

## COURT DOCUMENTS

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**House Bill 4532 (Substitute H-3)**

**Sponsor: Rep. Amanda Price**

**Committee: Judiciary**

**First Analysis (4-25-13)**

**BRIEF SUMMARY:** House Bill 4532 would amend the Revised Judicature Act to:

- make several changes in the manner probate court records are maintained and by whom;
- allow for the digitization of court documents;
- allow electronic signatures on court filings and documents;
- allow courts to provide, and charge a fee for, enhanced access to court documents through electronic means; and
- establish records management policies and procedures for the maintenance and disposal of court records.

**FISCAL IMPACT:** According to the State Court Administrative Office, the bill would have no fiscal impact on the state, but there could be costs to local units. The fiscal impact is indeterminate until the Supreme Court rules have been finalized.

### **THE APPARENT PROBLEM:**

In an effort to create efficiencies, lower costs, stretch funding dollars, and increase public access to documents, courts across the nation have been implementing electronic systems by which court documents can be filed, stored, and accessed as needed via the Internet. For example, PACER, an electronic public access service that allows any user to obtain case and docket information from federal appellate, district, and bankruptcy courts, has been in use for several years. Several Michigan counties have also recently begun using some form of electronic filing and access.

On January 1 of this year, amendments to Rule 1.109 of the Michigan Court Rules adopted by the state Supreme Court took effect. Among numerous provisions, the rule changes allow court records and documents to be filed, stored, and managed in electronic, rather than paper, formats. However, several statutory provisions regarding court documents and the authority of the Supreme Court and the State Court Administrative Office to establish policies to manage those documents need to be amended in order for a statewide, standardized electronic content management system for courts to be implemented.

## ***THE CONTENT OF THE BILL:***

House Bill 4532 would amend several existing sections of the Revised Judicature Act and add two new ones. Specifically, the bill would do the following:

Section 832 changes: Currently, the probate judge or chief probate judge of each respective county or probate court district maintains possession of the court seal, records, books, files, and papers belonging to the probate court. The bill would instead require the clerk of the probate court to fulfill this duty.

The RJA requires that each judge keep a true and correct record of each order, sentence, and decree of the court; of his or her other official acts; and of all wills and letters of authority that are to be recorded in the court. The bill would delete this provision and instead require the clerk of the probate court, in accordance with state Supreme Court rules, to maintain every record created by or filed with the probate court.

A provision allowing the records, except as otherwise provided by law, to be inspected without charge by all interested persons would be eliminated. A provision requiring the probate court to maintain an alphabetical index to the records of probate court proceedings in each county would also be eliminated.

Section 859 changes: The probate court is required to record certain testimony, keep sufficient index of the testimony, and keep the index and the original notes for at least 10 years. The bill would delete the 10-year retention period and instead require these materials to be kept as prescribed by state Supreme Court rules.

The bill would delete the following provisions pertaining to transcriptions of testimony:

- Requiring a transcription of testimony only when ordered by the court or a party.
- Requiring notes pertaining to a hearing for the admission of a person to a hospital or other place of detention as a mentally ill or developmentally disabled person or as a person with a contagious disease to be destroyed only after the discharge of the person from the institution (the provision applies except in cases in which the testimony was transcribed and filed with the case record).
- Prohibiting the destruction of notes until after 10 years after the date of the hearing or as provided above, whichever is longer.

Section 1427 changes: With some exceptions (such as technical words or the proper and known names of process) writs, process, proceedings, and records in any state court must be in the English language. The provision goes on to specify that these documents must be made out on paper, not abbreviated (with some exceptions), and numbers expressed by Arabic figures or Roman numerals. The bill would delete the latter provision and instead specify that the documents would be required to be made out in the manner and on any medium authorized by state Supreme Court rules.

The bill would also allow an electronic signature as prescribed by Supreme Court rules to satisfy a signature requirement on any document filed with or created by a court.

Section 1426 (new): The bill would authorize a court to charge a reasonable fee, as established by the Supreme Court, for providing enhanced access. "Enhanced access" would be defined as access to a court through electronic means for pleadings, practice, and procedure. The term would include, but not be limited to, access to the court's case records as prescribed by the Supreme Court rules. A "reasonable fee" would mean a charge calculated to enable a court to recover over time those operating expenses directly related to the court's provision of enhanced access. "Operating expenses" would include a court's direct cost of creating, maintaining, processing, and upgrading access to the court through electronic means. This would include the cost of computer hardware and software, system development, employee time, and the actual cost of providing the access.

The bill would not require a court to provide enhanced access. However, if enhanced access is provided to another court or to a public agency, no fees could be charged. Certain information would have to be included in a written agreement between the court and the court or public agency to which it is providing enhanced access, as specified in the bill.

