



**House
Legislative
Analysis
Section**

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**SMALL CLAIMS: SUBSTITUTE
SERVICE OF PROCESS**

**House Bill 6013 (Substitute H-1)
First Analysis (11-19-96)**

**Sponsor: Rep. Michael Nye
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

The small claims court hears and decides disputes involving claims seeking the recovery of money in amounts of \$1,750 or less. Because of the jurisdictional maximum amount, the small claims court deals with cases involving small sums of money, usually unpaid debts or landlord-tenant disputes. In cases before the small claims court the parties are barred from being represented by attorneys and must represent themselves. In addition, the rules of the court are more relaxed than other courts. Because the disputes before the court involve relatively small sums of money, it is important to the participants that the costs of bringing such a case to court be kept to a minimum.

Part of the cost of bringing a suit in small claims court stems from service of process. Service of process refers to the delivery of the summons and complaint to the person being sued (the defendant). Due process requires that such service be done in a manner reasonably calculated to provide the defendant with notice of the proceedings and an opportunity to be heard. Generally, service can be made by certified mail, return receipt requested; however, sometimes the defendant either purposefully avoids service or simply cannot be found. When this occurs, it can become more costly to attempt to find and serve the defendant because different means have to be used to attempt to serve the defendant. This can be particularly true where the defendant does not wish to be found.

Although the Michigan Court Rules provide for alternative means of service for other courts in the state, the rules make no provision for alternative service in small claims cases. The current law regarding the service of process for a small claims case states that the process shall be served by certified mail, return receipt requested and deliverable to the addressee only, or by personal service. In some jurisdictions this language has been interpreted to disallow service by alternative means, as allowed by the Michigan Court Rules for civil actions generally, such as advertisement or posting. As a result, it has been suggested that statutory provision should be made to allow for the use of alternative means of service

for small claims cases where the court determines that such service is appropriate.

THE CONTENT OF THE BILL:

The Revised Judicature Act (RJA) requires that service of small claims civil process be by certified mail ("return receipt requested and deliverable to the addressee only") or by personal service. ("Service of process" refers generally to the delivery of writs or summonses which give notice to a defendant of proceedings initiated against him or her, so that he or she has the opportunity to appear in court and be heard.) The bill would amend the RJA to allow service by the court to order substitute service in any manner reasonably calculated to give the defendant actual notice of the proceedings and opportunity to be heard (such as posting or advertising) upon a showing that the service cannot be made as currently provided.

MCL 600.8405

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (11-19-96)

ARGUMENTS:

For:

The bill would allow for small claims plaintiffs to have the same sort of opportunity to seek alternative service as is allowed in cases in other courts by Michigan Court Rule. The court rules, apparently as the result of an oversight on the part of the drafters, currently do not provide for alternative service in small claims court. The bill would allow the court to determine if alternative service were warranted based upon the motion of the party attempting the service, as is provided in the court rules for other courts. Many times people attempt to avoid service of small claims summons knowing that because of the small amount involved in the dispute the party bringing the suit may give up rather than continue

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paying money to attempt service. Given the small amounts involved in small claims court, it can quickly become more expensive to attempt to serve someone who is trying to avoid service than could be won.

Allowing the court to decide whether alternative service is warranted will prevent possible abuses which could occur if the plaintiff were allowed to determine whether alternative service were warranted. This bill will provide small claims plaintiffs an opportunity to bring a suit and get a judgment against someone without having to spend the whole amount of the potential judgment trying to find a defendant who is avoiding service.

Against:

Rules allowing alternative service in small claims court should be contained in the Michigan Court Rules where the rules regarding service for all other cases and courts are contained. The court rules do not provide for alternative service in small claims court; it is possible that this was intentional and by passing the bill the legislature could be interfering with the decision of the rules drafters. Even if the rules' failure to contain reference to alternative service in small claims court was purely accidental, the place for such a provision is within the court rules, not the statute. When people are seeking information about what service is appropriate in what situations, they look to the court rules. Placing this provision in the small claims statute seems likely to have the effect of hiding it from those who would use it.

Response:

Although it might be a good idea to also include a similar provision in the court rules, it is still a good idea to place this language in the statute. Most non-lawyers do not have knowledge of or access to the Michigan Court Rules and would not think to look for the court rule on alternative service when filing a case in small claims court. They are, however, likely to look up the statute to find out what sort of things are allowed in small claims court. Thus, by placing the language in the statute it is more likely to be of help to the average citizen making use of the small claims court.

POSITIONS:

The Court Officers, Deputy Sheriffs Association supports the bill. (11-19-96)

The Michigan Credit Union League supports the bill. (11-19-96)

A representative of the Rental Properties Owners of Michigan testified in support of the bill. (11-19-96)

Analyst: W. Flory

■ 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.