

Regular Session, 2012

SENATE BILL NO. 263

BY SENATOR MARTINY

CIVIL PROCEDURE. Provides relative to service of process and the secretary of state.
(8/1/12)

1 AN ACT
2 To amend and reenact R.S. 9:3424(B), R.S. 13:3471(1)(c), R.S. 22:177(B), 335, and 442(B),
3 and R.S. 45:200.8(B), relative to service of process; to provide for the manner in
4 which the secretary of state effects service of process; to allow the secretary of state
5 to obtain service of process by certified mail, and to remove the requirement that
6 return receipt be requested; to provide for the secretary of state's service of process
7 on a foreign corporation or foreign limited liability company; to provide for the
8 secretary of state's service of process on an insurer's attorney-in-fact, on a foreign
9 insurer and on an unauthorized insurer; to provide for the secretary of state's service
10 of process on the owner of a public carrier vehicle; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 9:3424(B) is hereby amended and reenacted to read as follows:

13 §3424. Service of process

14 * * *

15 B. Failure to maintain a designated agent for service of process shall
16 constitute appointment of the secretary of state of this state as the designated agent
17 for service of process. Upon receipt of service of process the secretary of state shall

1 ascertain the domiciliary post office address of the foreign partnership, and shall
 2 send the original papers served to the foreign partnership by registered **or certified**
 3 mail, ~~with return receipt requested~~, or by commercial courier as defined in R.S.
 4 13:3204(D), when the person to be served is located outside of this state. The
 5 secretary of state shall retain in his office true copies of these papers, on which he
 6 shall note the date, the manner and other particulars of the service, and of the
 7 disposition made of the original papers.

8 Section 2. R.S. 13:3471(1)(c) is hereby amended and reenacted to read as follows:

9 §3471. Supplementary rules of service of process

10 The following rules supplement those governing the service of citation and
 11 other legal process in a civil action or proceeding contained in the Code of Civil
 12 Procedure:

13 (1)(a)

14 * * *

15 (c) The secretary of state shall ascertain the domiciliary post office address
 16 of the corporation, or limited liability company and shall send the original papers
 17 served to the corporation or limited liability company by registered **or certified** mail,
 18 ~~with return receipt requested~~, or by commercial courier as defined in R.S.
 19 13:3204(D), when the corporation or person to be served is located outside of this
 20 state. The secretary of state shall retain in his office true copies of these papers, on
 21 which he shall note the date, the manner and other particulars of the service, and of
 22 the disposition made of the original papers.

23 * * *

24 Section 3. R.S. 22:177(B), 335 and 442(B) are hereby amended and reenacted to
 25 read as follows:

26 §177. Process

27 * * *

28 B. When such process is served upon the secretary of state, duplicate copies
 29 of such process shall be delivered to him and he shall immediately forward one copy

1 of such process to the insurer's attorney-in-fact, by registered **or certified** mail ~~with~~
 2 ~~return receipt requested, postage prepaid, **or by commercial courier as defined in**~~
 3 **R.S. 13:3204(D)**, giving the day and hour of such service.

4 * * *

5 §335. Service of process; secretary of state as attorney

6 Every foreign or alien insurer shall appoint the secretary of state to be its true
 7 and lawful attorney in this state upon whom, or some other person in his office
 8 during his absence he may designate, all lawful process in any action or proceeding
 9 against such insurer may be served, which shall constitute service on such insurer.
 10 Such appointment shall continue in force so long as any contract or other liability of
 11 such insurer in this state shall remain outstanding. Whenever such process shall be
 12 served upon the secretary of state, he shall forthwith forward a copy of the process
 13 by ~~prepaid~~ registered **or certified** mail or by commercial courier as defined in R.S.
 14 13:3204(D), when the person to be served is located outside of this state to the
 15 person designated for the purpose by the insurer.

