

HOUSE BILL No. 4909

May 12, 2009, Introduced by Reps. Haines, Horn, Stamas, Tyler, Meltzer, Knollenberg, Bolger, Kowall, Green and Walsh and referred to the Committee on Regulatory Reform.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 3, 32, 39, 40, 43, 45, 61, and 64 (MCL 24.203, 24.232, 24.239, 24.240, 24.243, 24.245, 24.261, and 24.264), section 3 as amended by 1988 PA 277, section 39 as amended by 2004 PA 23, section 40 as amended by 1999 PA 262, section 43 as amended by 1989 PA 288, section 45 as amended by 2004 PA 491, and section 61 as amended by 1982 PA 413.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Adoption of a rule" means that step in the
2 processing of a rule consisting of the formal action of an agency
3 establishing a rule before its promulgation.

4 (2) "Agency" means a state department, bureau, division,
5 section, board, commission, trustee, authority or officer, created

1 by the constitution, statute, or agency action. Agency does not
 2 include an agency in the legislative or judicial branch of state
 3 government, the governor, an agency having direct governing control
 4 over an institution of higher education, the state civil service
 5 commission, or an association of insurers created under the
 6 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~
 7 ~~being sections 500.100 to 500.8302 of the Michigan Compiled Laws~~
 8 **1956 PA 218, MCL 500.100 TO 500.8302**, or other association or
 9 facility formed under ~~Act No. 218 of the Public Acts of 1956~~ **THAT**
 10 **ACT** as a nonprofit organization of insurer members.

11 (3) "Contested case" means a proceeding, including rate-
 12 making, price-fixing, and licensing, in which a determination of
 13 the legal rights, duties, or privileges of a named party is
 14 required by law to be made by an agency after an opportunity for an
 15 evidentiary hearing. When a hearing is held before an agency and an
 16 appeal from its decision is taken to another agency, the hearing
 17 and the appeal are deemed to be a continuous proceeding as though
 18 before a single agency.

19 (4) "Committee" means the joint committee on administrative
 20 rules.

21 (5) "Court" means the circuit court.

22 (6) **"DECISION RECORD" MEANS, IN REGARD TO A REQUEST FOR RULE-**
 23 **MAKING WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY AN**
 24 **ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED BY LAW, ALL OF**
 25 **THE FOLLOWING:**

26 (A) **THE MINUTES OF ALL MEETINGS RELATED TO THE REQUEST FOR**
 27 **RULE-MAKING.**

1 **(B) THE VOTES OF MEMBERS.**

2 **(C) THE DISCUSSION AND REASONING IN SUPPORT OF THE DECISION.**

3 (7) ~~(6)~~—"Guideline" means an agency statement or declaration
4 of policy which the agency intends to follow, which does not have
5 the force or effect of law, and which binds the agency but does not
6 bind any other person.

7 Sec. 32. (1) Definitions of words and phrases and rules of
8 construction prescribed in any statute ~~, and which~~ **THAT** are made
9 applicable to all statutes of this state ~~, also~~ **SHALL** apply to
10 rules unless clearly indicated to the contrary.

11 (2) A rule or exception to a rule shall not discriminate in
12 favor of or against any person. ~~, and a~~ **A** person affected by a rule
13 is entitled to the same benefits as any other person under the same
14 or similar circumstances.

15 (3) The violation of a rule is a crime when so provided by
16 statute. ~~A~~ **UNLESS PROVIDED FOR BY STATUTE, A** rule shall not ~~make an~~
17 ~~act or omission to act~~ **DESIGNATE AS** a crime ~~or~~ **AN ACT OR OMISSION**
18 **AND SHALL NOT** prescribe a criminal penalty for violation of a rule.

19 (4) An agency may adopt, by reference in its rules and without
20 publishing the adopted matter in full, all or any part of a code,
21 standard or regulation ~~which~~ **THAT** has been adopted by an agency of
22 the United States or by a nationally recognized organization or
23 association. The reference shall fully identify the adopted matter
24 by date and otherwise. The reference shall not cover any later
25 amendments and editions of the adopted matter, but if the agency
26 wishes to incorporate them in its rule it shall amend the rule or
27 promulgate a new rule therefor. The agency shall have available

1 copies of the adopted matter for inspection and distribution to the
2 public at cost and the rules shall state where copies of the
3 adopted matter are available from the agency and the agency of the
4 United States or the national organization or association and the
5 cost thereof as of the time the rule is adopted.

