

HOUSE BILL REPORT

ESB 5018

As Reported By House Committee On:
Judiciary

Title: An act relating to service of process.

Brief Description: Allowing service of process on a marital community by serving either spouse.

Sponsors: Senator Nelson.

Brief History:

Reported by House Committee on:
Judiciary, February 16, 1994, DP.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members:
Representatives Appelwick, Chair; Johanson, Vice Chair;
Ballasiotes, Assistant Ranking Minority Member; Campbell;
Chappell; Eide; Forner; J. Kohl; Long; H. Myers; Schmidt;
Scott and Tate.

Staff: Pat Shelledy (786-7149).

Background: When a party commences a civil action against another party, the party initiating the lawsuit must serve notice of the commencement of the lawsuit on the other party. Service of process is necessary for the court to have jurisdiction over the defendant.

If the defendant is a person, as opposed to a corporation or other entity, the plaintiff must personally serve the defendant, or may serve the defendant by leaving a copy of the notice at the defendant's home with a resident of the defendant's home who is of suitable age and discretion. That person is usually the spouse or older child of the defendant.

If the party is married, and the action is against the marital community, service of process may be made upon either spouse, and a resulting judgement for a community obligation is enforceable against the community. In some cases, an issue arises whether an action should be an action against the marital community or just an action against the separate property of one of the spouses when the spouses are having marital problems and may be separated. In those

cases, the court determines on a case-by-case basis whether the couple has exhibited a decision to renounce the community with no intention of resuming the marital relationship. Mere physical separation of the parties does not establish that they are living separate and apart sufficiently to negate the existence of a community.

However, even if the party is married, if the action is against the separate property of one of the spouses, that spouse must either be personally served, or service must be made upon a person who resides at the home of the spouse being sued. Consequently, spouses of the spouse being sued separately may not be served at work.

Summary of Bill: In a civil action against one or both spouses of a marital community, the plaintiff may serve either spouse personally, or may leave a copy of the notice at their home with a resident of the home who is of suitable age and discretion.

If the spouses do not live together, each spouse is entitled to personal service.

When a couple is living together, the bill will make it easier to serve a spouse who is being sued separately because the server will be able to serve the other spouse at work or at another location other than the family home.

The bill may make it more difficult to serve the marital community if the spouses are not living together. In that case, each spouse will have to be served personally.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will make it easier to complete service of process.

Testimony Against: None.

Witnesses: Benita McCormick, Washington Collection Association (pro); and Mark Gjurasic, Washington Collection Association (pro).