

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 151

An Act to amend and reenact § 8.01-277 of the Code of Virginia, relating to failure to serve process.

[H 1424]

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-277 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-277. Defective process; motion to quash; untimely service; motion to dismiss.

A. A person, upon whom process to answer any action has been served, may take advantage of any defect in the issuance, service or return thereof by a motion to quash filed prior to or simultaneously with the filing of any pleading to the merits. Upon sustaining the motion, the court may strike the proof of service or permit amendment of the process or its return as may seem just.

B. *A person, upon whom process has not been served within one year of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff did not exercise due diligence to have timely service and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff did exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within 21 days of such ruling. Nothing herein shall prevent the plaintiff from filing a nonsuit under § 8.01-380 before the entry of an order granting a motion to dismiss pursuant to the provisions of this section. Nothing in this subsection shall pertain to cases involving asbestos.*