

BILL ANALYSIS

Senate Research Center

S.B. 117
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State Affairs
3/5/1999
Committee Report (Amended)

DIGEST

In 1978, the Texas Supreme Court gave private servers the authority to deliver and serve subpoenas. The Texas Supreme Court further extended the authority of the servers by giving them the authority to deliver and serve all citations under Rule 103 of the Texas Rules of Civil Procedure. As a result, numerous private process-serving companies have been started throughout Texas. Many counties do not require adequate registration requirements, such as a background checks or liability insurance, to protect the public against fraudulent servers. C.S.S.B. 117 would apply certain regulations to private process servers and require the servers to obtain a state license or a registration under the Texas Commission of Licensing and Regulation.

PURPOSE

As proposed, C.S.S.B. 117 regulates private process servers by requiring a state license or registration under the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of licensing and regulation of the Texas Commission of Licensing and Regulation in SECTION 1 (Section 8, Article 9035, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 132, Chapter 20, V.T.C.S., by adding Article 9035, as follows:

Art. 9035. PRIVATE PROCESS SERVERS

Sec. 1. DEFINITIONS. Defines “civil court,” “civil process,” “commission,” “commissioner,” “constable,” “department,” “license holder,” “person,” “registered agent,” and “sheriff.”

Sec. 2. LICENSE OR REGISTRATION REQUIRED. Prohibits a person from serving a civil process in this state without being licensed or registered. Permits a non-licensed and non-exempt person to serve a civil court’s civil process, if specific conditions are met.

Sec. 3. EXEMPTION. Exempts sheriffs and constables engaged in official duties. Provides that this article does not limit the service of process as provided by a court order. Provides that this article does not apply to a court reporter certified under Chapter 52, Government Code.

Sec. 4. LICENSE APPLICATION. Requires applicants to submit a sworn application. Sets forth eligibility requirements which include age restrictions, conviction disclosure, fee submission, and completion of seminar and insurance compliancy.

Sec. 5. AGENT REGISTRATION. Authorizes a person registered as the agent of a license holder to serve a civil process on behalf of a license holder. Requires the applicant for an agent registration to submit a sworn statement and be of a certain age, disclose convictions regarding moral turpitude, and submit a fee.

Sec. 6. CRIMINAL HISTORY RECORD CHECK. Requires an applicant to disclose to the Texas Department of Licensing and Regulation convictions for moral turpitude or a felony. Requires the Department of Public Safety to provide a criminal history record check for applicants.

Sec. 7. ISSUANCE OF LICENSES AND REGISTRATIONS. Requires the Texas Department of Licensing and Regulation (department) to issue a server license or registration to an applicant satisfying certain requirements. Requires the license to be made within 60 days of application, except for permitted delays.

Sec. 8. INSURANCE REQUIREMENT. Requires the commissioner of licensing and regulation (commissioner) of the Texas Commission of Licensing and Regulation (TCLR), by rule, to prescribe insurance requirements for applicants.

Sec. 9. POWERS AND DUTIES OF LICENSE HOLDERS AND REGISTERED AGENTS. Authorizes a license holder or registered agent to serve civil process in the manner provided by law for service by sheriffs and constables. Permits service in the state, on any day. Authorizes the license holder or registered agent to determine the location of an individual for the purpose of serving civil process. Authorizes a license holder to serve a writ of garnishment, but prohibits a license holder or registered agent from serving a writ of attachment, a writ of sequestration or a distress warrant. Prohibits service by a license holder or agent who is an interested party or has certain legal interests.

Sec. 10. COSTS. Authorizes service charges to be added to court costs.

Sec. 11. OFFICER OF THE COURT. Requires each license holder and agent to be considered officers of the state's civil courts, but may not be considered peace officers. Requires an assault on a license holder or registered agent to be treated as an assault on a public servant.

Sec. 12. IDENTIFICATION NUMBER. Requires the department to issue a unique identification number to each license holder and agent, which must be marked on each return of service filed with the court.

Sec. 13. TERM OF LICENSES AND REGISTRATION; RENEWAL. Provides that the expiration date for licenses and registrations under this article is on the second anniversary of the date of issuance. Requires the department to send a renewal application no later than 45 days prior to its expiration date. Authorizes a person to renew a license of registration by submitting a renewal application and fee. Requires the license holder or registered agent to provide evidence of completion of a continuing education seminar in order to renew the license or registration.

Sec. 14. DISCIPLINARY ACTIONS. Authorizes the commissioner to deny, suspend, or revoke a license or registration and assess an administrative penalty under certain conditions. Provides that proceedings for license or registration denial, revocation, suspension, or imposition of an administrative penalty are governed by Article 9100, V.T.C.S., and Chapter 201, Government Code.

Sec. 15. CRIMINAL PENALTIES. Provides that the person commits a Class A misdemeanor, if a person practices as a process server or registered agent in violation of this article or a rule adopted under this article.

SECTION 2. Amends Section 411.093(a), Government Code, to make conforming changes.

SECTION 3. Exempts those who can prove two years of experience or more in serving civil processes from the education requirements of this Act.

SECTION 4. (a) Effective date: September 1, 1999, except as provided by Subsection (b).

(b) Effective date for Sections 2 and 15, Article 9035, V.T.C.S.: March 1, 2000.

SECTION 5. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 3, Article 9035, Title 132, Chapter 20, V.T.C.S., by adding Subsection (c) to provide that this article does not apply to a court reporter certified under Chapter 52, Government Code.