

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

SB 85 (Umberg)  
Version: April 8, 2025  
Hearing Date: May 6, 2025  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Civil actions: service of summons

**DIGEST**

This bill allows for alternative service of a summons in a civil case where the plaintiff is unable to effect service using prescribed methods, despite their due diligence, including by email or other electronic technology, except in an action against a governmental entity or an agent or employee thereof.

**EXECUTIVE SUMMARY**

Current law provides that where no provision is made in law for the service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served. However, concerns have arisen that there are many instances where the prescribed methods are ineffectual in certain circumstances and that more latitude should be provided where alternative methods of service are more likely to result in actual notice to the party to be served.

This bill provides that flexibility. It provides that if a plaintiff, using due diligence, is unable to effect service of the summons using the methods prescribed by statute, the court may order service in a manner that is reasonably calculated to give actual notice, including by email or other electronic means. However, the bill carves out actions against governmental entities or their agents or employees who are sued in an official or individual capacity.

This bill is author-sponsored. It is supported by the Civil Prosecutors Coalition. No timely opposition has been received by the Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Holds that parties whose rights are to be effected have a procedural due process right to be heard, and in order that they be heard, they must have notice of the legal proceeding against them. (*Fuentes v. Shevin* (1972), 407 U.S. 67, 80.)
- 2) Requires that notice to a party whose interests are to be effected in a legal proceeding be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Central Hanover Bank & Trust, Co.* (1950), 339 U.S. 306, 314.)
- 3) Where no provision is made in law for the service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served and that proof of such service be made as prescribed by the court. (Code Civ. Proc. § 413.30.)
- 4) Requires a summons, except as otherwise provided by statute, to be served on a person:
  - a) Within this state, as provided.
  - b) Outside this state but within the United States, as provided, or as prescribed by the law of the place where the person is served.
  - c) Outside the United States, as provided, or as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. (Code Civ. Proc. § 413.10.)
- 5) Provides that a summons may be served by personal delivery of a copy of the summons and the complaint on the person to be served, and that personal service is deemed complete at the time of such delivery. Requires that the date of the personal service must be affixed to the face of the copy at the time of delivery. (Code Civ. Proc. § 415.10.)
- 6) Provides that, in lieu of personal delivery of a copy of the summons and complaint to a corporate or public entity, as defined, the summons may be served by leaving a copy during usual office hours at their office, or if no physical address is known, at their usual mailing address, other than a United States Postal Service post office box, with the person apparently in charge of the office, and subsequently mailing a copy of the summons and complaint by first-

class mail with prepaid postage to the place where the summons and complaint were left. If the summons is left at the mailing address, it must be left with a person who is at least 18 years old, and they must be informed of the contents of the summons. Substitute service through these methods is deemed complete on the tenth day after the copy is mailed. (Code Civ. Proc. § 415.20(a).)

- 7) Provides that, if a copy of a summons and complaint cannot, with reasonable diligence, be personally delivered to an individual to be served, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or person apparently in charge of the office, place of business, or usual mailing address, who is at least 18 years old. The competent member of the household or person apparently in charge must be informed of the contents, and a copy of the summons and complaint must thereafter be mailed by first-class mail, with prepaid postage, to the person to be served at the address where the summons were left. Service in this manner is deemed complete on the tenth day after mailing. (Code Civ. Proc. § 415.20(b).)
- 8) Provides that, if the only address reasonably known for the person to be served is a private mailbox obtained through a commercial mail receiving agency, service of process may be effected on the first delivery by leaving a copy of the summons and complaint with the commercial mail receiving agency, as prescribed. (Code Civ. Proc. § 415.20(c).)
- 9) Provides that, if a summons is to be served by mail, a copy of the summons and complaint must be mailed by first-class mail or airmail, with prepaid postage, with two copies of a specified notice, and with a prepaid return envelope for acknowledgement of receipt of summons. Specifies that service by this manner is deemed complete on the date of the written acknowledgement of receipt, if the acknowledgement is returned to the person sending service. (Code Civ. Proc. § 415.30.)

