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BILL ANALYSIS



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Senate Bill 707 (as introduced 9-28-11)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

(as passed by the Senate)

Date Completed: 10-11-11

CONTENT

The bill would add Chapter 22, the "Uniform Interstate Depositions and Discovery Act", to the Revised Judicature Act (RJA). Chapter 22 would do the following:

- **Allow a party to submit a foreign subpoena to a circuit court clerk in Michigan, and request that court to issue a subpoena in this State.**
- **Establish requirements for the issuance and enforcement of a subpoena under Chapter 22, including requiring compliance with Michigan Court Rules and statutes.**

The bill also would amend Chapter 18 (Process and Arrests) of the RJA to delete provisions allowing a Michigan court to order a person domiciled or found within this State to give testimony or to produce documents or other things for use in a proceeding outside of Michigan.

The bill would take effect on July 1, 2012.

Uniform Interstate Depositions & Discovery Act

To request issuance of a subpoena under Chapter 22, a party would have to submit a foreign subpoena to the clerk of the circuit court in the county in which discovery was sought to be conducted in Michigan. The clerk, in accordance with the court's procedures, promptly would have to issue a subpoena for service upon the person to whom the foreign subpoena was directed. A request for the issuance of a subpoena under Chapter 22 would not constitute an appearance in Michigan courts.

(A "foreign subpoena" would be a subpoena issued under authority of a court of a state other than Michigan. "State" would mean a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.)

A subpoena under Chapter 22 would have to do both of the following:

- Incorporate the terms used in the foreign subpoena.
- Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena related and of any party not represented by counsel.

A subpoena issued by a circuit court clerk under Chapter 22 would have to 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 Chapter 22.

A motion for a protective order or an order to enforce, quash, or modify a subpoena issued under Chapter 22 would have to comply with Michigan Court Rules and be submitted to the circuit court in the county in which discovery was to be conducted.

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 Uniform Interstate Depositions and Discovery Act.

Chapter 22 would apply to requests for discovery in actions pending on July 1, 2012.

Process & Arrests

Under Chapter 18 of the RJA, any Michigan court of record may order a person who lives or is found within this State to give his or her testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside of Michigan. The order may be made upon the application of any interested person or in response to a letter rogatory and may prescribe the practice and procedure for taking the testimony or statement or producing the documents or other things. The order must be issued upon petition to a court of record in the county in which the deponent resides or is employed or transacts business in person or is found for a subpoena to compel the giving of testimony. The court may hear and act upon the petition with or without notice. The order may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court who has the power to administer any necessary oath.

The bill would delete these provisions.

MCL 600.1852 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate, but likely negligible, fiscal impact on State and local government. To the extent that the bill increased the administrative workload of various courts, local jurisdictions could incur additional costs.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.