than \$25,000.00, \$68.75 plus 1/2 of 1% of the amount over \$10,000.00.

(e) In an estate of value of \$25,000.00 but less than \$50,000.00, \$143.75 plus 3/8 of 1% of the amount over \$25,000.00.

(f) In an estate of value of \$50,000.00 but less than \$100,000.00, \$237.50 plus 1/4 of 1% of the amount over \$50,000.00.

(g) In an estate of value of \$100,000.00 to \$500,000.00, \$362.50 plus 1/8 of 1% of the amount over \$100,000.00.

(h) For each additional \$100,000.00 value, or larger fraction thereof, over \$500,000.00, \$62.50.

(i) For each additional \$100,000.00 value, or larger fraction thereof, over \$1,000,000.00, \$31.25.

(2) The fees in subsection (1), rounded to the whole dollar, shall be due and payable to the probate court before the filing of the final account or within 1 year after the commencement of probate proceedings, whichever occurs first. A final accounting shall not be accepted by the probate court until the fees are paid in full and shown as part of the final accounting. An official receipt shall be issued to the payer when the fees are collected.

Sec. 1701. The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

(a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.

(b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.

(c) All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.

(d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons that are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he or she is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.

(i) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(i) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.

(j) Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.

(l) The publication of a false or grossly inaccurate report of the court's proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

(m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party.

Sec. 8321. (1) Civil process in the district court shall be served by a sheriff, deputy sheriff or a court officer appointed by the judges of the court for that purpose, except that officers of the department of state police or conservation officers of the department of natural resources may serve civil process in any action to which the state is a party and police officers of an incorporated city or village may serve civil process in any action to which the incorporated city or village is a party.

(2) Under rules of the supreme court, any other person may serve any process or order of the district court that does not require the seizure, attachment, or garnishment of property or the arrest of a person. This section applies notwithstanding section 1908.

Sec. 8322. (1) A person serving as a bailiff of the common pleas court of Detroit on August 31, 1981, pursuant to an appointment under section 23 of former 1929 PA 260, shall become a bailiff of the district court in the thirty-sixth district on September 1, 1981. A bailiff shall be considered a court officer under section 8321(1) for the exclusive purpose of serving civil process in a civil action commenced in the district court in the thirty-sixth district, except for process issued in a summary proceeding under chapter 57. All process issued by the district court in civil actions shall be rotated

among the bailiffs pursuant to rules adopted by the court. A bailiff shall file with the clerk of the court a surety bond in the amount of \$100,000.00 with a surety company. The premium on the surety bond shall be paid by the district control unit. A bailiff shall possess only the powers necessary to serve process issued by the court. A bailiff governed pursuant to this subsection may bear arms while in office and in the exercise of his or her duties as bailiff. A bailiff shall hold office until death, retirement, resignation, or removal from office by the court for misfeasance or malfeasance in office. A vacancy in the office of bailiff as established pursuant to this subsection shall not be filled.

(2) A person serving as a bailiff of the common pleas court on August 31, 1981, pursuant to an appointment under section 31 of former 1929 PA 260, shall become a bailiff of the district court in the thirty-sixth district on September 1, 1981. A bailiff shall be considered a court officer under section 8321(1) for the exclusive purpose of serving civil process in summary proceedings commenced under chapter 57 in the district court in the thirty-sixth district. All process issued by the district court in summary proceedings shall be rotated among the bailiffs pursuant to rules adopted by the court, except that a writ of restitution shall be issued to the bailiff to whom the summons was issued in the particular proceeding. A bailiff shall file with the clerk of the court a surety bond in an amount of \$100,000.00 with a surety company. The premium on the surety bond shall be paid by the district control unit. A bailiff governed pursuant to this subsection shall be considered a peace officer only for the purpose of receiving compensation provided by 1937 PA 329, MCL 419.101 to 419.104. A bailiff shall hold office until death, retirement, resignation, or removal from office by the court for misfeasance or malfeasance in office. A vacancy in the office of bailiff established pursuant to this subsection shall not be filled.

(3) A bailiff governed pursuant to this section shall keep a written record of the date, amount, and nature of each financial transaction conducted by the bailiff in the course of his or her service as bailiff. An audit of each bailiff's financial transactions shall be conducted annually by the district control unit and reported immediately to the judges of the district. If the audit prescribed by this subsection is not conducted by the district control unit before June 30 of any year, the judges of the court shall contract with a certified public accountant to perform the audit. If a certified public accountant is required to perform the audit, the cost of the audit shall be paid by the district control unit.

(4) Upon the existence of a vacancy in the office of bailiff established under this section, the chief judge of the district may appoint a court officer pursuant to section 8321(1).

(5) A bailiff serving civil process pursuant to subsection (1) or (2) shall be compensated by salary and the fees and mileage prescribed in section 8326. A full-time bailiff, as defined by the employer designated under section 8274(2) or (3), shall receive from the city of Detroit a \$20,000.00 annual salary. For each part-time bailiff, as defined by the employer designated under section 8274(2) or (3), the employer designated under section 8274(2) or (3) shall establish a salary which is a pro rata portion of \$20,000.00 based on that portion of a full-time bailiff's workload to be assigned to the bailiff. A bailiff covered by this subsection is not entitled to any compensation from the city of Detroit other than that specifically authorized in this subsection.

