

Bill as Introduced

HB 325 - AS INTRODUCED

2009 SESSION

09-0630

09/01

HOUSE BILL

325

AN ACT

establishing standards for adequate service of process.

SPONSORS:

Rep. Ulery, Hills 27; Rep. Rowe, Hills 6; Rep. W. O'Brien, Hills 4

COMMITTEE:

Judiciary

ANALYSIS

This bill establishes standards for adequate service of process.

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT establishing standards for adequate service of process.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Standards for Adequate Service of Process. Amend RSA by inserting after
2 chapter 510 the following new chapter:

3 CHAPTER 510-A

4 STANDARDS FOR ADEQUATE SERVICE OF PROCESS

5 510-A:1 Standards for Adequate Service of Process. Notwithstanding any other provision of law,
6 the following standards for service of a subpoena, summons, or complaint shall apply:

7 I. The best practice for service of a subpoena, summons, or complaint is either delivering in
8 hand or reading to the person who is the subject of the subpoena, summons, or complaint. If the
9 person is not available at the time delivery is attempted, the document or documents may be given to
10 a member of the person's household who is over the age of 18 and of apparent mental competency.
11 Such service is known as "substitute service at place of abode."

12 II. If there is no one at the last and usual place of residence of the person who is the subject
13 of the subpoena, summons, or complaint, the document or documents may be posted to the main
14 entry door of the last and usual place of abode and a copy of the document or documents mailed via
15 United States Mail, address service requested, to the address where the document or documents
16 were posted. It is the duty of the server to deliver any returned mail to the person requesting
17 service. Such service is known as "posting service at place of abode."

18 III. If service is attempted at a place of employment, only personal service is permitted.

19 IV. If service is on a business entity, service shall be attempted on the registered agent of
20 the entity. If the registered agent is unknown, then service on an officer, manager, or employee of
21 the entity (in that order) is allowed. The name of the real person served should be obtained. If the
22 name is not provided, then a description of the person receiving the document or documents is
23 required. A person receiving the document or documents on behalf of a public corporation or
24 charitable enterprise regulated by the state is required to provide his or her full name. Failure to
25 provide the name may result in a personal finding of contempt of court.

26 2 Effective Date. This act shall take effect January 1, 2010.

Amendments

Rep. G. Richardson, Merr. 4
Rep. W. O'Brien, Hills. 4
November 17, 2009
2009-2522h
09/10

Amendment to HB 325

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing standards for adequate service of process and establishing a
4 commission to study service of process by laypersons.
5

6

7 Amend the bill by replacing all after the enacting clause with the following:

8

9 1 New Chapter; Standards for Adequate Service of Process. Amend RSA by inserting after
10 chapter 510 the following new chapter:

11

CHAPTER 510-A

12

STANDARDS FOR ADEQUATE SERVICE OF PROCESS

13

14 510-A:1 Standards for Adequate Service of Process. In the absence of other provisions of law or
15 order of the court, the following standards for service of a subpoena, summons, order of notice, or
16 petition shall apply:

17

18 I. Service of a subpoena, summons, order of notice, or petition may be made either by
19 delivering in hand or reading to the person who is the subject of the subpoena, summons, order of
20 notice, or petition in the presence of that person. Such service is known as "personal service." If the
21 person is not available at the time delivery is attempted, the document or documents may be given to
22 a member of the person's household who is over the age of 18 and of apparent mental competency.
23 Such service is known as "substitute service at place of abode."

24

25 II. If there is no one at the last and usual place of residence of the person who is the subject
26 of the subpoena, summons, or petition, the document or documents may be posted in an obvious
27 place at or near the main entry door of the last and usual place of abode and a copy of the document
28 or documents mailed via United States Mail, registered or certified mail, return receipt request and
29 postage prepaid, with address service requested, to the address where the document or documents
30 were posted. It is the duty of the server to deliver any returned mail to the person requesting
31 service. Such service is known as "posting service at place of abode."