6 (5) IF AN AGENCY ADOPTS RULES IN ORDER TO IMPLEMENT A
7 FEDERALLY DELEGATED PROGRAM, THE AGENCY SHALL ADOPT THE RULES AND
8 STANDARDS AS PROMULGATED OR ADOPTED BY THE FEDERAL GOVERNMENT. THE
9 AGENCY IS PROHIBITED FROM PROMULGATING OR ADOPTING A RULE MORE
10 STRINGENT THAN THE APPLICABLE FEDERAL STANDARD UNLESS SPECIFICALLY
11 AUTHORIZED BY STATUTE TO DO OTHERWISE.

12 (6) A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OR FORM
13 WITH INSTRUCTIONS SHALL NOT BE GIVEN THE FORCE AND EFFECT OF LAW BY
14 THE AGENCY AND IS CONSIDERED MERELY ADVISORY. AN AGENCY SHALL NOT
15 RELY UPON A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OR FORM
16 WITH INSTRUCTIONS TO SUPPORT AN AGENCY'S DECISION TO ACT OR REFUSE
17 TO ACT IF THAT DECISION IS SUBJECT TO JUDICIAL REVIEW. A COURT
18 SHALL NOT RELY UPON A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT,
19 OR FORM WITH INSTRUCTIONS TO UPHOLD SUCH AN AGENCY DECISION.

20 (7) WHERE A STATUTE PROVIDES THAT AN AGENCY MAY PROCEED BY
21 RULE-MAKING OR BY ORDER AND AN AGENCY PROCEEDS BY ORDER IN LIEU OF
22 RULE-MAKING, THE ORDER SHALL NOT BE GIVEN GENERAL APPLICABILITY TO
23 PERSONS WHO WERE NOT PARTIES TO THE PROCEEDING OR CONTESTED CASE
24 PRIOR TO THE ISSUANCE OF THE ORDER.

25 (8) A RULE SHALL NOT EXCEED THE RULE-MAKING DELEGATION
26 CONTAINED IN THE STATUTE AUTHORIZING THE RULE-MAKING.

27 Sec. 39. (1) Before initiating any changes or additions to

1 rules, an agency shall electronically file with the **STATE** office of
2 ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND RULES** a request for
3 rule-making in a format prescribed by the **STATE** office of
4 ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND RULES**. The request
5 for rule-making shall include the following:

6 (a) The state or federal statutory or regulatory basis for the
7 rule.

8 (b) The problem the rule intends to address.

9 (c) An assessment of the significance of the problem.

10 (D) **IF APPLICABLE, THE DECISION RECORD.**

11 (2) **IN THE CASE WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR**
12 **COMMENTS BY ANY ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED**
13 **BY LAW, THE ADVISORY COMMITTEE OR ENTITY SHALL ISSUE TO THE AGENCY**
14 **A DECISION RECORD REGARDING ANY ACTION OR DISCUSSION REGARDING THE**
15 **REQUEST FOR RULE-MAKING. THE DECISION RECORD SHALL BE POSTED ON AN**
16 **AGENCY WEBSITE NOT LESS THAN 60 DAYS BEFORE THE REQUEST FOR RULE-**
17 **MAKING IS SUBMITTED TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**
18 **AND RULES.**

19 (3) ~~(2)~~An agency shall not proceed with the processing of a
20 rule outlined in this chapter unless the **STATE** office of ~~regulatory~~
21 ~~reform~~**ADMINISTRATIVE HEARINGS AND RULES** has approved the request
22 for rule-making. **THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND**
23 **RULES IS NOT REQUIRED TO APPROVE A REQUEST FOR RULE-MAKING AND**
24 **SHALL DO SO ONLY AFTER IT HAS INDICATED IN ITS RESPONSE TO THE**
25 **REQUEST FOR RULE-MAKING SUBMITTED BY AN AGENCY THAT THERE ARE**
26 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
27 **REQUEST FOR RULE-MAKING.**