16 * * *

17 §442. Legal process against unauthorized insurer

18 * * *

19 B. Service of legal process against the insurer may be made in any such
 20 action by service upon the secretary of state or some other person in his office whom
 21 he may designate during his absence. The secretary of state shall forthwith mail the
 22 documents of process served, or a true copy thereof, to the person designated by the
 23 insurer in the policy for the purpose by ~~prepaid~~ registered **or certified** mail ~~with~~
 24 ~~return receipt requested **or by commercial courier as defined in R.S. 13:3204(D)**~~.
 25 The insurer shall have forty days from the date of service upon the secretary of state
 26 within which to plead, answer, or otherwise defend the action. Upon service of
 27 process upon the secretary of state in accordance with this provision, the court shall
 28 be deemed to have jurisdiction in personam over the insurer.

29 * * *

1 Section 4. R.S. 45:200.8(B) is hereby amended and reenacted to read as follows:

2 §200.8. Appointment of secretary of state as agent to receive service of process

3 * * *

4 B. When any process or pleadings are served upon the secretary of state, it
5 shall be by duplicate copies, one of which shall be filed in the office of the secretary
6 of state and the other immediately forwarded by the secretary of state by registered
7 **or certified** mail or by commercial courier as defined in R.S. 13:3204(D), when the
8 person to be served is located outside of this state to the address shown on such
9 certificate of such owner against whom the process and pleadings are directed. The
10 secretary of state shall note on the copy retained the date, the manner and other
11 particulars of service, and disposition of the forwarded copy.

12 * * *

The original instrument was prepared by Julie J. Baxter. The following digest, which does not constitute a part of the legislative instrument, was prepared by Sherri H. Breaux.

DIGEST

Martiny (SB 263)

Present law provides that for service of process on a foreign partnership, the secretary of state must send original papers either by registered mail with return receipt requested or by commercial courier.

Proposed law adds certified mail as an option for secretary of state's service of process on a foreign partnership, and removes the requirement of requesting a return receipt.

Present law provides that the secretary of state may obtain service of process on a foreign corporation or limited liability company by sending original papers either by registered mail with return receipt requested or by commercial courier.

Proposed law adds certified mail as an option and removes the requirement that return receipt be requested.

Present law provides that the secretary of state's service of process on an insurer's attorney-in-fact may be by registered mail with return receipt requested, postage prepaid, or by commercial courier.

Proposed law provides that the secretary of state may obtain service of process on an insurer's attorney-in-fact by registered or by certified mail, and removes the requirement that return receipt be requested.

Present law provides that the secretary of state may obtain service of process on a foreign insurer by prepaid registered mail or by commercial courier.

Proposed law removes the requirement for prepaid mailing and authorizes the secretary of

state to use either registered or certified mail, or commercial courier, in order to obtain service of process on a foreign insurer.

Present law provides for the secretary of state to obtain service of process on an unauthorized insurer either by prepaid registered or certified mail with return receipt requested or by commercial courier.

Proposed law removes the requirement for prepaid mailing and authorizes the secretary of state to use either registered or certified mail, or commercial courier to obtain service of process on an unauthorized insurer. Further removes the requirement that return receipt be requested.

Present law provides that the acceptance by an owner of a public carrier vehicle of a certificate issued by a municipality or parish shall be deemed appointment, by such owner, of the secretary of state to be his true and lawful attorney for service of process in any action or proceeding involving such owner by reason of the ownership, operation, maintenance or use of such vehicle upon any street. Further provides that such service of process upon the secretary of state shall have the same legal force as if served on the owner personally. Also provides for any process or pleadings served upon the secretary of state to be by duplicate copies, one copy of which is to be forwarded by the secretary of state to public carrier vehicle owners who are out of state by registered mail or commercial courier.

Proposed law retains present law and adds that a copy of served documents may also be forwarded by certified mail.

Effective August 1, 2012.

(Amends R.S. 9:3424(B), R.S. 13:3471(1)(c), R.S. 22:177(B), 335, and 442(B), and R.S. 45:200.8(B))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Makes technical correction.