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SUMMONS IN LAND CONTRACT PROCEEDINGS

House Bill 4174 passed by the House
Second Analysis (7-30-01)

Sponsor: Rep. James Koetje
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

Civil actions to recover possession of real property (as in landlord-tenant disputes and in land contract forfeitures) are governed by Chapter 57, "Summary Proceedings to Recover Possession of Premises," of the Revised Judicature Act. Currently, a summons served on a defendant to appear in a civil proceeding concerning a land contract forfeiture orders the defendant to appear for trial within 15 days of the court's issuance of the summons, and the summons must be served at least ten days before the date set for trial. (In other civil proceedings, the defendant is given 10 days from the issuance of the summons by the court to appear for trial, and the summons must be served at least three days before the trial date.)

If a plaintiff in a land contract forfeiture case mails his or her documents to a court to initiate proceedings, it sometimes happens that the court does not respond immediately. Especially when contact with and by the court occurs by mail, it sometimes then happens that due to the amount of time taken by the mailing of the documents to and from the court, there remains only a day or two within which to serve the summons to the defendant in such proceedings. This can result in the proceedings having to be started over again, with a reissuance of the summons, if the defendant cannot be served in that short amount of time. Legislation has been introduced to address this issue.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to double the amount of time, from the current 15 days to 30 days, given for a defendant in land contract forfeiture proceedings to appear for trial after the issuance of a summons by the court. The bill also would clarify that these deadlines would be calculated from the issuance date of the summons. The bill would not change the current provision that the summons must be served at least ten days before the date set for trial.

MCL 600.5735

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications. (6-21-01)

ARGUMENTS:

For:

By increasing the amount of time in which a summons may be served on a defendant in a land contract forfeiture dispute, the bill would lessen the likelihood that a summons in such cases would have to be reissued, thereby slowing the process. The bill would make the service of process for summary proceedings under the Revised Judicature Act more efficient, and could benefit not only plaintiffs but defendants as well. It could benefit plaintiffs by widening the effective window on service of process in such cases, especially in cases where defendants actively seek to avoid being served. Under current law, there are only six days during which process can be served on defendants in a land contract forfeiture case (not more than 15, but at least 10, days before trial). In cases that are initiated through the mail, this can mean that effectively there are only two to three days in which process can be served (because of the legal requirement that there be a ten-day minimum time period between service of process and the trial date). If a defendant actively avoids being served, and the six-day "window" runs out, the plaintiff winds up having to start the process all over again, with the trial then unnecessarily delayed. The bill also could benefit defendants by providing them with more time to respond to a land contract forfeiture action, giving those who have legitimate defenses in such cases more time to find and receive legal advice and assistance. It also would give parties in such proceedings more time to negotiate a settlement.

House Bill 4147 (7-30-01)

POSITIONS:

The Center for Civil Justice supports the bill. (7-30-01)

Analyst: S. Ekstrom

■ 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.