1 (4) ~~(3)~~The **STATE** office of ~~regulatory reform~~**ADMINISTRATIVE**
 2 **HEARINGS AND RULES** shall record the receipt of all requests for
 3 rule-making on the internet and shall make electronic or paper
 4 copies of approved requests for rule-making available to members of
 5 the general public. ~~upon request.~~**THE STATE OFFICE OF**
 6 **ADMINISTRATIVE HEARINGS AND RULES SHALL ISSUE A WRITTEN OR**
 7 **ELECTRONIC RESPONSE TO THE REQUEST FOR RULE-MAKING THAT**
 8 **SPECIFICALLY ADDRESSES THE ISSUES OF WHETHER THE REQUEST HAS**
 9 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
 10 **REQUEST FOR RULE-MAKING.**

11 (5) ~~(4)~~The **STATE** office of ~~regulatory reform~~**ADMINISTRATIVE**
 12 **HEARINGS AND RULES** shall immediately make available to the
 13 committee electronic copies of the request for rule-making
 14 submitted to the **STATE** office of ~~regulatory reform~~**ADMINISTRATIVE**
 15 **HEARINGS AND RULES**. On a weekly basis, the **STATE** office of
 16 ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND RULES** shall
 17 electronically provide to the committee a listing of all requests
 18 for rule-making approved or denied during the previous week. The
 19 committee shall electronically provide a copy of the approved and
 20 denied requests for rule-making, not later than the next business
 21 day after receipt of the notice from the **STATE** office of ~~regulatory~~
 22 ~~reform~~**ADMINISTRATIVE HEARINGS AND RULES**, to members of the
 23 committee and to members of the standing committees of the senate
 24 and house of representatives that deal with the subject matter of
 25 the proposed rule.

26 Sec. 40. (1) When an agency proposes to adopt a rule that will
 27 apply to a small business and the rule will have a disproportionate

1 impact on small businesses because of the size of those businesses,
 2 the agency **SHALL CONSIDER EXEMPTING SMALL BUSINESSES AND, IF NOT**
 3 **EXEMPTED, THE AGENCY** proposing to adopt the rule shall reduce the
 4 economic impact of the rule on small businesses by doing ~~1 or more~~
 5 **ALL** of the following when it is lawful and feasible in meeting the
 6 objectives of the act authorizing the promulgation of the rule:

7 (A) **IDENTIFY AND ESTIMATE THE NUMBER OF SMALL BUSINESSES**
 8 **AFFECTED BY THE PROPOSED RULE AND ITS PROBABLE EFFECT ON SMALL**
 9 **BUSINESSES.**

10 (B) ~~(a) Establish differing compliance or reporting~~
 11 ~~requirements or timetables for small businesses under the rule~~
 12 **AFTER PROJECTING THE REQUIRED REPORTING, RECORD-KEEPING, AND OTHER**
 13 **ADMINISTRATIVE COSTS.**

14 (C) ~~(b) Consolidate, or simplify,~~ **OR ELIMINATE** the compliance
 15 and reporting requirements for small businesses under the rule **AND**
 16 **IDENTIFY THE SKILLS NECESSARY TO COMPLY WITH THE REPORTING**
 17 **REQUIREMENTS.**

18 (D) ~~(c) Establish performance rather than design standards,~~
 19 ~~when appropriate~~ **STANDARDS TO REPLACE DESIGN OR OPERATIONAL**
 20 **STANDARDS REQUIRED IN THE PROPOSED RULE.**

21 ~~(d) Exempt small businesses from any or all of the~~
 22 ~~requirements of the rule.~~

23 (2) **THE FACTORS DESCRIBED IN SUBSECTION (1) (A) THROUGH (D)**
 24 **SHALL BE SPECIFICALLY ADDRESSED IN THE SMALL BUSINESS IMPACT**
 25 **STATEMENT.**

26 (3) ~~(2) If appropriate in~~ **IN** reducing the disproportionate
 27 economic impact on small business of a rule as provided in

1 subsection (1), an agency ~~may~~**SHALL** use the following
2 classifications of small business:

3 (a) 0-9 full-time employees.

4 (b) 10-49 full-time employees.

5 (c) 50-249 full-time employees.

