

JUSTICE POLICY INITIATIVE
Respectfully submits the following position on:

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HB 4038

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The Justice Policy Initiative is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Justice Policy Initiative only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

The State Bar position on this matter is to oppose the bill.

The total membership of the Justice Policy Initiative is 13.

The position was adopted after discussion and electronic vote. The number of members in the decision-making body is 13. The number who voted in favor to this position was 11. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of Committee:

Justice Policy Initiative

Contact Person:

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Bill Number:

[HB 4038](#) (Forlini) Housing; landlord and tenants; notification of evictions; allow by electronic mail. Amends sec. 5718 of [1961 PA 236](#) (MCL [600.5718](#)).

Date position was adopted:

March 18, 2015

Process used to take the ideological position:

Position adopted after discussion and electronic vote.

Number of members in the decision-making body:

13

Number who voted in favor and opposed to the position:

11 Voted for position

0 Voted against position

0 Abstained from vote

2 Did not vote (absent)

Position:

Oppose

Explanation of the position, including any recommended amendments:

Email is not a reliable manner to transmit such important information as an eviction notice, and the harm that may result from faulty service should mitigate in favor of great caution. A tenant may not have email access at all or may not have the same email used at the time of signing the lease. With regards to the availability of electronic notice being placed in a written agreement, there may be no opportunity for the tenant to negotiate this in a lease. The delay in receiving the eviction notice could greatly affect the individual's opportunity to defend in court. Emails also can go to spam/junk or similar folders unless user is sufficiently computer literate to understand the need to set program to recognize the sender as "trusted" and even then is dependent on notice being sent from the same email account. IF

email is to be permitted as an acceptable method of service, the statute should at a minimum require that receipt of the notice itself be acknowledged by reply email in order for service of the notice to be considered effective.

Even if the proposed “acknowledgement by reply email” provision is added, the landlord can allege non-receipt of the tenant’s acknowledgement email. Thinking in terms of signals typically exchanged in computers, the email “handshake” between the landlord and the tenant is not complete unless, the landlord also acknowledges receipt of the tenant’s acknowledgement email.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2015-HB-4038>

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys**
- The improvement of the functioning of the courts**
- ✓ **The availability of legal services to society**
- The regulation of attorney trust accounts**
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Keller-permissible explanation:

This bill greatly limits the eviction notification to a tenant from a landlord by allowing electronic mail. The bill allows for personal delivery of an electronic form “if authorized in a written agreement.” Because e-mail communication is not a reliable form of communication and not every person has email availability, an individual might not receive an eviction notice which could eliminate their right to a timely court defense.