

Legislative Analysis



ELIMINATE BAN ON SUNDAY SERVICE OF PROCESS

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House Bill 4133 (Substitute H-2)

Sponsor: Rep. Leslie Mortimer

Committee: Local Government and Urban Policy

First Analysis (5-16-05)

BRIEF SUMMARY: The bill would allow service of process to be served on a Sunday.

FISCAL IMPACT: The bill would have no fiscal impact.

THE APPARENT PROBLEM:

Currently, Michigan law prohibits civil process from being served or executed on a Sunday, except restraining orders and certain writs can be served on a Sunday if sufficient cause is shown by affidavit to the satisfaction of a circuit court judge. The ban on Sunday process of service apparently dates back to the Revised Statutes of 1846, when courts and most other businesses did not transact business on Sundays. Now, however, some courts conduct arraignments and other business on Sundays. Furthermore, over half a million new civil cases are filed each year; each new case necessitates service of process on the litigants. Allowing service to be made on Sundays provides 52 more days for process servers to locate litigants and is expected to increase the efficiency of the courts. Reportedly, at least 39 states allow for service of process on Sunday. Legislation has been offered to eliminate the ban on Sunday service of process.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to allow civil process to be served or executed on a Sunday.

MCL 600.1831

ARGUMENTS:

For:

Whenever a civil complaint (e.g., an action to begin a divorce, a lawsuit to recover damages, etc.) is filed in court, a copy must be delivered in person within a specified time frame to the person or persons named in the action. This is referred to as service of process. In 2004, over 583,000 new civil cases were filed in district courts in Michigan. Often, only the home address of the person is known to the process server and many people are home on Saturdays and Sundays whereas they may be at work on other days of the week. A significant amount of people are served on Saturdays; adding Sundays is therefore expected to help expedite the process, reduce backlogs, and increase the efficiency of courts across the state.

For:

Although "blue laws" for many years prohibited various business transactions (and other activities) on Sundays, that day is now a normal business day for many. The lifting of the blue laws through the years also recognized that not all faiths view Sunday as the principal day of celebration or worship. Many faiths designate other days of the week as their day of worship and so are not currently protected from service of process on those days. State laws should not favor members of one religion over another. It is time that Michigan join with the majority of states that allow service of process on Sundays.

Against:

Because of the current ban on service of process on Sundays, clergy do not have to worry about a process server interrupting a church service to deliver court papers. The bill should be amended to protect clergy while they are conducting a church service.

Response:

Clergy of denominations and faiths that worship on Friday, Saturday, or other days of the week can now be served regardless of whether or not it is a day of worship for them. To provide a protection only for clergy of certain faiths could be viewed as a violation of the separation of church and state doctrine. In addition, according to court officers, defendants in a civil suit can get very creative in avoiding being served and could easily abuse a law that says they can't be served while conducting a religious service. It would appear that clergy conducting religious services on days other than Sunday have not had problems with process servers disrupting their meetings; therefore, widespread disruption of Sunday church services should not be expected. If a problem were to occur, the issue could be revisited later.

POSITIONS:

The Court Officers and Deputy Sheriffs Association supports the bill. (5-11-05)

The 12th Judicial District Court supports the bill. (5-12-05)

The Michigan Creditors Bar Association supports the bill. (3-22-05)

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