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HOUSE BILL NO. 1546

Offered January 9, 2013

Prefiled January 4, 2013

A BILL to amend and reenact §§ 8.01-301, 8.01-310, 8.01-312, and 8.01-329 of the Code of Virginia, relating to service of process on nonresidents.

Patrons—Loupassi and Bell, Robert B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-301, 8.01-310, 8.01-312, and 8.01-329 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-301. How process served on foreign corporations generally.

Subject to § 8.01-286.1, service of process on a foreign corporation may be effected in the following manner:

1. By personal service on any officer, director or on the registered agent of a foreign corporation which is authorized to do business in the Commonwealth, and by personal service on any agent of a foreign corporation transacting business in the Commonwealth without such authorization, wherever any such officer, director, or agents be found within the Commonwealth;

2. By substituted service on a foreign corporation in accordance with §§ 13.1-766 and 13.1-928, if such corporation is authorized to transact business or affairs within the Commonwealth;

3. By substituted service on a foreign corporation in accordance with § 8.01-329 or by service in accordance with § 8.01-320, where jurisdiction is authorized under § 8.01-328.1, regardless of whether such foreign corporation is authorized to transact business within the Commonwealth; or

4. By order of publication in accordance with §§ 8.01-316 and 8.01-317 where jurisdiction in rem or quasi in rem is authorized, regardless of whether the foreign corporation so served is authorized to transact business within the Commonwealth.

This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

§ 8.01-310. How service made on Commissioner and Secretary; appointment binding.

A. Service of process on either the Commissioner of the Department of Motor Vehicles as authorized under § 8.01-308 or on the Secretary of the Commonwealth as authorized under § 8.01-309, shall be made by the plaintiff or his agent or the sheriff leaving a copy of such process together with the fee for service of process on parties, in the amount prescribed in § 2.2-409, for each party to be thus served, in the hands, or in the office, of such the Commissioner or such the Secretary, and such service shall be sufficient upon the nonresident and shall be effective on the date when service is made on the Commissioner or the Secretary. All fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department of Motor Vehicles.

B. Appointment of the Commissioner or Secretary as attorney or agent for the service of process on a nonresident under § 8.01-308 or § 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident:

1. Where a nonresident has died before the commencement of an action against him regarding an accident or collision under § 8.01-308 or § 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident; or

2. Where a nonresident dies after the commencement of an action against him regarding an accident or collision under § 8.01-308 or § 8.01-309, the action shall continue and shall be irrevocable and binding upon his executor, administrator, or other personal representative with such additional notice of the pendency of the action as the court deems proper.

§ 8.01-312. Effect of service on statutory agent; duties of such agent.

A. Service of process on the statutory agent shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended. *It shall be the duty of the statutory agent to:*

1. Provide a receipt to a party seeking service who serves process on the statutory agent by hand delivery or any other method that does not provide a return of service or other means showing the date on which service on the statutory agent was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of court in which the action is pending;

~~Provided that such agent shall forthwith~~ 2. Forthwith send by registered or certified mail, with return

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59 receipt requested, a copy of the process to the person named therein and for whom the statutory agent is
60 receiving the process; and

61 ~~Provided further that the statutory agent shall file~~ 3. File an affidavit of compliance with this section
62 with the papers in the action; this filing shall be made in the office of the clerk of the court in which
63 the action is pending.

64 B. Unless otherwise provided by § 8.01-313 and subject to the provisions of § 8.01-316, the address
65 for the mailing of the process required by this section shall be that as provided by the party seeking
66 service.

67 C. *The time for a nonresident to respond to process sent by the statutory agent shall run from the*
68 *date when the affidavit of compliance is filed in the office of the clerk of the court in which the action is*
69 *pending.*

70 **§ 8.01-329. Service of process or notice; service on Secretary of Commonwealth.**

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

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

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

90 C. Service of such process or notice on the Secretary shall be made by the plaintiff's, his agent's or
91 the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in
92 subsection B ~~hereof~~ and the fee prescribed in § 2.2-409 in the office of the Secretary in the City of
93 Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service
94 otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be
95 served, ~~provided that notice of such service, a copy of the process or notice, and a copy of the affidavit~~
96 ~~are forthwith mailed and shall be effective on the date when service is made on the Secretary. It shall~~
97 ~~be the duty of the Secretary to:~~

98 1. *Provide a receipt to a party seeking service who serves process on the Secretary by hand delivery*
99 *or any other method that does not provide a return of service or other means showing the date on*
100 *which service on the Secretary was accomplished. The party seeking service shall be responsible for*
101 *filing such receipt in the office of the clerk of the court in which the action is pending;*

102 2. *Forthwith send by certified mail, return receipt requested, by the Secretary to the person or persons*
103 *to be served at the last known post-office address of such person; and notice of such service, a copy of*
104 *the process or notice, and a copy of the affidavit; and*

105 3. *Forthwith file with the papers in the action a certificate of compliance herewith by the Secretary*
106 *or someone designated by him for that purpose and having knowledge of such compliance; shall be*
107 *forthwith filed with the papers in the action. Service of process or notice on the Secretary shall be*
108 *effective on the date the certificate of compliance is filed with the court in which the action is pending.*

109 Upon receipt of the certificate of compliance, the clerk of the court shall mail verification of the date
110 the certificate of compliance was filed with the court to the person who filed the affidavit required by
111 subsection B ~~hereof~~, in the self-addressed, stamped envelope, if any, provided to the clerk at the time of
112 filing of the affidavit. The clerk shall not be required to mail verification unless the self-addressed,
113 stamped envelope has been provided. *The time for the person to be served to respond to process sent by*
114 *the Secretary shall run from the date when the certificate of compliance is filed in the office of the clerk*
115 *of the court in which the action is pending.*

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

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

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