Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 321 (as reported without amendment)   *(enacted version)*
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 5-20-13

RATIONALE

Under the Michigan Penal Code, the offense of trespassing includes entering or remaining on the land or premises of another person, without lawful authority, after having been forbidden to do so or being notified to leave, as well as entering or remaining on another person's fenced or posted farm property without consent. A violation is a misdemeanor punishable by up to 30 days' imprisonment and/or a maximum fine of $250. While process servers in some states are considered to have lawful authority to be on private property, there apparently is no such interpretation in Michigan. Consequently, process servers who are not also deputy sheriffs or court officers cannot enter onto some private property without risking being arrested and subject to the criminal penalty for trespassing. It has been suggested that process servers be excluded from the Penal Code's prohibition against trespassing when they were serving process.

CONTENT

The bill would amend the Michigan Penal Code to exclude a process server from the prohibition against and penalty for trespassing if he or she were on the land or premises of another while in the process of attempting, by the most direct route, to serve process upon any of the following:

-- An owner or occupant of the land or premises.
-- An agent of the owner or occupant.
-- A lessee of the land or premises.

"Process server" would mean a person authorized under the Revised Judicature Act

or Supreme Court rule to serve process.

MCL 750.552

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency.   The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Service of process (the delivery of a legal document such as a summons, complaint, or subpoena) is essential to the civil justice system because it is the method by which a defendant is notified that he or she is being sued or someone is informed that he or she must testify or produce evidence in an action.   Service of process is usually required and accomplished by personal delivery to the defendant or other person to whom the documents are directed. Process servers who encounter "no trespassing" signs or who are notified to leave private property may not be able to fulfill their duties, which can impede the progress of litigation or dispute resolution. A process server who ignores such warnings may be subject to arrest and criminal penalty, which also might affect the status of any professional license he or she holds, both in Michigan and in other jurisdictions.   In addition, people subject to service of process may sometimes rely on the trespass law to avoid being served.

By excluding process servers from the Penal Code's trespassing prohibition when they are attempting to serve process on an owner or occupant of the land or premises in question, an agent of the owner or

occupant, or a lessee of the land or premises, the bill would protect these professionals against exposure to a criminal penalty and would help to improve the efficiency of the civil justice system.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate, but likely negligible, fiscal impact on local units of government. There are no data to indicate how many process servers are charged with misdemeanor trespassing under current law. To the extent that this occurs, the bill would result in a marginal decrease in costs of incarceration in county jails and/or community supervision. The bill also could marginally decrease fine revenue that otherwise would benefit public libraries.

Fiscal Analyst: Dan O'Connor