6 **(4)** ~~(3)~~For purposes of subsection ~~(2)~~**(3)**, an agency may
7 include a small business with a greater number of full-time
8 employees in a classification that applies to a business with fewer
9 full-time employees.

10 **(5)** ~~(4)~~This section and section 45(3) do not apply to a rule
11 ~~which~~**THAT** is required by federal law and ~~which~~**THAT** an agency
12 promulgates without imposing standards more stringent than those
13 required by the federal law.

14 Sec. 43. (1) Except in the case of an emergency rule
15 promulgated in the manner described in section 48, a rule is not
16 valid unless processed in compliance with ~~section 42~~**SECTIONS 39,**
17 **40, 42, AND 45(3)** and unless in substantial compliance with section
18 41(2), (3), (4), and (5).

19 (2) A proceeding to contest **THE VALIDITY OF THE PROCESSING OF**
20 a rule on the ground of noncompliance with the requirements of
21 ~~sections~~**SECTION 39, 40, 41, and 42, OR 45(3), OR ANY COMBINATION**
22 **THEREOF**, shall be commenced within 2 years after the effective date
23 of the rule.

24 **(3) AN AGENCY DETERMINED TO HAVE VIOLATED THIS CHAPTER**
25 **REGARDING THE PROCESSING OF A RULE IS SUBJECT TO DAMAGES AS A**
26 **RESULT OF AN ACTION BROUGHT BY A PERSON UNDER SECTION 64(2).**

27 Sec. 45. (1) Except as otherwise provided for in this

1 subsection, the agency shall submit the proposed rule to the
2 legislative service bureau for its formal certification. The
3 submission to the legislative service bureau for formal
4 certification shall be in the form of electronic transmission. If
5 requested by the legislative service bureau, the **STATE** office of
6 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also
7 transmit up to 4 paper copies of the proposed rule. The legislative
8 service bureau shall promptly issue a certificate of approval
9 indicating a determination that a proposed rule is proper as to all
10 matters of form, classification, and arrangement. If the
11 legislative service bureau fails to issue a certificate of approval
12 within 21 calendar days after receipt of the submission for formal
13 certification, the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
14 **HEARINGS AND RULES** may issue a certificate of approval. If the
15 submission to the legislative service bureau is returned by the
16 legislative service bureau to the agency before the expiration of
17 the 21-calendar-day time period, the 21-calendar-day time period is
18 tolled until the rule is resubmitted by the agency. The remainder
19 of the 21-calendar-day time period or 6 calendar days, whichever is
20 longer, shall be available for consideration by the legislative
21 service bureau for formal certification of the rule. The **STATE**
22 office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** may
23 approve a proposed rule if it considers the proposed rule to be
24 legal **AND APPROPRIATE**.

25 (2) Except as provided in subsection (6), after notice is
26 given as provided in this act and before the agency proposing the
27 rule has formally adopted the rule, the agency shall prepare an

1 agency report containing a synopsis of the comments contained in
2 the public hearing record and a copy of the **REQUEST FOR RULE-MAKING**
3 **AND THE** regulatory impact statement required under subsection (3).
4 In the report, the agency shall describe any changes in the
5 proposed rules that were made by the agency after the public
6 hearing. The **STATE** office of ~~regulatory reform~~-**ADMINISTRATIVE**
7 **HEARINGS AND RULES** shall transmit by notice of transmittal to the
8 committee copies of the rule, the agency reports **CONTAINING THE**
9 **REQUEST FOR RULE-MAKING**, a copy of the regulatory impact statement,
10 and certificates of approval from the legislative service bureau
11 and the **STATE** office of ~~regulatory reform~~-**ADMINISTRATIVE HEARINGS**
12 **AND RULES**. The **STATE** office of ~~regulatory reform~~-**ADMINISTRATIVE**
13 **HEARINGS AND RULES** shall also electronically submit a copy of the
14 rule, any agency reports required under this subsection, any
15 regulatory impact statements required under subsection (3), and any
16 certificates of approval required under subsection (1) to the
17 committee. The agency shall electronically transmit to the
18 committee the records described in this subsection within 1 year
19 after the date of the last public hearing on the proposed rule
20 unless the proposed rule is a resubmission under section 45a(7).