32

33 III. If service is attempted at a place of employment, only personal service is permitted.

34

35 IV. If service is on a business entity, non-profit organization, or other association, service
36 shall be made on the registered agent of the entity. If service is unable to be made on a registered
37 agent or if the entity does not have a registered agent, then service on an officer, manager, employee,
38 or 2 members of an association is permitted. The actual person or persons served shall be requested
39 to provide his or her name or their names and the name or names shall be noted on the return of

1 service. If the person served refuses to provide his or her name, a description of the circumstances
2 and the person receiving the document or documents shall be noted on the return of service. Refusal
3 to provide the name may result in a personal finding of contempt of court if the court determines
4 that the refusal was in bad faith to frustrate service of process.

5 V. If the address of service is at a gated community, the document or documents may be left
6 with the person operating the security gate or entrance if entry is denied and a copy of the document
7 or documents mailed via United States Mail, registered or certified mail, return receipt request and
8 postage prepaid, to the address where the document or documents were posted.

9 VI. The return of service shall indicate the date, time, location, and method of service and
10 shall be signed by the person or persons served, or if signature is refused, a description of the
11 circumstances and person served. All returns shall be made under oath or under the pains of
12 perjury.

13 2 Service of Process; Nonresident Defendant. Amend RSA 510:4, II to read as follows:

14 II. SERVICE OF PROCESS ON SECRETARY OF STATE. Service of process upon any
15 person who is subject to the jurisdiction of this state, as provided in this section, may be made by
16 leaving a copy thereof, with a fee of \$10, in the hands or office of the secretary of state. Such service
17 shall be of the same legal force and effect as if served on the defendant at his abode or place of
18 business in the state or country where he resides and according to the law of that state or country,
19 provided that notice thereof and a copy of the process is forthwith sent by [~~registered mail, postage~~
20 ~~prepaid~~] **registered or certified mail, return receipt requested and postage prepaid**, by the
21 plaintiff or his attorney to the defendant at his last known abode or place of business in the state or
22 country in which the defendant resides. The defendant's return receipt and an affidavit of the
23 plaintiff or his attorney of compliance with the section shall be appended to the process and entered
24 therewith. In the event that the notice and a copy of the process are not delivered to or accepted by
25 the defendant, the court may order such additional notice, if any, as justice may require.

26 3 Commission Established.

27 I. There is established a commission to study service of process by laypersons.

28 II.(a) The members of the commission shall be as follows:

29 (1) Two members of the house of representatives, appointed by the speaker of the
30 house of representatives.

31 (2) One member of the senate, appointed by the president of the senate.

32 (3) One member with expertise in local and county issues, appointed by the
33 New Hampshire Municipal Association.

34 (4) One sheriff, appointed by the New Hampshire Sheriffs' Association.

35 (b) Legislative members of the commission shall receive mileage at the legislative rate
36 when attending to the duties of the commission.

37 III. The commission shall study service of process by laypersons.

Amendment to HB 325

- Page 3 -

1 IV. The members of the commission shall elect a chairperson from among the members. The
2 first meeting of the commission shall be called by the first-named house member. The first meeting
3 of the commission shall be held within 45 days of the effective date of this section. Three members of
4 the commission shall constitute a quorum.

5 V. The commission shall report its findings and any recommendations for proposed
6 legislation to the speaker of the house of representatives, the president of the senate, the house
7 clerk, the senate clerk, the governor, and the state library on or before November 1, 2010.

8 4 Effective Date.

9 I. Section 3 of this act shall take effect upon its passage.

10 II. The remainder of this act shall take effect January 1, 2011.

Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

BILL NUMBER: HB 325

BILL TITLE: establishing standards for adequate service of
process.

DATE: Mar. 5, 2009

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.



David E. Cote, Chairman

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 325

BILL TITLE: establishing standards for adequate service of process.
DATE: FEB 11, 2009
LOB ROOM: 208 **Time Public Hearing Called to Order:** 11:45A
Time Adjourned: 12:00P

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Brown, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

Bill Sponsors: Rep. Ulery, Hills 27; Rep. Rowe, Hills 6; Rep. W. O'Brien, Hills 4

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Ulery-sponsor-supports.

Individual claim that a "service" was ineffectively served. Currently no adequate definition of a valid service in NH deleting line 5 "notwithstanding.....law", sponsor suggests.

Rep. Wall: Line 14 can't get in main door of some condominiums. Sponsor suggests give service to security guard or agent in charge of facility.

