House of Representatives

General Assembly

File No. 566

February Session, 2010

House Bill No. 5527

House of Representatives, April 15, 2010

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING STATE MARSHALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 34-105 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Any process, notice or demand in connection with any action or proceeding required or permitted by law to be served upon a limited liability company which is subject to the provisions of section 34-104, may be served upon the limited liability company's statutory agent for service by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state.

(b) If it appears from the records of the Secretary of the State that such a limited liability company has failed to appoint or maintain a statutory agent for service, or if it appears by affidavit endorsed on the return of the officer or other proper person directed to serve any

process, notice or demand upon such a limited liability company's statutory agent for service appearing on the records of the Secretary of the State that such agent cannot, with reasonable diligence, be found at the address shown on such records as the agent's address, service of such process, notice or demand on such limited liability company may, when timely made, be made by such officer or other proper person by: (1) Leaving a true and attested copy thereof together with the required fee at the office of the Secretary of the State or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to said office, and (2) depositing in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy thereof, together with a statement by such officer that service is being made pursuant to this section, addressed to such limited liability company at its principal office.

(c) The Secretary of the State shall file the copy of each process, notice or demand received by him as provided in subsection (b) of this section and keep a record of the **[**day**]** date and hour of such receipt. Service made as provided in this section shall be effective as of such **[**day**]** date and hour.

(d) Notwithstanding subsections (a) and (b) of this section, any process, notice or demand in connection with any action or proceeding required or permitted by law to be served upon a limited liability company which is subject to the provisions of section 34-104 may be served upon any member of the limited liability company in whom management of the limited liability company is vested or any manager of the limited liability company by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such member or manager or by leaving it at such member's usual place of abode in this state or, in the case of a manager who is a natural person, at such manager's usual place of abode in this state.

[(d)**]** (e) Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by

law to be served upon a limited liability company in any other manner permitted by law.

Sec. 2. Section 52-50 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) All process shall be directed to a state marshal, a constable or other proper officer authorized by statute, or, subject to the provisions of subsection (b) of this section, to an indifferent person. A direction on the process "to any proper officer" shall be sufficient to direct the process to a state marshal, constable or other proper officer.

(b) Process shall not be directed to an indifferent person **[**unless more defendants than one are named in the process and are described to reside in different counties in the state, or**]** unless, in case of a writ of attachment, the plaintiff or one of the plaintiffs, or his or their agent or attorney, makes oath before the authority signing the writ that the affiant truly believes the plaintiff is in danger of losing his debt or demand unless an indifferent person is deputed for the immediate service of the writ or other process. The authority signing the writ shall certify on the writ that he administered the oath and insert in the writ the name of the person to whom it is directed, but he need not insert the reason for such direction. Any process directed to an indifferent person by reason of such an affidavit shall be abatable on proof that the party making the affidavit did not have reasonable grounds, at the time of making it, for believing the statements in the affidavit to be true.

(c) Service of motions for modification, motions for contempt and wage withholdings in any matter involving a beneficiary of care or assistance from the state and in other IV-D child support cases may be made by any investigator employed by the Commissioner of Administrative Services or the Commissioner of Social Services.

(d) Service of motions for modification, motions for contempt and wage withholdings in any matter involving child support, including, but not limited to, petitions for support authorized under sections 17b-

745 and 46b-215, and those matters involving a beneficiary of care or assistance from the state, may be made by a support enforcement officer or support services investigator of the Superior Court.

(e) Borough bailiffs may, within their respective boroughs, execute all legal process which state marshals or constables may execute.

Sec. 3. Section 52-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) If any officer has commenced the service of any civil process within his precinct, he may attach the property of, or serve the process upon, any defendant named in the process outside of his precinct. An officer shall not be deemed to have commenced service in any civil action by process of foreign attachment or garnishment by service on the garnishee therein, unless the garnishee has concealed in his possession, at the time of the service, the property of the defendant or is indebted to him.

(b) If there are two or more defendants, any of whom reside outside of the precinct of the officer commencing service or, in any action in case of attachment of property or in case of foreign attachment or garnishment, if any defendant or garnishee resides outside of the precinct of the officer commencing service, any officer may serve the process upon such of the defendants or garnishees as reside within his precinct, and may then (1) complete the service himself upon any defendant or garnishee residing outside his precinct, or (2) deliver the process to an officer of another precinct for service upon any defendant or garnishee residing in the other precinct and each officer serving the same shall endorse his actions thereon. The officer completing the service shall include in his endorsement a copy of the endorsement upon the writ of the officer commencing service and shall return the process to court.

(c) In any action where process is permitted to be served upon the Secretary of the State, **[**or**]** the Commissioner of Motor Vehicles, **[**pursuant to sections 52-57, 52-59b, 52-62 and 52-63**]** <u>the Attorney</u>

112 General or the Insurance Commissioner, service of such process may
113 be made by any officer of any precinct having such process in his
114 hands for service. Service by an officer upon the Secretary of the State,
115 the Commissioner of Motor Vehicles, the Attorney General or the
116 Insurance Commissioner pursuant to this subsection shall constitute
117 the commencement of service within such officer's precinct and such
118 officer may then complete service as provided in subsection (a) or (b)
119 of this section.

120 (d) The execution or service of any capias issued pursuant to section
121 52-143 or 54-2a or any warrant or capias mittimus issued by a court or
122 family support magistrate in a family support matter may be made in
123 any precinct in the state by any state marshal of any precinct or any
124 special policeman appointed under section 29-1g, having such capias,
125 warrant or capias mittimus, or a copy thereof made by any
126 photographic, micrographic, electronic imaging or other process,
127 which clearly and accurately copies such original document, in his
128 hands for service.

129 (e) Any state marshal of any precinct may serve any person
130 confined in any correctional institution or community correctional
131 center in this state.

132 Sec. 4. Section 52-583 of the general statutes is repealed and the
133 following is substituted in lieu thereof (*Effective October 1, 2010*):

134 No civil action shall be brought against any sheriff, **[**sheriff's
135 deputy**]** state marshal or constable, for any neglect or default in his or
136 her office or duty, but within two years next after the right of action
137 accrues.

138 Sec. 5. Section 52-593a of the general statutes is repealed and the
139 following is substituted in lieu thereof (*Effective October 1, 2010*):

140 (a) Except in the case of an appeal from an administrative agency
141 governed by section 4-183, a cause or right of action shall not be lost
142 because of the passage of the time limited by law within which the

action may be brought, if the process to be served is personally delivered to a state marshal, [authorized to serve the process] constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery.

(b) In any such case, the [state marshal] officer making service shall endorse under oath on such [state marshal's] officer's return the date of delivery of the process to such [state marshal] officer for service in accordance with this section.

Sec. 6. Section 52-260 of the general statutes is amended by adding subsection (h) as follows (*Effective October 1, 2010*):

(NEW) (h) The fees of any witness summoned by a party other than the state to testify in any action or proceeding shall be paid to the witness by such party on the day of attendance of such witness.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2010*	34-105
Sec. 2	*October 1, 2010*	52-50
Sec. 3	*October 1, 2010*	52-56
Sec. 4	*October 1, 2010*	52-583
Sec. 5	*October 1, 2010*	52-593a
Sec. 6	*October 1, 2010*	52-260

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various changes to the service of process and the timing of payments of witness fees, which has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
HB 5527

AN ACT CONCERNING STATE MARSHALS.

SUMMARY:

This bill makes a number of changes regarding service of process and witness fees. It:

1. adds an additional means of serving process on a limited liability company (LLC);

2. limits the circumstances when an indifferent person (someone other than a state marshal or other proper officer) can serve process;

3. (a) allows an officer of any precinct to serve the secretary of the state or Department of Motor Vehicles (DMV) commissioner when service on that official is permitted by any law, rather than just under specific laws; (b) allows an officer of any precinct to serve the attorney general or insurance commissioner with any process permitted by law to be served on them; and (c) makes service on any of these state officials the start of service within the officer's precinct and the officer can then complete service outside of his or her precinct as allowed by law;

4. allows a state marshal of any precinct to serve anyone confined in a correctional institution or community correctional center in the state;

5. requires a lawsuit against a state marshal for neglect or default of office or duty to be brought within two years after the right of action accrues (other statutes provide general statutes of limitations such as two years for negligence and three years for

an oral contract);

6. provides that a cause of action is not lost by missing a statute of limitations if the process to be served is personally delivered to a constable or other proper officer within the required time frame and the process is served within 30 days of delivery; and

7. requires a party other than the state who summons a witness to testify in any action or proceeding to pay the witness when he or she attends (§ 6).

EFFECTIVE DATE: October 1, 2010

§ 1 — SERVICE OF PROCESS ON LLC

The bill adds an additional means of serving process on a LLC.

Under current law, a proper officer or anyone empowered to make service can serve process on a LLC by serving (1) its statutory agent or (2) the secretary of the state's office and mailing a copy to the LLC's principal office, if the secretary's records show that there is no statutory agent or the agent cannot be found with reasonable diligence at the address in the records.

The bill also allows service on any manager or member vested with management of a LLC. Service can be made by leaving a copy with the person, at the member's usual place of abode in the state, or at the manager's usual place of abode in the state if the manager is a natural person.

§ 2 — SERVICE OF PROCESS BY AN INDIFFERENT PERSON

By law, a state marshal, constable, other proper officer, or an indifferent person can serve process. The bill eliminates the ability of an indifferent person to serve process when more than one defendant is named in the process and the defendants reside in different counties. By law, an indifferent person may serve process when, for an attachment, a plaintiff makes an oath before the authority signing the writ that he or she is in danger of losing the debt or demand unless an

indifferent person is used for immediate service.

A number of statutes requiring service of process for particular purposes allow service by an indifferent person as well as other proper officers (such as serving subpoenas and certain environmental protection orders). The bill's change appears to limit the ability of an indifferent person to serve process under those provisions as well.

By law, unchanged by the bill, an indifferent person is authorized to serve a copy of the complaint in a probate appeal, regardless of the general provisions on when an indifferent person can serve process (CGS § 45a-186(b)).

§ 3 — SERVICE OUTSIDE OF PRECINCT AND SERVICE ON CERTAIN STATE OFFICIALS

Generally, the law allows state marshals and other proper officers to serve process in their precincts (a state marshal's precinct is the county for which he or she is appointed). But they may serve process outside of their precincts in certain circumstances, such as when an action involves more than one defendant and the officer begins by serving process on a defendant who resides within his or her precinct.

The law allows an officer of any precinct to serve process on the secretary of the state or DMV commissioner when those officials can be served on behalf of a:

1. voluntary association when no officers are state residents or partnership when no partners are state residents;

2. nonresident individual, foreign partnership, foreign voluntary association, or executor or administrator for one of them under certain circumstances that allow the courts to exercise jurisdiction;

3. nonresident in an action for negligent operation of a motor vehicle; or

4. motor vehicle operator or owner in an action for negligently

operating a motor vehicle if the person cannot be found after making diligent effort.

The bill allows an officer of any precinct to serve the secretary or DMV commissioner as permitted by any other law as well. It also allows an officer of any precinct to serve any process permitted by law to be served on the attorney general or insurance commissioner.

The bill makes service on one of these officials the start of service within the officer's precinct and the officer can then complete service outside his or her precinct as allowed by law.

§ 4 — LAWSUITS AGAINST STATE MARSHALS

The bill requires a lawsuit against a state marshal for neglect or default of his or her office or duty to be brought within two years after the right of action accrues. Under current law, this applies to sheriffs, deputy sheriffs, and constables. The bill repeals the provision for deputy sheriffs. The positions of sheriffs and deputy sheriffs were eliminated in 2000 and state marshals took over their service of process functions.

§ 5 — STATUTE OF LIMITATIONS AND SERVICE OF PROCESS

By law, a cause of action is not lost by missing a statute of limitations if the process to be served is personally delivered to a state marshal and the process is served within 30 days of delivery. The bill extends this provision to service of process by constables and other proper officers. These officers are also authorized by statute to serve process. The bill also codifies a recent Connecticut Supreme Court ruling by specifying that these officers must receive the process within the required statute of limitation (see BACKGROUND).

BACKGROUND

Witness Fees

By law, witnesses receive the following fees:

1. 50 cents per day for attending court and the same per-mile rate for travel to the place of trial as is paid to state employees for

travel;

2. $100 plus mileage (taxable as part of costs) for police officers and firefighters summoned in a criminal or civil proceeding if they are not compensated by their employer for the time;

3. an extra $2 for each day that a material witness in a pending criminal proceeding is confined;

4. a reasonable fee determined by the court (taxable as costs) for practitioners of the healing arts, dentists, registered nurses, advanced practice nurses, licensed practical nurses, psychologists, and real estate appraisers who give expert testimony, including by deposition; and

5. a reasonable fee determined by the court and paid by a party who subpoenas a licensed public accountant to testify in any action or proceeding.

Related Cases—Statute of Limitations and Service of Process

A Superior Court judge recently interpreted the statute that preserves lawsuits if the process is delivered to a state marshal within the required time frame to file the action. The judge noted that the statute was amended as part of a large bill to reform the sheriffs system and it was one of many statutes amended to give state marshals, instead of sheriffs, the power to serve process. This particular statute was amended to replace the broader term "officer," which would have included constables and other proper officers authorized to serve process, with "state marshal." The judge concluded that the amendment was not intended to exclude process served by constables and a proper interpretation of the statute allowed it to apply to process given to a constable (*Abitz v. Fierer*, 44 CLR 820 (January 15, 2008)).

In another case under this statute, the Connecticut Supreme Court ruled that the process must be delivered to the state marshal before the statute of limitations expires, even though this requirement was not

expressly stated in the statute. The court found that prior to the sheriffs' reform act, the statute included this requirement and the legislative history did not show any intention of changing this provision. The court found that to rule otherwise would produce an absurd result and allow a party time to bring an action at any time by delivering process for a state marshal to serve within 30 days. The court stated that such an interpretation would be contrary to the intent behind the statute and frustrate the purpose of the statutes of limitation (*Tayco Corp. v. Planning and Zoning Commission*, 294 Conn. 673 (2010)).

Related Bill

HB 5542, reported favorably by the Judiciary Committee, contains the same provision on preserving lawsuits when process is delivered within the required time frame to a proper officer.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 39 Nay 1 (03/29/2010)