

# Legislative Analysis



## PROOF OF SERVICE OF PROCESS

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**Senate Bill 244 (S-2) as reported from House committee**

**Sponsor: Sen. Jim Runestad**

**House Committee: Judiciary**

**Senate Committee: Judiciary and Public Safety**

**Complete to 2-20-22**

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

**BRIEF SUMMARY:** Senate Bill 244 would amend the Revised Judicature Act to modify procedures for providing proof of service of process under the act.

**FISCAL IMPACT:** Senate Bill 244 would have no fiscal impact on the state or on local units of government.

### ***THE APPARENT PROBLEM:***

Service of process refers to the formal procedure by which a party to a lawsuit is notified that a legal action has been initiated. The documents served—a court summons and a copy of the plaintiff’s complaint—are collectively referred to as “process” and give a defendant the notice required for the court to exercise personal jurisdiction over the defendant. Service can be either personal/actual or constructive/substituted, with personal service referring to actual delivery to the person to whom it is directed and constructive service referring to any other method of service allowed by law instead of personal service, such as service by mail.

Every person has a fundamental right to due process of law, which means that a person has the right to be heard by a court. Service of process—or the notice that legal action has been initiated—and process servers are important to facilitate due process. According to the sponsor of the bill, fraudulent service of process is an issue in Michigan that may hinder a person’s right to due process. Some in the profession of serving process believe that fraudulent acts may be deterred, and that process servers may do their jobs more diligently, if the proof of service includes a reminder that falsely acknowledging service is a felony offense. Legislation addressing the issue has been offered.

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

Currently under the Revised Judicature Act, proof of service of process may be made by one of the following methods:

- Written acknowledgment of the receipt of the process.
- If service is made in Michigan by either of the following, a certificate stating the facts of service:
  - A sheriff.
  - A deputy sheriff, medical examiner, bailiff, or constable who holds office in a county where the court issuing the process is held or a deputy of such an officer.
- If service is made by any other person, an affidavit stating the facts of service and indicating the person’s official capacity, if any.

The bill would retain the first method without substantive change. It would amend the second to change “bailiff” to “court officer” and to no longer require that the specified officers must hold office in the county of the court issuing the process. It would amend the third to allow, instead of an affidavit, a written statement of the facts of service that is signed and dated and verified by a statement that the individual asserts the truth of the proof of service under penalty of perjury. In addition, the bill would no longer require the individual to indicate any official capacity he or she has.

Under the bill, then, proof of service could be made by one of the following methods:

- Written acknowledgment of the receipt of the process.
- If service is made in Michigan by a sheriff or by a deputy sheriff, medical examiner, court officer, or constable or a deputy of such an officer, a certificate stating the facts of service.
- If service is made by any other individual, a written statement of the facts of service that is signed and dated and verified by the following statement: “I declare under the penalty of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.”

The bill would take effect 180 days after being enacted.

MCL 600.1910

#### ***HOUSE COMMITTEE ACTION:***

The House Judiciary committee reported the Senate-passed version of the bill without amendment.

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

The bill is similar to House Bill 4666 and Senate Bill 231 of the 2017-18 and 2019-20 legislative sessions, respectively.

#### ***ARGUMENTS:***

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

Service of process can have profound financial and personal consequences on a litigant, and individuals can lose substantial rights if service is inadequate due to a process server’s unethical behavior. For example, a Michigan man lost a paternity lawsuit by default when he failed to show at a court date he knew nothing about because the process server had lied about the documents being served. According to news reports, by the time he could prove he was not the father of the child, over \$30,000 had been seized by the legal system from his paychecks and financial accounts. More recently, members of a Michigan law firm were charged with racketeering after forging signatures on process documents in dozens of cases pertaining to debt collections. Although the bill would not increase penalties, it is believed that requiring process servers to swear on each and every document under the penalty of perjury that the information is true and accurate is the best first step toward deterring fraudulent practices and ensuring that service is conducted adequately.

***Against:***

No arguments opposing the bill were offered in House committee.

***POSITIONS:***

A representative of the Michigan Court Officers, Deputy Sheriffs Association testified in support of the bill. (1-12-22)

The following entities indicated support for the bill:

- State Bar of Michigan (1-25-22)
- Michigan Creditors Bar Association (1-12-22)

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