

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 29

*An Act to amend and reenact § 8.01-329 of the Code of Virginia, relating to service of process on Secretary of Commonwealth.*

[H 1577]

Approved March 2, 2001

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-329 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-329. Service of process or notice; service on Secretary of Commonwealth.

A. When the exercise of personal jurisdiction is authorized by this chapter, service of process or notice may be made in the same manner as is provided for in Chapter 8 (§ 8.01-285 et seq.) of this title in any other case in which personal jurisdiction is exercised over such a party, or process or notice may be served on any agent of such person in the county or city in this Commonwealth in which that agent resides or on the Secretary of the Commonwealth of Virginia, hereinafter referred to in this section as the "Secretary," who, for this purpose, shall be deemed to be the statutory agent of such person.

B. When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served. *For the mailing, by the clerk to the party or his agent or attorney, in accordance with subsection C, of verification of the effective date of service of process, the person filing an affidavit may leave a self-addressed, stamped envelope with the clerk.*

When the person to be served is a resident, the signature of an attorney, party or agent of the person seeking service on such affidavit shall constitute a certificate by him that process has been delivered to the sheriff or to a disinterested person as permitted by § 8.01-293 for execution and, if the sheriff or disinterested person was unable to execute such service, that the person seeking service has made a bona fide attempt to determine the actual place of abode or location of the person to be served.

C. Service of such process or notice on the Secretary shall be made by the plaintiff's, his agent's or the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in subsection B hereof and the fee prescribed in § 2.1-71.2 in the office of the Secretary in the City of Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be served, provided that notice of such service, a copy of the process or notice, and a copy of the affidavit are forthwith mailed by certified mail, return receipt requested, by the Secretary to the person or persons to be served at the last known post-office address of such person, and a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance, shall be forthwith filed with the papers in the action. Service of process or notice on the Secretary shall be effective on the date the certificate of compliance is filed with the court in which the action is pending. *Upon receipt of the certificate of compliance, the clerk of the court shall mail verification of the date the certificate of compliance was filed with the court to the person who filed the affidavit required by subsection B hereof, in the self-addressed, stamped envelope, if any, provided to the clerk at the time of filing of the affidavit. The clerk shall not be required to mail verification unless the self-addressed, stamped envelope has been provided.*

D. Service of process in actions brought on a warrant or motion for judgment pursuant to § 16.1-79 or § 16.1-81 shall be void and of no effect when such service of process is received by the Secretary within ten days of any return day set by the warrant. In such cases, the Secretary shall return the process or notice, the copy of the affidavit, and the prescribed fee to the plaintiff or his agent. A copy of the notice of the rejection shall be sent to the clerk of the court in which the action was filed.

E. The Secretary shall maintain a record of each notice of service sent to a person for a period of two years. The record maintained by the Secretary shall include the name of the plaintiff or the person seeking service, the name of the person to be served, the date service was received by the Secretary, the date notice of service was forwarded to the person to be served, and the date the certificate of compliance was sent by the Secretary to the appropriate court. The Secretary shall not be required to maintain any other records pursuant to this section.