

WILLIAM DONALD SCHAEFER, Governor

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 514.

This bill provides that service of civil process in certain insurance cases may be made on a defendant's insurance company if the defendant's whereabouts are unknown and there have been three unsuccessful attempts at service. Any judgments would be limited to the limits of the applicable insurance.

House Bill 514 also provides that all policy defenses under the terms of the insurance policy, including noncooperation, are available to the insurer. The Attorney General advises me, however, that the bill is not clear as to what effect a disclaimer of coverage would have upon the sufficiency of service of process or the permissible entry of a judgment against the defendant. If there were a judgment against a defendant who has no actual knowledge of the lawsuit, and whose insurance has been disclaimed because of noncooperation or other policy defense, a violation of the Due Process Clause might exist.

In addition to the concerns raised by the Attorney General, I note that placing an insured in the position of being an agent for service while limiting the liability of the defendant to the limits of any applicable insurance could place an insurer in a conflict of interest. The liability of the insured may only become unlimited if the insurer makes the insured part of the case. Revealing the whereabouts of the insured could subject an insurance company to claims of bad faith by the insured. If the insurance company does not bring the policyholder into the litigation, then the insurance company's ability to defend the case is hampered. A more appropriate solution to the possible problem of insurance companies refusing to divulge the whereabouts of their policyholders due to restrictions of agency law might be legislation which would permit plaintiffs limited access to insurance company files. I suggest that the General Assembly study the possibility of legislation which would allow limited discovery as to the whereabouts of policyholders. However, for reasons outlined above, I have decided that it is necessary to veto House Bill 514.

Sincerely,
William Donald Schaefer
Governor

House Bill No. 514

AN ACT concerning

Civil Actions - Substituted Service of Process --