

Legislative Analysis



UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

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Senate Bill 707 as introduced
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 10-16-12

A SUMMARY OF SENATE BILL 707 AS PASSED BY THE SENATE 10-27-12

The bill would adopt model legislation known as the Interstate Depositions and Discovery Act proposed by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). The new act would establish procedures by which an out-of-state litigant could depose a Michigan resident and for the production of discoverable materials that may be located in the state.

Senate Bill 707 would amend Section 1852 of the Revised Judicature Act and also add Chapter 22, which would be known as the Uniform Interstate Depositions and Discovery Act. The bill's provisions would apply to requests for discovery in actions pending on the bill's effective date. In applying and construing Chapter 22, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the model act.

Current provisions authorizing a state court to order a resident to give testimony or to produce documents for use in a proceeding in an out-of-state-jurisdiction would be eliminated. The bill would also specify that any Michigan court of record in a county in which a person resides, is employed, transacts business in person, or is found, could order service upon the person of any document issued in connection with a proceeding in a tribunal outside of Michigan.

Foreign subpoenas

Under the new act, a party from a foreign jurisdiction would request issuance of a subpoena to a Michigan resident by first submitting a foreign subpoena to the clerk of the circuit court in the Michigan county where discovery was sought to be conducted. The clerk, in accordance with court procedures, would have to promptly issue a subpoena for service upon the person to which the foreign subpoena had been directed. The subpoena issued in response to the request would have to incorporate the terms used in the foreign subpoena and contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

"Foreign jurisdiction" would mean a state other than Michigan. "State" would be defined as a state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a federally

recognized Indian Tribe, or territory or insular possession subject to U.S. jurisdiction. "Foreign subpoena" would mean a subpoena issued under authority of a court of record of a foreign jurisdiction.

Subpoenas

A subpoena issued by a clerk of the circuit court would be served in compliance with Michigan Court Rules. Michigan Court Rules and statutes applicable to compliance with subpoenas and requests for the production of documents and things or entry on land would apply to subpoenas issued under the model act. A motion for a protective order or an order to enforce, quash, or modify a subpoena issued by a state county clerk would also have to comply with Michigan Court Rules and would have to be submitted to the circuit court in the county in which discovery was to be conducted.

"Subpoena" would mean a document, however denominated, issued under authority of a court of record that would require a person to do any of the following:

- Attend and give testimony at a deposition.
- Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.
- Permit inspection of premises under the control of the person.

(As defined, "subpoena" would not include a subpoena for the inspection of a person, such as a medical examination for a personal injury case.)

"Person" would be defined to mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

MCL 600.1852 et al.

FISCAL IMPACT:

The bill would have an indeterminate, but likely minimal, fiscal impact on the judiciary. The bill could result in a higher administrative workload for some courts, which may increase costs for those courts. The exact cost of this increased workload is not known, but would not likely be a significant portion of the court's administrative workload.

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