

tion 167A of Article 66 $\frac{1}{2}$ now provides that a person suffering damages caused by an uninsured operator or owner whose whereabouts cannot be ascertained, may bring an action therefor against the Board* for recovery. This section provides further that the plaintiff in such a case must furnish the court with certain assurances of his bona fide efforts to locate the original defendant.

The material difference between the present procedure, and that contemplated by S.B. 212, is that the absconding motor vehicle owner or operator remains the defendant, and judgment against him may be obtained by serving papers on the Board. It is entirely possible, therefore, that a judgment may be obtained against a named defendant without his ever having actual notice of the suit being filed.

We have approved this bill as to constitutionality because we are unable to find any Maryland Court of Appeals, or applicable federal decision, holding unconstitutional the procedure set out in S.B. 212. It is well settled law that in the absence of any such holding, a presumption of constitutionality attaches to a legislative enactment. See *John Hopkins v. Williams*, 199 Md. 382.

Obviously, S.B. 212 fully protects the rights of the plaintiff, for he will be paid by the Fund. We can, however, foresee considerable difficulty at such time as the Board might move against the original defendant under its right of subrogation. In such a proceeding, the defendant could very well successfully argue that he had been denied his constitutional right of due process, because of the lack of actual knowledge by him of the judgment against him.

We endorse the broad plan of simplifying the procedure whereby a plaintiff, unable to locate a defendant motorist, proceeds against the Board. We believe, however, that the Board's right of subrogation would be much better protected, if there were a provision in the law requiring that before the Board could accept service for the original defendant, the defendant must have received, or have been tendered, a registered letter, advising him of the action against him. Where such registered mail notification could be shown, we believe that the plaintiff should be permitted to serve the original papers on the Board and proceed to judgment. Where such notification could not be shown, then he should be required to file a new proceeding naming the Board as defendant, as is required under existing law.

I hope that these comments fully answer your inquiry relating to this Bill.

Sincerely,

/s/ FRANCIS B. BURCH,

Attorney General.

* On July 1, 1968, Chapter 543 of the Acts of 1968 became effective, substituting the Board for the Commissioner of Motor Vehicles, who had theretofore been the officer against whom such action was to be brought.