080212304

SENATE BILL NO. 12

Offered January 9, 2008

Prefiled December 10, 2007

A BILL to amend and reenact § 8.01-294 of the Code of Virginia, relating to return of service of process; costs.

Patron—Puller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-294 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-294. Sheriff to get from clerk's office process and other papers; return of papers; effect of late return.

Every sheriff who attends a court shall, every day when the clerk's office is open for business, go to such office and receive all process, and other papers to be served by him, and give receipts therefor, unless he has received notice from a regular employee of the clerk's office that there are no such papers requiring service and shall return all papers within 72 hours of service, except when such returns would be due on a Saturday, Sunday, or legal holiday. In such case, the return is due on the next day following such Saturday, Sunday, or legal holiday.

If a sheriff fails to return all papers within the time provided for in this section, the party requesting service of process may elect to have process served by a private process server. Prior to making such an election, the party requesting service shall provide notice, via first-class mail or other reliable means, of his intention to make such an election to the clerk's office that issued the process and the sheriff. If, at the time such notice is received by the clerk's office and sheriff, return of service of process has still not been made, the sheriff shall be liable for the costs subsequently incurred in effecting service together with the costs, including reasonable attorney fees, of any motion required to collect the costs of service.

Failure to make return of service of process by anyone authorized to serve process under § 8.01-293 within the time specified in this section shall not invalidate any service of process or any judgment based thereon. In the event a late return prejudices a party or interferes with the court's administration of a case, the court may, in its discretion, continue the case, require additional or substitute service of process, or take such other action or enter such order as the court deems appropriate under the circumstances.