This bill:

- 1) Provides that if a plaintiff, using due diligence, has been unable to serve the summons using the methods prescribed by statute, the court may direct that summons be served in a manner that is reasonably calculated to give actual notice to the party to be served, including by email or other electronic technology.
- 2) Provides that this section does not apply in an action against a governmental entity or an agent or employee of the governmental entity who has been sued in an official or individual capacity.

## COMMENTS

### 1. Service and due process

“The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions.”<sup>1</sup> California courts have outlined the importance of the laws governing service of process in ensuring due process:

Service of process on a defendant is an important step in obtaining access to the remedies available through the court system. The “formal service of process performs two important functions.” First, from the court’s perspective, service of process asserts jurisdiction over the person. Obtaining personal jurisdiction is important because a trial court can enter a valid judgment only if it has both jurisdiction of the person and jurisdiction of the subject matter. Second, from a defendant’s perspective, service of process provides notice of the pending action and gives the defendant an opportunity to present a defense. Thus, service of process protects a defendant’s due process right to defend against an action by providing constitutionally adequate notice of the court proceeding.

“‘Process’ signifies a writ or summons issued in the course of a judicial proceeding.” Service of a summons is governed by a five-article chapter in California’s Code of Civil Procedure. “[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.”<sup>2</sup>

Service of process generally takes place through several common methods. This includes service by mail with acknowledgment of receipt, personal delivery to defendant or authorized representative, delivery to someone at the defendant’s usual residence or place of business, and service by publication.<sup>3</sup>

In addition, and relevant here, the law, Section 413.30 of the Code of Civil Procedure, provides for alternative service where these usual methods are not available:

Where no provision is made in this chapter or other law for the service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served and that proof of such service be made as prescribed by the court.

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<sup>1</sup> *Fuentes v. Shevin* (1972) 407 U.S. 67, 80.

<sup>2</sup> *Crane v. Dolihite* (2021) 70 Cal. App. 5th 772, 784 (citations omitted).

<sup>3</sup> *Ibid.*

However, concerns have been raised that this flexibility should be expanded given the circumstances of a particular case and the nature of modern technology. The author and proponents point to *Searles v. Archangel*, 60 Cal. App. 5th 43. In that case, the superior court dismissed the petitioner's petition for a civil harassment restraining order when she was unable to personally serve the defendant with a copy of the petition and notice of hearing as required by Code of Civil Procedure section 527.6. The plaintiff argued that, given her inability to effect personal service on a homeless respondent who was actively evading service by staying away from locations he usually visited, Section 413.30 authorized the court to allow service by social media as an alternative that was reasonably calculated to give actual notice of the case.

The appellate court emphasized the clear language of Section 413.30 allows for alternative service that is "reasonably calculated to give actual notice to the other party" only where "no provision is made . . . for the service of summons." Then the court analyzed the statute at issue in the case, finding:

[T]he Legislature has expressly mandated that the respondent in a proceeding for a civil harassment restraining order be provided notice of the hearing, together with a copy of the petition and any TRO, only through personal service. Thus, section 413.30 is inapplicable in this situation: The necessary prerequisite for the court to authorize an alternative method of service – that "no provision is made in this chapter or other law for the service for summons" – is unsatisfied.<sup>4</sup>

After extolling the virtues of exploring novel approaches to effectuating service, the court made a call to the Legislature:

We encourage the Legislature and the Judicial Council, which have already authorized extensive use of electronic service of notice (*see* Code Civ. Proc., § 1010.6; Cal. Rules of Court, rule 2.251; *see also* Prob. Code, § 1215, subd. (c)), to consider developing pilot programs to test the efficacy of utilizing new technologies as an approved method of service of process.

This bill answers this call. It provides that even where a form of service is provided for, if a plaintiff is unable to serve the summons using due diligence and those methods prescribed, the court may direct service to be affected in a manner that is reasonably calculated to give actual notice; this explicitly includes service by email or other electronic technology. This bill provides additional flexibility to the currently rigid rules around service.

It should be noted that providing alternative means of service does not upset due process considerations. As the United States Supreme Court has held:

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<sup>4</sup> *Searles*, 60 Cal. App. 5th at 54 (citation omitted).

