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HOUSE BILL NO. 18

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 26, 1996)

(Patron Prior to Substitute—Delegate Armstrong)

*A BILL to amend and reenact §§ 8.01-296 and 8.01-325 of the Code of Virginia, relating to service of process; return.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01- 296 and 8.01-325 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-296. Manner of serving process upon natural persons.

In any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:

1. By delivering a copy thereof in writing to the party in person; or

2. By substituted service in the following manner:

a. If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older; or

b. If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than ten days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of ten days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, 1989, upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, 1989, is validated.

c. The person executing such service shall note *the manner and* the date of such service on *the original and* the copy of the process so delivered or posted under subdivision 2 *and shall effect the return of process as provided in §§ 8.01-294 and 8.01-325.*

3. If service cannot be effected under subdivisions 1 and 2 of this section, then by order of publication in appropriate cases under the provisions of §§ 8.01-316 through 8.01-320.

§ 8.01-325. Return by person serving process.

Unless otherwise directed by the court, the person serving process shall make return thereof ~~promptly~~ to the clerk's office *within seventy-two 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.* ~~stating~~ *The process shall state* thereon the date and manner of service and the name of the party served.~~Such proof~~ ~~Proof~~ *Proof* of service shall be in the following manner:1. If service by sheriff, the *form of the* return of such sheriff as provided by the Rules of the Supreme Court; or2. If service by any other person qualified under § 8.01-293, whether service made in or out of the Commonwealth, his affidavit of such qualifications ~~as well as~~ ; the date and manner of service and the name of the party served; *and stamped or printed on the return of process, an annotation that the service was by a private server, and the name, address, and telephone number of the server;* or

3. In case of service by publication, the affidavit of the publisher or his agent giving the dates of publication and an accompanying copy of the published order.