

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 103

(Senator Frosh)

Judicial Proceedings

Judiciary

Maryland Uniform Interstate Depositions and Discovery Act

This bill repeals existing law relating to foreign depositions and establishes the Maryland Uniform Interstate Depositions and Discovery Act, which sets forth procedures governing interstate discovery requests.

Fiscal Summary

State Effect: Any increase in petitions for protective orders or enforcement of subpoenas could be handled with existing resources of the Judiciary.

Local Effect: Any increase in duties for clerks of the circuit court is expected to be minimal and could be handled with existing resources. Any increase in petitions for protective orders or enforcement of subpoenas that are made to circuit courts could be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill establishes procedures to be followed by circuit court clerks with respect to subpoenas issued from other states. The bill requires a party requesting issuance of a subpoena to submit a foreign subpoena to a circuit court clerk for the county in which discovery is sought to be conducted in this State. A subpoena is defined in the bill as a document issued under authority of a court of record that requires a person to (1) attend and give testimony at a deposition; (2) produce and permit inspection and copying of designated materials in the possession, custody, or control of the person; or

(3) permit inspection of premises under the control of the person. Foreign subpoenas are those that have been issued under authority of a court of record of another state. This request does not constitute an appearance in the courts of this State.

When a foreign subpoena is submitted to a clerk, the clerk must promptly issue a subpoena for service on the individual named in the foreign subpoena. The subpoena is required to incorporate the terms used in the foreign subpoena and include or be accompanied by the names and contact information of all counsel and unrepresented parties. The subpoena is required to be served in compliance with the Maryland Rules.

The Maryland rules governing discovery and subpoenas in civil actions apply to subpoenas issued under the bill. An application to the court for a protective order or to enforce, quash, or modify a subpoena that was issued by a clerk under the bill shall comply with the rules and statutes of the State. The application is to be submitted to the circuit court for the county in which discovery is sought.

The bill requires that, in applying and construing this uniform act, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that have adopted it.

The bill applies to requests for discovery in cases pending on the effective date of the bill.

Current Law: Maryland follows the Uniform Foreign Depositions Act (UFDA). The Act specifies that if a mandate, writ, or commission has been issued from a court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in the state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as is employed for the purpose of taking testimony in proceedings pending in this State.

On the request of a person entitled to the issuance of a subpoena, a circuit court clerk is required to issue a completed subpoena, or provide a blank form of subpoena, which shall be filled in and returned to the clerk to be signed and sealed before service. On the request of an attorney entitled to the issuance of a subpoena, the clerk must issue a subpoena signed and sealed but otherwise in blank, to be filled in before service.

Generally, a subpoena issued by a clerk in Maryland must contain (1) the caption of the action; (2) the name and address of the person to whom it is directed; (3) the name of the person requesting the subpoena; (4) the date, time, and place where attendance is required; (5) a description of any documents or other tangible things to be produced; and

(6) when applicable, a notice for an organization to designate an individual to testify on the organization's behalf.

Subpoenas are required to be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person, including service upon a person's attorney. Subpoenas may be served by a sheriff of any county or by any nonparty who is at least 18. Unless it is impracticable, a party shall make a good faith effort to serve a trial or hearing subpoena at least five days prior to the trial or hearing.

Background: In addition to Maryland, Florida, Georgia, Louisiana, Nevada, New Hampshire, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Wyoming, and the Virgin Islands have adopted the UFDA. Although every state has a rule governing foreign depositions, the rules are not uniform. The National Conference of Commissioners on Uniform State Laws originally adopted the UFDA in 1920 and approved and recommended the Uniform Interstate Depositions and Discovery Act in 2007. The Act is intended to clarify common issues that arise with respect to interstate depositions, including what matters can be covered in a subpoena and whether the procedures and evidentiary laws of the discovery state or the trial state would apply.

Additional Information

Prior Introductions: None.

Cross File: HB 88 (Delegate Vallario) – Judiciary.

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

Fiscal Note History: First Reader - January 22, 2008
ncs/jr

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