Rep. Richardson, Attorney General's Office-Does this bill conflict with other parts of law?

A. Maybe, that is why he suggested deleting the portion of line 5 (noted above.)

Richard Head, Assistant Attorney General: There are other provisions in Consumer Protection Act regarding service. He takes no position on establishing a universal standard of service. Removal of the words in line 5 may not eliminate the conflict.

Respectfully submitted,



Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: 8/10/09

LOB ROOM: 208

Time Public Hearing Called to Order: 11:45

Time Adjourned: 12:00

(please circle if present)

Committee Members: Reps. D. ~~Cote~~, ~~Wall~~, ~~Power~~, ~~Hackel~~, ~~P. Preston~~, ~~G. Richardson~~, ~~L. Weber~~, ~~B. Browne~~, ~~Nixon~~, ~~Thompson~~, ~~Watrous~~, ~~Rowe~~, ~~N. Elliott~~, ~~DiFruscia~~, ~~W. O'Brien~~, ~~Pearson~~, ~~Hagan~~, ~~L. Perkins~~, ~~Silva~~ and ~~W. Smith~~. MEAD

Bill Sponsors: Rep. Ulery, Hills 27; Rep. Rowe, Hills 6; Rep. W. O'Brien, Hills 4

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Respectfully submitted,

Rep. Philip Preston, Clerk

#1

Wlery

Individual claim that a "service" was ineffectively

currently

served. No adequate definition of a

There are no standards.

Valid service in NH, Sponsor suggests deleting line 5 "notwithstanding... laws,"

Wall Q

line 14 can't get in main door of some

Sponsor give service to
condominiums, suggests security guard or

agent in charge of facility

Q Rich

Does this bill conflict w/ other parts of law,

Ans Maybe, that is why he suggested deleting the
portion of line 5 ^{noted} (above).

#2

Richard
Ass't AG, HeadThere are other provision in Consumer Protection Act
regarding service, He takes no position on

establishing a universal standard of service, Removal

of the words in line 5 may not eliminate ^{the} conflicts.

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 3, 2009

Subcommittee Members: Reps. Nixon, Richardson, Thompson, Rowe, and O'Brien

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 3, 2009

Subcommittee Members: Reps.

*NIXON, RICHARDSON, THOMPSON, ROWE,
O'Brien*

Comments and Recommendations:

Amendments:

Sponsor: Rep. ~~HEWITT~~

OLS Document #: ~~09-0630~~

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

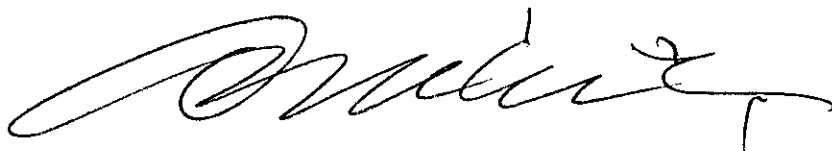
Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk



HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 10, 2009

Subcommittee Members: Reps. Nixon, Richardson, Thompson, Rowe, and O'Brien

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE WORK SESSION ON HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 13, 2009

Subcommittee Members: Reps. Nixon, Richardson, Thompson, Rowe, and O'Brien

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: MAR 5, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'BRIEN

Seconded by Rep. ROWE

Vote: WITHDRAWN

Motions: OTP, OTP/A, ITL, Interim Study, RETAIN

Moved by Rep. O'BRIEN

Seconded by Rep. ROWE

Vote: UNANIMOUS VOICE VOTE

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: 3/5/09

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: ~~OTP~~ OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Rowe

Vote: (Please attach record of roll call vote.)

Withdrawn

Motions: ^{Retain} OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'Brien

Seconded by Rep. Rowe

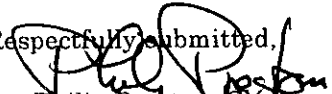
Vote: (Please attach record of roll call vote.)

unanimous voice vote

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 325 Title: establishing standards for adequate service & process
 PH Date: 2 / 11 / 09 Exec Session Date: 3 / 5 / 09

Motion: Retain Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman		
Wall, Janet G, V Chairman		
Potter, Frances D		
Hackel, Paul L		
Preston, Philip, Clerk		
Richardson, Gary B		
Weber, Lucy M		
Browne, Brendon S		
Nixon, David L		
Thompson, Robert B		
Watrous, Rick H		
Rowe, Robert H		
Elliott, Nancy J		
DiFruscia, Anthony R		
Mead, Robert D		
O'Brien, William L		
Hagan, Joseph M		
Perkins, Lawrence B		
Silva, Peter L		
Smith, William B		

TOTAL VOTE:

Printed: 2/11/2009

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. G. Richardson & O'Brien OLS Document #: 2009 2522h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTR, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. O'Brien

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 325

BILL TITLE: establishing standards for adequate service of process.

