

# SENATE BILL REPORT

## HB 1226

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As Reported By Senate Committee On:  
Judiciary, March 26, 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:** Representatives Moeller, Campbell, Lantz and Carrell.

**Brief History:**

**Committee Activity:** Judiciary: 3/21/03, 3/26/03 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

**Staff:** Jinnah Rose-McFadden (786-7421)

**Background:** To properly institute a lawsuit, a plaintiff must notify the defendant of the commencement of the suit by service of process, or service of a summons. Generally, a defendant must be served 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: (1) a nonresident motorist involved in an accident; or (2) a resident who, within three years of the accident, departs from the state. With regard to this second alternative, the State Supreme Court has held that a plaintiff may only serve substitute process upon the Secretary of State if the plaintiff has a good faith belief that the defendant has departed and has attempted, with due diligence, to find and serve the defendant.

**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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** There is a circumstance under current law that allows a defendant in an automobile accident to escape service of process, and therefore escape civil suit. A nonresident who gets into an automobile accident while traveling in Washington may be notified of a civil action by substitute service of process to the Secretary of State's Office. However, if a resident is involved in an automobile accident, the burden is placed on the plaintiff to either personally serve the defendant or serve substitute service of process on the Secretary of State's Office only if the plaintiff can show that the defendant has left the state. This bill goes a long way to remedy this double standard.

**Testimony Against:** None.

**Testified:** PRO: Michael Temple, Washington State Trial Lawyers Association; Robin Mullins, Washington State Process Servers Association.