The requirements of due process of law “are not technical, nor is any particular form of procedure necessary.” Due process of law guarantees “no particular form of procedure; it protects substantial rights.” “The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.”<sup>5</sup>

According to the author:

SB 85 aims to allow a plaintiff alternative means of service through email or electronic means when they, with due diligence, cannot reasonably effect service.

Service is one of the critical first steps in the California judicial process. It is the procedure by which one party in a lawsuit gives notice of legal action to another party in order to exercise jurisdiction over that party and compel them to appear in court. For instance, to affect service, a plaintiff (through a servicer) will deliver a printed court order to the defendant to give them notice of a lawsuit. In order for a party to exercise jurisdiction over another, they must serve the other so as to give them actual notice. While it is in the interest of all parties to act in good faith and accept service, some parties choose to try and evade being served so as to have not been given actual notice.

Under the California Code of Civil Procedure (CCP), courts are only allowed to authorize alternative service “[w]here no provision is made in [the statute] or other law for service of summons”. The California Court of Appeal has interpreted this to only permit alternative service if there is no other procedure authorized under the CCP – even if service under the statutorily authorized procedures are impractical or are ineffective despite a plaintiff’s diligence. See *Searles v. Archangel*, 60 Cal.App.5th 43, 52-55 (2021). Notably, the California Court of Appeal recognized that California law is arguably out of step with other jurisdictions and urged the Legislature and Judicial Council to act.

This is in contrast to states like New York, Texas, and Florida who do allow courts to authorize service of process by alternate means – including by email or other electronic technology – where a plaintiff has been unable to effect service through statutorily prescribed means after due diligence and the alternative service method is reasonably calculated to provide actual notice. On the other hand, California has no “due diligence” equivalent for alternative service.

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<sup>5</sup> *Mitchell v. W. T. Grant Co.* (1974) 416 U.S. 600, 610 (citations omitted).

SB 85 aims to solve this problem by amending the CCP so that after a showing of due diligence, courts may allow email/electronic service as an alternative service method if the plaintiff has been unable to effect service through statutory means.

The bill also not only exempts such alternative service in any actions filed against a governmental entity or agent or employee of a governmental entity, but carves them out of the statute completely. This includes in actions against a governmental employee sued in their individual capacity. The Civil Prosecutors Coalition writes in support:

SB 85 addresses a critical gap in California law. Under current rules, even when a party has made every reasonable effort to serve notice under the Code of Civil Procedure, courts cannot authorize an alternative method – like email – unless no statutory method exists at all. This rigidity was highlighted in the 2021 *Searles v. Archangel* case, where the court acknowledged the limitations of existing law and called on the Legislature to act.

In our own enforcement work, we’ve seen firsthand how these limitations obstruct justice. In San Francisco’s recent high-profile lawsuit against dozens of companies involved in creating and disseminating AI-generated deepfake pornography, our office struggled to serve parties who had no physical location but valid, verified email addresses. If SB 85 had been law at the time, it would have empowered us to reach these actors quickly and directly, ensuring that justice could proceed.

California should not lag behind other states like New York, Texas, and Florida, which already allow for electronic service after due diligence. SB 85 brings our procedures in line with these jurisdictions while preserving fairness and due process.

### **SUPPORT**

Civil Prosecutors Coalition

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: AB 747 (Kalra, 2025) strengthens procedural protections for defendants by increasing accountability for process servers, clarifying the standard for substituted service, requiring photographic documentation of service, and enhancing

access to post-judgment relief when service was unlawful. AB 747 is currently in the Assembly Appropriations Committee.

Prior Legislation:

SB 1040 (Ochoa Bogh, 2024) would have permitted substitute service of process upon an inmate in a state prison or county jail through specified processes, if an attempt at personal service as described was not successful. SB 1040 died in the Senate Appropriations Committee.

AB 2067 (Dixon, Ch. 222, Stats. 2024) permitted a financial institution to designate a third-party agent, as defined, as a central location for service of legal process, as specified.

AB 622 (Chen, Ch. 12, Stats. 2019) required guards or other security personnel, if any, to grant access to a covered multifamily dwelling, as defined, for the sole purpose of performing service of process or serving a subpoena.

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