

ELECTRONIC ACCESS TO COURTS

Phone: (517) 373-8080
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House Bill 4164 (H-2) as adopted on the House floor

Sponsor: Rep. Ryan Berman

Committee: Oversight

Complete to 4-28-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4164 would amend Chapter 19A (Electronic Access to Courts) of the Revised Judicature Act to do all of the following:

- Require a court to allow the public to access, through a website, the register of documents and digital images of documents filed in that court.
- Require certain courts to accept documents filed by email.
- Revise some provisions to specifically include municipal courts.

Chapter 19A provides for the creation and maintenance of a statewide electronic filing system by which documents can be filed online in addition to or instead of being filed in person at a courthouse. State courts may apply to the Supreme Court for access to and use of the electronic filing system. If the Supreme Court accepts a court, the State Court Administrative Office (SCAO) is required to use money from the Judicial Electronic Filing Fund to pay the costs of technological improvements necessary for that court to operate electronic filing. (The Judicial Electronic Filing Fund receives an electronic filing system fee collected, in addition to the fee for filing the civil action, when a civil action is commenced.) Nothing in Chapter 19A may be construed to require a person to file a document electronically, and a court or court funding unit may not require or allow a person to file a document electronically except as directed by the Supreme Court.

Access to register of actions and document images

The bill would add a new section to require, by January 1, 2023, and except as otherwise prohibited by law, a court to make available to the public, through a website, the register of actions and a digital image of all documents filed in any case in that court. The new section would not apply to a court document filed before January 1, 2023, unless the court has previously digitized documents.

The website, register, and digital images would have to be accessible without charge, without having to register or set up a user account or password, and without having to submit personal identifying information.

Nonauthorized courts

Under the act, a court may apply to the Supreme Court for access to and use of the electronic filing system. The bill would require a court that is not an authorized court to accept the filing of documents through email.

Municipal courts

Four cities in Michigan operate a municipal court, which has limited powers, instead of a district court. However, unlike the other courts of the state, municipal courts are not now referenced in Chapter 19A. The bill would revise the definitions of the following terms:

Clerk, to include a municipal court clerk.

Court funding unit, to include, for a municipal court, the city in which the municipal court is located.

Electronic filing system, to include a municipal court in the list of courts for which documents may be filed electronically through the system.

[**Note:** Among other things, section 1986 of the act specifies the amount a clerk may collect as an electronic filing system fee when a civil action is commenced. In its current form, the bill does not amend this section to provide a fee specific to municipal courts.]

MCL 600.1985 and 600.1991 and proposed MCL 600.1991a

BRIEF DISCUSSION:

Currently, although attorneys may file court documents electronically in state courts, access to digital court documents by attorneys and the public is not universally available across the state. By contrast, many federal court documents can be accessed electronically by anyone, for a nominal fee, through the Public Access to Court Electronic Records (PACER) system. Although attorneys and members of the public may search Michigan court documents in person at a court, the ongoing COVID-19 pandemic, which has seen closures of state offices or restrictions on access, as well as hesitancy by some to be in an indoor setting to obtain documents, underscores the importance of the state to provide a service similar to the PACER system.

In a separate matter, some courts allow court documents to be filed by fax, but do not accept documents filed via email. As fax machines are quickly becoming extinct, and almost any business can be conducted over the internet, some feel that a court that is not currently part of the statewide e-filing system but accepts filings by fax should be required to also accept filings sent by email.

House Bill 4164 would address both of the issues described above. However, several concerns have been raised in opposition. Of primary concern is that full implementation of the statewide electronic filing system (MiFILE) is still several years out and is unlikely to be completed before the January 1, 2023, date required under the bill. Since 2017, five pilot courts and three model courts have transitioned to MiFILE and been testing MiFILE 2.0. It is expected that a series of probate courts will go online by the end of 2021. Cost and time challenges are due to the need to transition a multitude of software programs and case management programs used by the many district, circuit, and probate courts with each other and the state appellate and supreme court into a single, modern, electronic case

management system that is flexible and easily updated. According to information provided by SCAO, if additional funding of \$1.5 million annually were appropriated, with an additional \$3.2 million to further accelerate completion of the project, approximately 90% of the state courts could be on the MiFILE system by about 2025 (rather than about 2027 without the additional funding). However, making legislative changes that could require additional software changes when the MiFILE system is still in process of being implemented could impede the statewide rollout of the e-filing system.

As to requiring courts to accept filings by email, this could increase costs to counties by requiring additional staff time for county clerk offices to first print email documents and then file them in a digital format compatible with that court's system. According to testimony offered by the Michigan Association of Counties and the Michigan Association of County Clerks, this would create new burdens, in addition to software and maintenance costs to create a new, secure online presence, and unless money were appropriated to counties to cover the implementation of the requirement, the bill would result in an unfunded mandate on counties at a time when many county budgets are already strained.

FISCAL IMPACT:

House Bill 4164 would have an indeterminate fiscal impact on local units of government. According to SCAO, the costs associated with local trial courts providing online access to the register of actions and digital images of all documents filed in courts are not known at this time.

POSITIONS:

The following entities indicated opposition to the bill (3-11-21):

- State Court Administrative Office (SCAO)
- Michigan Municipal League
- Michigan Association of Counties
- Michigan Association of County Clerks

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.