

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 586

(Senators Ramirez and Zirkin)

Judicial Proceedings

Judiciary

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**Courts - Service of Process - Motor Vehicle Administration and Insurer as Agent  
for Driver**

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This bill authorizes a motor vehicle insurer to be served as agent of a resident driver in an action related to an accident or collision involving a motor vehicle driven by the resident if the party seeking service certifies under oath (1) the resident's last known address; and (2) that the party, after exercising due diligence, was unable to serve the resident at the resident's last known address.

If the party seeking service is unable to serve the resident's motor vehicle insurer after exercising due diligence, the bill authorizes service on the Motor Vehicle Administration (MVA).

The bill only applies prospectively to cases filed on or after October 1, 2011.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be met with existing State resources.

**Local Effect:** None.

**Small Business Effect:** None. In general, motor vehicle insurers are not small businesses.

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## Analysis

### Bill Summary:

*Service on Motor Vehicle Insurers:* The bill establishes that by purchasing motor vehicle liability insurance from a motor vehicle insurer, a resident appoints the motor vehicle insurer as agent to receive a subpoena, a summons, or other process that is (1) issued in an action related to an accident or collision involving a motor vehicle driven by the resident driver and in which the resident driver is named as a party; and (2) directed to the resident driver.

A motor vehicle insurer may be served as agent of a resident under the bill only if the party seeking service certifies under oath to the motor vehicle insurer (1) the resident's last known address; and (2) that the party, after exercising due diligence, was unable to serve the resident at the resident's last known address.

Service of process is sufficient service on a resident driver if:

(1) service is made by the personal delivery and leaving of a copy of the process, with a certification of the last known address of the resident driver, with the motor vehicle insurer;

(2) the fee for service of process is paid to the motor vehicle liability insurer;

(3) the motor vehicle insurer sends a copy of the process by certified mail, return receipt requested, to the resident driver at the resident driver's last known address; and

(4) the motor vehicle insurer files an affidavit of compliance with the provisions of this section with the clerk of the court in which the action is pending.

The motor vehicle insurer must provide a copy of the affidavit of compliance to the party seeking service and keep a record of all process served that shows the date and hour of service on the motor vehicle insurer by the party seeking service.

When the certified return receipt is returned to the motor vehicle insurer, the insurer is required to (1) deliver it to the party seeking service; and (2) keep a record of the date of its receipt and the date of its delivery to the party seeking service.

The motor vehicle insurer is authorized to collect a fee to recover the insurer's costs under this section that is equivalent to the fee charged by the MVA for service on nonresident and resident drivers.

*Service on MVA:* The bill also extends to resident drivers provisions of current law authorizing service on the MVA as agent for a nonresident driver. The bill states that a nonresident or resident who drives a motor vehicle in the State irrevocably appoints the Motor Vehicle Administration (MVA) as the agent to receive a subpoena, summons, or other process that (1) is directed to the driver; and (2) is issued in an action related to an accident or collision involving a motor vehicle driven by the driver and in which the driver is named as a party.

MVA may serve as the agent for a resident driver only if the party seeking service certifies to MVA under oath that: (1) the resident driver's last known address; (2) that the party seeking service was unable to serve the resident driver at the resident driver's last known address after exercising due diligence; and (3) that the party, after exercising due diligence, was unable to serve the resident's motor vehicle insurer, if any.

**Current Law:** By exercising the nonresident's privilege to drive, a nonresident irrevocably appoints MVA as the agent to receive a subpoena, summons, or other process that is directed to the nonresident driver and is issued in an action that is related to an accident or collision involving a motor vehicle driven by the nonresident driver and in which the nonresident driver is named a party.

Service of process is sufficient service on the nonresident driver if:

- service is made by personal delivery and leaving of a copy of the process with a certification of the last known address of the nonresident driver, with MVA;
- a fee for service of process is paid to MVA;
- MVA sends a copy of the process by certified mail, return receipt requested, to the nonresident driver at the nonresident driver's last known address; and
- MVA files an affidavit of compliance with these provisions with the clerk of the court in which the action is pending.

MVA has to provide a copy of the affidavit to the party seeking service. The party seeking service is required to send a copy of the affidavit of compliance to the motor vehicle insurer of the nonresident driver. The affidavit must be sent to the insurer by certified mail, return receipt requested.

MVA must keep a record of all process served that shows the date and hour of the service. When the certified return receipt is returned to MVA, MVA must:

- deliver it to the party seeking service; and

- keep a record of the date of its receipt and the date of delivery to the party seeking service.

MVA is authorized to establish and collect a fee to recover its costs.

MVA is required to submit an annual report to the General Assembly that includes the following information for the preceding calendar year:

- the total number of subpoenas, summonses, and other service of process issued in accordance with the current law;
- the number of instances in which MVA failed to reach the individual being served and the reasons that those attempts failed;
- a breakdown of all direct and indirect costs incurred by MVA in carrying out the law's requirements; and
- the total fees collected by MVA from persons requesting service of process.

Under the Maryland Rules, service of process may be made:

- by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it;
- if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or
- by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery - show to whom, date, address of delivery."

If a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant.

If good faith efforts to serve the defendant by personal service, certified mail, or leaving a copy at the defendant's dwelling have not succeeded and the plaintiff proves that service by mailing and leaving a copy at the defendant's place of business is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice. These means may include service on the defendant's insurer. *See Wiant v. Hudson*, 101 Md. App.74 (1994).

These methods of service are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

**Background:** MVA acted as the agent for nonresident drivers in 46 instances in 2010.

**State Fiscal Effect:** Since the overwhelming majority of accidents in the State are likely to involve resident drivers, the bill's inclusion of resident drivers in MVA's role as agent for service of process will increase the workload of MVA. However, the bill clearly states that MVA will only be able to serve in this role if the individual seeking service was unable to serve the resident driver and the resident driver's motor vehicle insurer, if any, after exercising due diligence. As a result, the bill creates a situation in which MVA is the "agent of last resort." Given the limited number of cases to which these restrictions will apply, MVA can meet the bill's requirements with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 388 (Delegate Anderson, *et al.*) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2011  
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