Before providing enhanced access, a court would have to adopt a policy under requirements prescribed by the Supreme Court. Further, if the Supreme Court amended or adjusted the fee established for providing enhanced access, the State Court Administrative Office (SCAO) would have to notify the chairpersons of the Senate and House of Representatives appropriations subcommittees on the Judiciary of the change not more than 30 days after the fee change took effect.

Section 1428 (new): The bill would require the SCAO to establish and maintain records management policies and procedures for the courts, including a records and retention and disposal schedule, in accordance with Supreme Court rules. However, the retention and disposal schedule would have to be developed and maintained as prescribed in Section 5 of Public Act 271 of 1913, which created the Michigan Historical Commission and prescribed its powers and duties.

Disposal of records under the bill would be subject to provisions of the Records Reproduction Act. Regardless of its medium, a record could not be disposed of until the record had been in the custody of the court for the retention period established by SCAO under the bill's provisions. "Record" would mean information of any kind, recorded in any manner, and created by a court or filed with a court in accordance with Supreme Court rules.

A court would be authorized by the bill to assess a reasonable fee associated with the creation, reproduction, retrieval, and retention of its records, but only as prescribed by the Supreme Court. A court could not charge a fee to retrieve and inspect a record on site.

If the Supreme Court amended or adjusted the records retention and disposal schedule established under this new provision, the SCAO would have to notify the chairpersons of the Senate and House of Representatives appropriations subcommittees on the Judiciary of the change not more than 30 days after the fee change took effect.

MCL 600.832 et al.

### ***BACKGROUND INFORMATION:***

The bill is similar to House Bill 4064. That bill previously passed the House of Representatives.

### ***ARGUMENTS:***

#### ***For:***

The bill recognizes that how humans conduct business, access information, and even seek entertainment is increasingly through digital formats and electronic devices such as computers, smart phones, and tablets. All court activity revolves around documents and records. These documents and records are required by law to be stored for long periods of time, if not indefinitely. Paper systems have limitations and weaknesses. They require large storage areas; are difficult to search quickly; and can be damaged or destroyed by fire, water, and natural disasters such as tornados. Filing court documents by mail or in person can be costly and time consuming to retrieve (meaning higher costs for clients).

On the other hand, some state courts that have begun exploring the use of electronic content management systems (ECM) are reporting many benefits, including improved timeliness and customer service, and cost savings. For instance, ECMs can allow easy access between various county/court agencies such as Friend of the Court, the prosecutor's office, and law enforcement agencies. A study conducted by Ottawa County on the county's ECM system done in 2009 showed significant annual savings in just a few years, such as 12,492 staff hours saved annually, a reduction in annual overtime of 452 hours, 549,067 fewer pages copied, 7,257 fewer documents mailed, and 2,935 fewer file folders purchased.

The bill would delete some provisions and revise others to remove statutory obstacles to the implementation of a standardized digitalization of court records. Without the bill, the state could end up with a patchwork system that varies from county to county, with different fees and access policies, to name a few. Under the bill, the state Supreme Court would have the authority to set standards via the court rule process, which involves public input, to develop and implement a standardized digitalization of court records and fee schedule.

The bill also would allow documents filed with the court to be signed digitally. Currently, only physical signatures are recognized and accepted on court documents. This is an important change needed to implement electronic filing systems.

***Against:***

The bill eliminates a current provision that requires probate courts to allow the public to inspect records free of charge. Instead, courts would be allowed to charge fees for a variety of services, including retrieval of records in order to inspect them. This could create a hardship for indigent and low income persons if they had to pay just to search for a case record or document. Some people have already complained that the fees charged by some courts are outrageous and drive up costs for businesses, such as law firms and private investigators that are heavy users of court records. By comparison, the federal PACER system, which allows Internet access to federal court case records, allows certain functions such as record searches to be done free of charge and has reasonable fees for downloading records. PACER also has free access for certain charities, attorneys providing pro bono services, and for the indigent.

***Response:***

The H-3 substitute addresses some of these concerns. The Supreme Court is charged under the bill with establishing the policies and fees for electronic access to the digital records system. If done under the court rule process, public input would be solicited. The bill would prohibit a court from charging another court or public agency a fee for electronic access. In addition, an individual could retrieve and inspect a record in person at any court in the state free of charge.

***POSITIONS:***

A representative of the 20th Circuit Court and Ottawa County Probate Court testified in support of the bill. (4-18-13)

The Michigan Judges Association indicated support for the bill. (4-18-13)

The Michigan District Judges Association indicated support for the bills. (4-18-13)

The County of Ottawa indicated support for the bill. (4-18-13)

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■ 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.