(6) A bailiff serving civil process pursuant to subsection (1) or (2) shall not become a member of the state employees' retirement system created by the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69. Beginning September 1, 1981, the city of Detroit shall contribute to the retirement system in which the bailiff is a member on August 31, 1981, an amount equal to the amount which the state would have contributed to the state employees' retirement system pursuant to the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, if the bailiff had become a member of the state employees' retirement system, based on the salary paid by the city of Detroit pursuant to subsection (5). Beginning September 1, 1981, each bailiff shall continue to contribute to the retirement system in which the bailiff is a member on August 31, 1981, as required by ordinance, based on salary and fees received pursuant to subsection (5), except mileage.

(7) From each filing fee collected under section 8371, the clerk of the court shall pay to the Wayne county retirement system the sum of \$1.00, to be credited to the retirement fund of the bailiffs of the district court in the thirty-sixth district serving civil process pursuant to subsection (1). The county of Wayne shall annually review the retirement fund and shall ensure that the fund is maintained in an actuarially sound condition. Copies of the actuarial reports shall be provided to the employer designated under section 8274(2) or (3) and to the chief judge of the thirty-sixth district.

(8) From each filing fee collected for filing a summary proceeding under section 5756, the clerk of the court shall pay to the Wayne county retirement system the sum of \$1.00 for each defendant served in the proceeding, to be credited to the retirement fund of the bailiffs of the district court in the thirty-sixth district serving civil process pursuant to subsection (2). However, the amount credited to the retirement fund under this subsection shall not exceed 1/2 of the fee collected in a proceeding. The county of Wayne shall annually review the retirement fund and shall ensure that the fund is maintained in an actuarially sound condition. Copies of the actuarial reports shall be provided to the employer designated under section 8274(2) or (3) and to the chief judge of the thirty-sixth district.

Sec. 8331. All proceedings in the district court, except as otherwise provided by law or supreme court rule, shall be recorded.

Sec. 8344. Except as provided in this section, not less than 6 years after the entry of a judgment in a civil action, including a summary proceeding, or in an ordinance violation case or a criminal case in the district court, the court may dispose of documents, records, recordings, and notes related to that action, except the register of actions pursuant to a schedule adopted by the state administrative board. The court may order the destruction of documents, records, recordings, and notes related to a civil infraction action not less than 3 years after the entry of a finding in the action. The court may order the destruction of notes, tapes, and recordings that have been transcribed and filed with the court 1 year after the date of the filing of the transcript. The register of actions shall be in a form adequate to reveal, in summary fashion, the general nature of the action and judgment. After the disposal of the documents, records, recordings, and notes, the register of actions or a certified reproduction of the register of actions pursuant to the records media act is the official record of the action and judgment. The validity and enforceability of a judgment are not affected by the destruction of the piece of paper upon which the judgment is entered, but the register of actions itself, or a certified reproduction of the register of actions pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, is a complete replacement of the judgment and the records of the action. This section applies to judgments of municipal and common pleas courts abolished after January 1, 1969, if the judgment was entered or the action disposed of after January 1, 1969. This section applies to actions entered in the small claims division of the district court, except that a register of actions need not be preserved or maintained after destruction of the file.

Sec. 8507. (1) Magistrates shall be registered electors in the county in which they are appointed. All magistrates appointed shall serve at the pleasure of the judges of the district court. Before assuming office, persons appointed magistrates shall take the constitutional oath of office and file a bond with the treasurer of a district funding unit of that district in an amount determined by the state court administrator. The bond shall also apply to temporary service in another county under subsection (2), (3), or (4), or pursuant to a multiple district plan under subsection (5).

(2) In a district of the first class that consists of more than 1 county, if a magistrate is temporarily absent or incapacitated, the chief or only district judge may direct a magistrate of another county of the same district to serve temporarily in the county where the magistrate is temporarily absent or incapacitated. The district judge shall make his or her order in writing. A magistrate serving temporarily under this subsection is not entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred during the authorized temporary service upon certification and approval by the state court administrator. Upon allowance, the reimbursement shall be paid by the state treasurer out of the appropriation for the state court administrative office.

(3) In a district of the first class that consists of more than 1 county, the chief or only district judge may authorize a magistrate appointed in 1 county to serve in another county in the district.

(4) Pursuant to a multiple district plan under section 8320 involving adjoining districts of the first class, a district court magistrate appointed in a county of 1 district may be authorized to serve in a county of the adjoining district. While serving in the adjoining district, the magistrate shall be subject to the superintending control of the chief or only district judge of that district.

(5) Pursuant to a multiple district plan under section 8320 involving districts in the same county, a district court magistrate may be authorized to serve in any participating district of the county.

Sec. 8808. (1) When a person who is not a resident of this state is issued a citation for a civil infraction under section 8807, the person may recognize to the law enforcement officer or to the court for his or her appearance by leaving with the officer or court a sum of money not to exceed \$100.00.

(2) The officer receiving a deposit of money under subsection (1) shall give a receipt to the person for the money deposited together with the written citation required under subsection (1).

(3) At or before the completion of his or her tour of duty, a law enforcement officer taking a deposit of money shall deliver the deposit of money and the citation either to the court named in the citation or to the agency chief or person authorized by the agency chief to receive deposits. The agency chief or person authorized shall deposit the money and the citation with the court in the same manner as prescribed for citations in section 8805. A failure to deliver the money deposited is embezzlement of public money.

(4) If the person who posts a deposit fails to appear as required in the citation or for a scheduled informal or formal hearing, the court having jurisdiction and venue over the civil infraction shall enter a default judgment against the person, and the money deposited shall be forfeited and applied to any civil fine or costs ordered under section 8827.

Enacting section 1. Section 8507 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8507, as amended by this amendatory act, applies to bonds filed or renewed by district court magistrates after December 31, 2005.

Enacting section 2. Sections 8555 and 8611 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8555 and 600.8611, are repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor