



House of Representatives

File No. 669

General Assembly

February Session, 2010

(Reprint of File No. 566)

House Bill No. 5527
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 29, 2010

AN ACT CONCERNING STATE MARSHALS.

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

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 Section 34-105 of the general statutes is repealed and the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

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

11 (b) If it appears from the records of the Secretary of the State that
12 such a limited liability company has failed to appoint or maintain a
13 statutory agent for service, or if it appears by affidavit endorsed on the
14 return of the officer or other proper person directed to serve any
15 process, notice or demand upon such a limited liability company's

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

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

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

46 [(d)] (e) Nothing contained in this section shall limit or affect the
47 right to serve any process, notice or demand required or permitted by
48 law to be served upon a limited liability company in any other manner

49 permitted by law.

50 Sec. 2. Section 52-56 of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

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

74 (c) In any action where process is permitted to be served upon the
75 Secretary of the State, [or] the Commissioner of Motor Vehicles,
76 [pursuant to sections 52-57, 52-59b, 52-62 and 52-63] the Attorney
77 General or the Insurance Commissioner, service of such process may
78 be made by any officer of any precinct having such process in his
79 hands for service. Service by an officer upon the Secretary of the State,
80 the Commissioner of Motor Vehicles, the Attorney General or the

81 Insurance Commissioner pursuant to this subsection shall constitute
82 the commencement of service within such officer's precinct and such
83 officer may then complete service as provided in subsection (a) or (b)
84 of this section.

85 (d) The execution or service of any *capias* issued pursuant to section
86 52-143 or 54-2a or any warrant or *capias mittimus* issued by a court or
87 family support magistrate in a family support matter may be made in
88 any precinct in the state by any state marshal of any precinct or any
89 special policeman appointed under section 29-1g, having such *capias*,
90 warrant or *capias mittimus*, or a copy thereof made by any
91 photographic, micrographic, electronic imaging or other process,
92 which clearly and accurately copies such original document, in his
93 hands for service.

94 (e) Any state marshal of any precinct may serve any person
95 confined in any correctional institution or community correctional
96 center in this state.

97 Sec. 3. Section 52-583 of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

103 Sec. 4. Section 52-593a of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective October 1, 2010*):

105 (a) Except in the case of an appeal from an administrative agency
106 governed by section 4-183, a cause or right of action shall not be lost
107 because of the passage of the time limited by law within which the
108 action may be brought, if the process to be served is personally
109 delivered to a state marshal, [authorized to serve the process]
110 constable or other proper officer within such time and the process is
111 served, as provided by law, within thirty days of the delivery.

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

116 Sec. 5. Section 52-260 of the general statutes is amended by adding
 117 subsection (h) as follows (*Effective October 1, 2010*):

118 (NEW) (h) The fees of any witness summoned by a party other than
 119 the state to testify in any action or proceeding shall be paid to the
 120 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	<i>October 1, 2010</i>	34-105
Sec. 2	<i>October 1, 2010</i>	52-56
Sec. 3	<i>October 1, 2010</i>	52-583
Sec. 4	<i>October 1, 2010</i>	52-593a
Sec. 5	<i>October 1, 2010</i>	52-260

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 made various changes to the service of process and the timing of payments of witness fees, which had no fiscal impact.

House 'A' made a minor change to the service of process, which had no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5527 (as amended by House "A")******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. (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;
3. allows a state marshal of any precinct to serve anyone confined in a correctional institution or community correctional center in the state;
4. 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);

5. 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
6. 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 (§ 5).

*House Amendment "A" removes a provision limiting when an indifferent person can serve process.

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 an 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 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.

§ 3 — 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 sheriff and deputy sheriff were eliminated in 2000 and state marshals took over their service of process

functions.

§ 4 — 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, File 550, passed by both the House and Senate, 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)