

# Legislative Analysis

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## ALLOW EVICTION NOTICE VIA EMAIL

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4038 (reported from committee as H-2)**

**Sponsor: Rep. Anthony G. Forlini**

**Committee: Judiciary**

**Complete to 3-16-15**

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

### SUMMARY:

The bill allows a landlord to deliver an eviction notice by electronic mail (e.g., email), under specified circumstances.

Chapter 57 of the Revised Judicature Act, entitled "Summary Proceedings to Recover Possession of Premises," addresses the process by which a property owner may regain possession of leased premises. Under Section 5716, the property owner must make a demand for the premises or for payment (rent) in writing. Section 5718 allows the property owner to personally deliver the demand to the person in possession of the premises or deliver it on the premises to a member of that person's family or household or an employee. The demand may also be delivered by first-class mail.

House Bill 4038 amends Section 5718 of the RJA to also allow the demand to be delivered electronically, if the person in possession of the premises has specifically consented to electronic service of the demand in writing and an electronic communication constituting or confirming the consent has been sent by one party and affirmatively replied to, by electronic service, by the other party (MCL 600.5718).

The electronic service and address used by a party in the process described above will be considered to remain that party's correct, functioning electronic communication method, unless the process described above is repeated using a different electronic service or address for that party or unless that party notifies the other in writing that that party no longer has an electronic service.

A landlord could not refuse to enter a lease because the prospective tenant declines to consent to electronic service under the bill. The bill would take effect 90 days after enactment.

### FISCAL IMPACT:

The bill would have no fiscal impact on the Judiciary.

### BRIEF DISCUSSION OF THE ISSUES:

Supporters of the bill say that it reflects the changing behaviors of tenants. Landlords are finding that not all tenants in apartment buildings or complexes request a mailbox. Some tenants may have a mailbox, but check it infrequently as most of their business and correspondence is conducted online. Thus, providing a landlord with the option to send a

notice to quit by email or posting to someone's Facebook page or other electronic communication service may enable a tenant to receive the notice sooner than under the current practice. Supporters say that electronic notices of the notice to quit may mitigate the practice of some landlords who claim that a notice was posted on the tenant's door when it really wasn't. Sending the notice via electronic communication services will create and preserve a "paper trail" that can verify when a notice was sent and whether or not a notice was received by the intended recipient.

Some still find the bill's provisions troubling. It is not unusual for people to change their email addresses frequently or to change the types of social media they use to interact with others. Moreover, just because one email or posting was sent back and forth by the parties today does not mean that that same channel will be available in the future, especially in the case of long term leases. For instance, a tenant may not remember to give a new email or other electronic communication address to the landlord, and vice versa. A tenant receiving an email or post from an unrecognized address may delete the message unopened. And just because an email is successfully delivered today does not mean that tomorrow's email from the same source won't land up in the recipient's junk folder. Not everyone remembers to check the junk mail folder on a regular basis. Thus, though some may welcome the new option, it is not without potential for tenants to still not receive the notice to quit in a timely manner or to be surprised to find an eviction notice taped to their doors.

#### **POSITIONS:**

A representative of the Property Management Association of Michigan testified in support of the bill. (3-3-15)

The Michigan Judges Association submitted written testimony in support of the bill. (3-2-15)

The Rental Property Owners Association of Michigan indicated support for the bill. (3-3-15)

The Apartment Association of Michigan indicated support for the bill. (3-3-15)

Princeton Enterprises indicated support for the bill. (3-3-15)

A representative of the Michigan Poverty Law Program testified that the entity is neutral on the H-2 Substitute. (3-3-15)

A representative of the Michigan Process Servers Alliance submitted written testimony opposing the bill. (3-3-15)

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■ 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.