



Sen. Laura Fine

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10400HB1391sam001

LRB104 06058 JRC 37661 a

1 AMENDMENT TO HOUSE BILL 1391

2 AMENDMENT NO. _____. Amend House Bill 1391 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-213 as follows:

6 (735 ILCS 5/2-213) (from Ch. 110, par. 2-213)
7 Sec. 2-213. Waiver of service.

8 (a) Notice and request for waiver. A plaintiff may notify
9 a defendant of the commencement of an action and request that
10 the defendant waive service of a summons. The notice and
11 request shall be in writing in a form prescribed by Supreme
12 Court rule. The notice and request shall:

13 (1) be addressed to an individual who is the defendant
14 or who could be served as representative of an entity that
15 is the defendant;

16 (2) be dispatched through first class U.S. mail or

1 other equally reliable means;

2 (3) contain a copy of the complaint and identify the
3 court in which it has been filed;

4 (4) inform the defendant of the consequences of
5 compliance and of a failure to comply with the request;

6 (5) allow the defendant a reasonable time to return
7 the waiver, which shall be at least (i) 30 days from the
8 date on which the request is sent or (ii) 60 days if the
9 defendant is addressed outside the United States; and

10 (6) provide the defendant with an extra copy of the
11 notice and request and prepaid means of compliance in
12 writing.

13 (b) Limits on waiver. A defendant who waives service of a
14 summons in the manner provided in subsection (a) does not
15 thereby waive any objection to the venue or to the
16 jurisdiction of the court over the person of the defendant.

17 (c) Time to appear or answer. A defendant who returns a
18 timely waiver of service is not required to appear or serve an
19 answer to the complaint until (i) 60 days from the date on
20 which the request for waiver of service was sent or (ii) 90
21 days if the defendant was addressed outside of the United
22 States.

23 (d) Effect of filing. When a waiver of service is filed by
24 the plaintiff with the court, the action shall proceed as if a
25 summons and complaint had been served at the time of filing of
26 the waiver, and no proof of service shall be required.

1 (e) Right to refuse to waive service; effect of refusal. A
2 defendant may refuse to waive service of a summons. If a
3 defendant does not return the waiver provided for in
4 subsection (a), the plaintiff must serve summons on that
5 defendant as otherwise provided by this Code and Supreme Court
6 rules. If a defendant located within the United States fails,
7 without good cause, to sign and return a waiver requested by a
8 plaintiff located within the United States:

9 (1) in an action in which the ad damnum does not exceed
10 \$50,000 exclusive of interest and costs, the court, in its
11 discretion, may impose on the defendant the expenses later
12 incurred in making service and the reasonable expenses,
13 including attorney's fees, of any motion required to
14 collect those service expenses. In exercising its
15 discretion under this paragraph, the court shall consider
16 the totality of the circumstances, including:

17 (A) the proportionality of the fees and costs
18 sought to the amount in controversy;

19 (B) whether the defendant acted in good faith or
20 had a reasonable basis for declining to return the
21 waiver;

22 (C) the conduct of the parties, including efforts
23 to reduce the need for formal service;

24 (D) whether the plaintiff substantially complied
25 with the requirements of subsection (a);

26 (E) the relative burden of the expenses sought on

1 the parties; and

2 (F) whether an award would promote the efficient
3 and just resolution of the action.

4 (2) In an action in which the ad damnum exceeds
5 \$50,000 exclusive of interest and costs or an action
6 seeking only equitable relief, the court must impose on
7 the defendant the expenses later incurred in making
8 service and the reasonable expenses, including attorney's
9 fees, of any motion required to collect those service
10 expenses.

11 (Source: P.A. 87-352.)".