

# HOUSE BILL REPORT

## HB 1226

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**As Passed House:**

February 28, 2003

**Title:** An act relating to service of summons for persons who cannot be found in this state.

**Brief Description:** Authorizing service of summons for persons not found in this state.

**Sponsors:** By Representatives Moeller, Campbell, Lantz and Carrell.

**Brief History:**

**Committee Activity:**

Judiciary: 2/4/03, 2/13/03 [DP].

**Floor Activity:**

Passed House: 2/28/03, 95-0.

**Brief Summary of Bill**

- Allows service of process on the Secretary of State for resident motorists who cannot be found in the state after a due and diligent search.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Edie Adams (786-7180).

**Background:**

In order to properly institute a lawsuit, a plaintiff must notify the defendant of the commencement of the suit by serving a summons on the defendant. This is called service of process. Generally, a defendant must be personally served with the summons. Individuals may be personally served either by delivering a copy of the summons to the defendant personally or by leaving a copy at the defendant's home with a person of suitable age and discretion.

Substitute service of process is allowed under certain circumstances if a plaintiff is unable

to personally serve the defendant. In motor vehicle actions, the Secretary of State may receive substitute service of process for a non-resident motorist involved in an accident, or for a resident who within three years of the accident "departs from this state." For substitute service upon the Secretary of State to be valid, the plaintiff must also send notice of such service and a copy of the summons to the defendant's last known address by registered mail with return receipt requested.

The Washington Supreme Court, in a case construing the absent motorist statute, held that a person who cannot be found in the state is not the equivalent of the statute's requirement that the resident "departs from this state." Instead, the court found that a plaintiff may only serve substitute process upon the Secretary of State if: (1) the defendant has in fact departed the state; or (2) the plaintiff has a good faith belief that the defendant has departed and has attempted, with due diligence, to find and serve the defendant.

The due diligence standard requires a plaintiff to make honest and reasonable efforts to locate the defendant. Not all conceivable means must be employed, but at the least any accident report made must be examined and its information investigated with reasonable effort. In addition, if the plaintiff has information pertaining to the defendant's whereabouts other than that contained in the accident report, he or she must make reasonable efforts to investigate based on that information as well.

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**Summary of Bill:**

A state resident involved in a motor vehicle accident while operating a motor vehicle on a state public highway may be served by substitute service of process on the Secretary of State if the resident cannot be found in Washington, after a due and diligent search, at any time within the three years following the event.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The purpose behind the statute is to provide a method for serving motorists who cannot be found in the state. It will apply only when the process server has diligently attempted through all available methods to serve process and is unable to do so. The only beneficiaries of the current system are those people who intentionally and successfully avoid process.

**Testimony Against:** None.

**Testified:** Representative Moeller, prime sponsor; Robin Mullins, Washington State Process Servers Association; and Larry Shannon, Washington State Trial Lawyers Association.