

LD4177358

HOUSE BILL NO. 2588

Offered January 23, 1995

A BILL to amend and reenact §§ 46.2-324 and 46.2-354 of the Code of Virginia, relating to habitual offenders; service thereon; statutory agent for service.

Patrons—Mims, Albo, Bennett, Copeland, Deeds, Fisher, McDonnell, Moore and Murphy; Senators: Norment, Stolle and Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-324 and 46.2-354 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-324. Applicants and license holders to notify Department of change of address; service of process upon failure to comply.

Whenever any person, after applying for or obtaining a driver's license shall move from the address shown in the application or on the license, he shall, within thirty days, notify the Department in writing of his change of address.

There may be imposed upon anyone failing to comply with this section a fee of five dollars, which fee shall be used to defray the expenses incurred by the Department.

Any resident of Virginia who fails to comply with this section shall be deemed by such failure to have appointed the Secretary of the Commonwealth as his statutory agent for the service of process in any action against him arising from his operation of a motor vehicle upon a highway, as defined in § 46.2-100, of the Commonwealth.

§ 46.2-354. Show cause order; service on person named as habitual offender; procedure where conviction denied.

The court in which an information is filed as provided for in § 46.2-353, shall enter an order, which incorporates the transcript or abstract provided for in § 46.2-352 and is directed to the person named therein, to show cause why he should not be barred from driving a motor vehicle on the highways in the Commonwealth. A copy of the show cause order and the transcript or abstract shall be served on the person named therein in the manner prescribed by § 8.01-296 (1). The person may be served wherever he may be found in the Commonwealth. *However, if any such person is not found, a copy of the show cause order and the transcript or abstract shall be delivered by the attorney for the Commonwealth for the jurisdiction in which the information has been filed to the Secretary of the Commonwealth who shall simultaneously be given written notice of a rescheduled court date, which date shall be at least ninety days from the date the Secretary receives such process. The Secretary of the Commonwealth shall make inquiries at the Department of Taxation, the Department of Social Services, the Virginia Employment Commission, and any other appropriate state agency with regard to ascertaining the current address of the person to be served. If a current address for such person is found as a result of these inquiries, the Secretary of the Commonwealth shall mail the show cause order and the transcript or abstract to such person at that address, by certified mail, together with notice of the pending show cause proceeding. The Secretary of the Commonwealth, in any such case, shall also notify the appropriate attorney for the Commonwealth of the new address and such attorney for the Commonwealth shall attempt personal service on such person at that address. In the event a current address cannot be located, the Secretary of the Commonwealth shall mail a copy of the show cause order and the transcript or abstract to such person's last known address as shown on the records of the Department of Motor Vehicles. This address is to be provided to the Secretary of the Commonwealth, upon request, by the appropriate attorney for the Commonwealth. Such service by mail shall satisfy the service requirements of this section and any notice requirements of the Rules of Court. Service thereof on any nonresident of the Commonwealth may be made on the Secretary of the Commonwealth, who for this purpose shall be the statutory agent of the person. Service shall be made by leaving a copy of the order and the transcript or abstract in the hands of the Secretary or in his office in the City of Richmond, and this service shall be sufficient on the nonresident, provided that notice of the service and a copy of the order and the transcript or abstract are forthwith sent by certified or registered mail, with delivery receipt requested, by the Secretary to the person at his last known address, and an affidavit of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of the compliance, shall forthwith be filed with the papers. For this service, a fee of seven dollars, which shall be paid into the general fund of the Commonwealth, shall be taxed against the defendant as a part of the cost of the proceeding, if he is found to be an habitual offender.*

If the person denies he was convicted or held not innocent of any offense necessary for a holding

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60 that he is an habitual offender, and if the court cannot, on the evidence available to it, make a
61 determination, the court may certify the decision of the issue to the court in which the conviction or
62 holding of not innocent was made. The court to which the certification is made shall forthwith conduct a
63 hearing to determine the issue and send a certified copy of its final order determining the issue to the
64 court in which the information was filed.