

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 413

(Senators Stone and Haines)

Judicial Proceedings

Judiciary

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

This bill designates the Motor Vehicle Administration as the agent for a nonresident driver with regard to service of process pertaining to an action related to an accident or collision involving a motor vehicle driven by the nonresident. The bill establishes when service on a nonresident driver is sufficient and authorizes MVA to collect a fee to recover costs associated with receiving process. The bill requires the MVA to submit an annual report containing specified information to the General Assembly.

The bill only applies prospectively to cases filed on or after the October 1, 2008 effective date.

Fiscal Summary

State Effect: Increase in Transportation Trust Fund expenditures to process subpoenas offset by cost recovery fee revenues. The actual effect would depend on the number of subpoenas served on MVA. Insignificant effect on the Judiciary's workload.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: By exercising the nonresident's privilege to drive, a nonresident irrevocably appoints MVA as 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 the provisions of this section 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 delivery to the party seeking service.

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

The bill requires MVA 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 this bill;
- 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 this bill's requirements; and
- the total fees collected by MVA from persons requesting service of process.

Current Law: Maryland Rule 2-124 sets forth the persons who are to be served with process. Service is made on an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

Background: Statutes in the majority of states provide for some form of constructive or substituted service of process on nonresident motorists involved in an accident while using the state's highways. Such statutes have survived constitutional challenge. Montana, North Carolina, South Carolina, and Washington have enacted statutes providing that a nonresident who operates a motor vehicle on that state's roads automatically authorizes a specified official of that state (usually the Secretary of State or the Commissioner of Motor Vehicles) to accept service of process pertaining to an action related to an accident or collision involving a motor vehicle driven by the nonresident. Some of the statutes extend to motor vehicles driven for or under the control of the nonresident.

State Expenditures: MVA processes approximately 8,500 subpoenas annually. The subpoenas are currently processed by one full-time customer agent. However, MVA advises that the process necessary to issue subpoenas under this bill would require substantially more labor than the current process for issuing a subpoena. In fiscal 2004, nonresident or unknown resident drivers were involved in 59,694 accidents. The number of subpoenas actually served on MVA as a result of the bill cannot be reliably estimated at this time.

For illustrative purposes only, if MVA issued subpoenas for 10% (6,000) of the nonresident and unknown residence drivers, MVA could require at least three additional full-time customer agents and related communications expenditures at a cost of \$171,459 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. Future year expenditures would reflect annualization and inflation.

The District Court advises that it may experience an increase in caseloads that may require additional clerical time to process more cases and additional court time for more trials. Any such increase is not expected to be significant.

State Revenues: MVA is authorized to recover its costs for processing subpoenas. Therefore, the total fiscal impact should be minimal. *For illustrative purposes only*, if MVA has to process an additional 6,000 subpoenas per year, assuming the expenditure increases above, the cost for each subpoena is estimated at \$38.10 during the year of implementation, and \$35.71 in fiscal 2010. MVA would need to revisit the cost per subpoena annually based on actual expenditures incurred.

Additional Information

Prior Introductions: HB 496 of 2007, a substantially similar bill, passed the House but received an unfavorable report from the Senate Judicial Proceedings Committee. Similar cross filed bills were introduced in 2006. HB 1279 was passed by the House, while SB 543 received an unfavorable report from Judicial Proceedings. SB 653 of 2005, a similar bill, received an unfavorable report from Judicial Proceedings.

Cross File: HB 736 (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 18, 2008
mcp/jr Revised - Senate Third Reader - April 1, 2008

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