21 (3) Except for a rule promulgated under sections 33, 44, and
22 48, the agency shall prepare and include with the notice of
23 transmittal **THE REQUEST FOR RULE-MAKING AND THE RESPONSE FROM THE**
24 **STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES, A SMALL BUSINESS**
25 **IMPACT STATEMENT PREPARED UNDER SECTION 40(1), AND** a regulatory
26 impact statement. ~~containing~~-**THE REGULATORY IMPACT STATEMENT SHALL**
27 **CONTAIN** all of the following information:

1 (a) A comparison of the proposed rule to parallel federal
2 rules or standards set by a state or national licensing agency or
3 accreditation association, if any exist.

4 (b) An identification of the behavior and frequency of
5 behavior that the rule is designed to alter.

6 (c) An identification of the harm resulting from the behavior
7 that the rule is designed to alter and the likelihood that the harm
8 will occur in the absence of the rule.

9 (d) An estimate of the change in the frequency of the targeted
10 behavior expected from the rule.

11 (e) An identification of the businesses, groups, or
12 individuals who will be directly affected by, bear the cost of, or
13 directly benefit from the rule.

14 (f) An identification of any reasonable alternatives to
15 regulation pursuant to the proposed rule that would achieve the
16 same or similar goals.

17 (g) A discussion of the feasibility of establishing a
18 regulatory program similar to that proposed in the rule that would
19 operate through market-based mechanisms.

20 (h) An estimate of the cost of rule imposition on the agency
21 promulgating the rule.

22 (i) An estimate of the actual statewide compliance costs of
23 the proposed rule on individuals.

24 (j) An estimate of the actual statewide compliance costs of
25 the proposed rule on businesses and other groups.

26 (k) An identification of any disproportionate impact the
27 proposed rule may have on small businesses because of their size.

1 (l) An identification of the nature of any report and the
2 estimated cost of its preparation by small business required to
3 comply with the proposed rule.

4 (m) An analysis of the costs of compliance for all small
5 businesses affected by the proposed rule, including costs of
6 equipment, supplies, labor, and increased administrative costs.

7 (n) An identification of the nature and estimated cost of any
8 legal consulting and accounting services that small businesses
9 would incur in complying with the proposed rule.

10 (o) An estimate of the ability of small businesses to absorb
11 the costs estimated under subdivisions (l) through (n) without
12 suffering economic harm and without adversely affecting competition
13 in the marketplace.

14 (p) An estimate of the cost, if any, to the agency of
15 administering or enforcing a rule that exempts or sets lesser
16 standards for compliance by small businesses.

17 (q) An identification of the impact on the public interest of
18 exempting or setting lesser standards of compliance for small
19 businesses.

20 (r) A statement describing the manner in which the agency
21 reduced the economic impact of the rule on small businesses or a
22 statement describing the reasons such a reduction was not feasible.

23 (s) A statement describing ~~whether and~~ how the agency has
24 involved small businesses in the development of the rule.

25 (t) An estimate of the primary and direct benefits of the
26 rule.

27 (u) An estimate of any cost reductions to businesses,

1 individuals, groups of individuals, or governmental units as a
2 result of the rule.

3 (v) An estimate of any increase in revenues to state or local
4 governmental units as a result of the rule.

5 (w) An estimate of any secondary or indirect benefits of the
6 rule.

7 (x) An identification of the sources the agency relied upon in
8 compiling the regulatory impact statement, **INCLUDING THE**
9 **METHODOLOGY UTILIZED IN DETERMINING THE EXISTENCE AND EXTENT OF THE**
10 **IMPACT OF A PROPOSED RULE AND A COST-BENEFIT ANALYSIS OF THE**
11 **PROPOSED RULE.**

12 (y) **A DETAILED RECITATION OF THE EFFORTS OF THE AGENCY TO**
13 **COMPLY WITH THE MANDATE TO REDUCE THE DISPROPORTIONATE IMPACT OF**
14 **THE RULE UPON SMALL BUSINESSES AS DESCRIBED IN SECTION 40(1)(A)**
15 **THROUGH (D).**

16 (z) ~~(y)~~ Any other information required by the **STATE** office of
17 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES.**

18 (4) The agency shall electronically transmit the regulatory
19 impact statement required under subsection (3) to the **STATE** office
20 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** at least 28
21 days before the public hearing required pursuant to section 42.
22 Before the public hearing can be held, the regulatory impact
23 statement must be reviewed and approved by the **STATE** office of
24 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES.** The agency
25 shall also electronically transmit a copy of the regulatory impact
26 statement to the committee before the public hearing and the agency
27 shall make copies available to the public at the public hearing.