DATE: November 17, 2009

LOB ROOM: 208

Amendments:

Sponsor: Rep. Nixon, Richardson OLS Document #: 2009 - ~~2522~~ 2522b
adopted vote unanimously

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. O'Brien

Vote: 18/0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk



JUDICIARY

Bill #: HB 325 Title: establishing standards for adequate service of process

PH Date: / /

Exec Session Date: 11 / 17 / 09

Motion: OTP/A

Amendment #: 2009-2522h

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V. Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Browne, Brendon S	Y	
Nixon, David L	<i>abs</i> Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R	<i>abs</i>	
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M	Y	
Perkins, Lawrence B	Y	
Silva, Peter L	Y	
Smith, William B	<i>Bates, David</i> Y	
TOTAL VOTE:	18	0
Printed: 2/11/2009		

Committee Report

CONSENT CALENDAR

November 20, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on JUDICIARY to which was referred
HB325,**

**AN ACT establishing standards for adequate service of
process. Having considered the same, report the same
with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. Gary B Richardson

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB325
Title:	establishing standards for adequate service of process.
Date:	November 20, 2009
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

HB 325 as amended establishes and clarifies the process for adequate service of process. Current statutes are not specific. The bill as amended sets forth the procedures for making personal service on an individual, posting service at someone's abode when personal service is not available, and making service of process on a business entity, non-profit organization or an association. The amended bill also makes it clear that service may be made by certified mail as well as registered mail when such service is authorized. Finally, the amended bill establishes a commission to study authorizing service of process by laypersons. Service of process by layperson could save costs for litigants but has financial implications for our county sheriffs and the committee felt that additional input was warranted before proposing legislation in the area.

Vote 18-0.

Rep. Gary B Richardson
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB325, establishing standards for adequate service of process. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary B Richardson for JUDICIARY. HB 325 as amended establishes and clarifies the process for adequate service of process. Current statutes are not specific. The bill as amended sets forth the procedures for making personal service on an individual, posting service at someone's abode when personal service is not available, and making service of process on a business entity, non-profit organization or an association. The amended bill also makes it clear that service may be made by certified mail as well as registered mail when such service is authorized. Finally, the amended bill establishes a commission to study authorizing service of process by laypersons. Service of process by layperson could save costs for litigants but has financial implications for our county sheriffs and the committee felt that additional input was warranted before proposing legislation in the area. **Vote 18-0.**

Original: House Clerk
Cc: Committee Bill File

HB 325 Blurb

HB 325 as amended establishes and clarifies the process for adequate service of process. Current statutes are not specific. The bill as amended sets forth the procedures for making personal service on an individual, posting service at someone's abode when personal service is not available, and making service of process on a business entity, non-profit organization or an association. The amended bill also makes it clear that service may be made by certified mail as well as registered mail when such service is authorized. Finally, the amended bill establishes a commission to study authorizing service of process by laypersons. Service of process by laypersons could save costs for litigants but has financial implications for our county sheriffs and the committee felt that additional input was warranted before proposing legislation in that area.

OK-~~QA~~

HB 325

HB 325 as amended establishes and clarifies the process for adequate service of process. Current statutes are not specific. The bill as amended sets forth the procedures for making personal service on an individual, posting service at someone's abode when personal service is not available, and making service of process on a business entity, non-profit organization or an association. The amended bill also makes it clear that service may be made by certified mail as well as registered mail when such service is authorized. Finally, the amended bill establishes a commission to study authorizing service of process by laypersons. Service of process by layperson could save costs for litigants but has financial implications for our county sheriffs and the committee felt that additional input was warranted before proposing legislation in the area.