

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 388
Judiciary

(Delegate Anderson, *et al.*)

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

This bill states that a nonresident or resident who drives a motor vehicle in the State irrevocably appoints Motor Vehicle Administration (MVA) as the agent to receive a subpoena, summons, or other process that (1) is directed to the nonresident driver; and (2) is issued in an action related to an accident or collision involving a motor vehicle driven by the nonresident driver and in which the nonresident driver is named as a party. The bill also establishes requirements that need to be met for MVA to be served as the agent for process.

MVA may serve as the agent for a nonresident driver only if the party seeking service certifies the nonresident driver's last known address to MVA. MVA may serve as the agent for a resident driver only if the party seeking service certifies to MVA: (1) the resident driver's last known address; and (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.

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

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

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 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: The Department of Legislative Services advises that MVA can meet the bill's requirements with existing resources as it authorizes the use of MVA as an agent for service of process for actions directed to nonresident drivers. While the bill states that a nonresident or resident who drives a motor vehicle in the State irrevocably appoints MVA as agent to receive service of process, the bill as written applies to process (1) issued in an action that is related to an accident or collision involving a motor vehicle driven by a nonresident driver and in which the nonresident driver is named as a party; and (2) directed to the nonresident driver. Thus, the requirements of the bill can only be met in motor vehicle cases in which a nonresident was driving and needs to be served process. Accordingly, the existing resources of MVA are adequate to meet the bill's requirements.

Additional Information

Prior Introductions: None.

Cross File: SB 586 (Senators Ramirez and Zirkin) - Judicial Proceedings.

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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