1 **THE AGENCY SHALL PUBLISH THE REGULATORY IMPACT STATEMENT ON ITS**
2 **WEBSITE AT LEAST 10 DAYS BEFORE THE DATE OF THE PUBLIC HEARING.**

3 (5) The committee shall electronically transmit to the senate
4 fiscal agency and the house fiscal agency a copy of each rule and
5 regulatory impact statement filed with the committee, as well as a
6 copy of the agenda identifying the proposed rules to be considered
7 by the committee. The senate fiscal agency and the house fiscal
8 agency shall analyze each proposed rule for possible fiscal
9 implications that, if the rule were adopted, would result in
10 additional appropriations in the current fiscal year or commit the
11 legislature to an appropriation in a future fiscal year. The senate
12 fiscal agency and the house fiscal agency shall electronically
13 report their findings to the senate and house appropriations
14 committees and to the committee before the date of consideration of
15 the proposed rule by the committee.

16 (6) Subsections (2), (3), and (4) do not apply to a rule that
17 is promulgated under sections 33, 44, and 48.

18 Sec. 61. (1) The filing of a rule under this act raises a
19 rebuttable presumption that the rule was adopted, filed with the
20 secretary of state, and made available for public inspection as
21 required by this act.

22 (2) The publication of a rule in the Michigan register, the
23 Michigan administrative code, or in an annual supplement to the
24 code raises a rebuttable presumption that **THE FOLLOWING OCCURRED:**

25 (a) The rule was adopted, filed with the secretary of state,
26 and made available for public inspection as required by this act.

27 (b) The rule printed in the publication is a true and correct

1 copy of the promulgated rule.

2 ~~—— (c) All requirements of this act relative to the rule have~~
3 ~~been complied with.~~

4 (3) The courts shall take judicial notice of a rule which
5 becomes effective under this act.

6 Sec. 64. (1) Unless an exclusive procedure or remedy is
7 provided by a statute governing the agency, the validity or
8 applicability of a rule, **INCLUDING THE FAILURE OF AN AGENCY TO**
9 **ASSESS THE IMPACT OF THE RULE ON SMALL BUSINESSES IN ITS REGULATORY**
10 **IMPACT STATEMENT**, may be determined in an action for declaratory
11 judgment when the court finds that the rule or its threatened
12 application interferes with or impairs, or imminently threatens to
13 interfere with or impair, the legal rights or privileges of the
14 plaintiff. The action shall be filed in the circuit court of the
15 county where the plaintiff resides or has his principal place of
16 business in this state or in the circuit court for Ingham county.
17 The agency shall be made a party to the action. ~~An action for~~
18 ~~declaratory judgment may not be commenced under this section unless~~
19 ~~the plaintiff has first requested the agency for a declaratory~~
20 ~~ruling and the agency has denied the request or failed to act upon~~
21 ~~it expeditiously.~~ This section shall not be construed to prohibit
22 the determination of the validity or applicability of the rule in
23 any other action or proceeding in which its invalidity or
24 inapplicability is asserted.

25 (2) **A PERSON ALLEGING A VIOLATION OF CHAPTER 3 REGARDING THE**
26 **PROCESSING OF A RULE, AS DESCRIBED IN SECTION 43(3), MAY BRING AN**
27 **ACTION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PLAINTIFF**

1 RESIDES OR IN THE CIRCUIT COURT FOR INGHAM COUNTY FOR AN AWARD OF
2 DAMAGES. IF THE COURT DETERMINES THAT SUCH A VIOLATION HAS
3 OCCURRED, IT MAY AWARD UP TO 10 TIMES THE COST OF ANY PERMIT FEES
4 AS WELL AS THE ACTUAL AND REASONABLE COSTS RELATING TO WITNESS AND
5 ATTORNEY FEES.