

BILL ANALYSIS

Senate Research Center
78R6469 JMM-D

S.B. 1309
By: Wentworth
Jurisprudence
4/5/2003
As Filed

DIGEST AND PURPOSE

In 1978, the Texas Supreme Court gave private process servers the authority to deliver and serve subpoenas. The court further extended the authority of the servers by giving them the authority to deliver all citations under Rule 103, Texas Rules of Civil Procedure. As a result, numerous private process-serving companies have been established throughout Texas. There is no uniform requirement for background checks or liability insurance to protect the public against fraudulent servers. As proposed, S.B. 1309 establishing the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Section 191.056, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends The Civil Practice and Remedies Code by adding Title 8, as follows:

TITLE 8. CIVIL PROCESS

CHAPTER 191. PRIVATE PROCESS SERVERS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. Defines “civil court,” “civil process,” “commission,” “constable,” “department,” “executive director,” “license holder,” “person,” “public servant,” “registered agent,” and “sheriff.”

Sec. 191.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter does not apply to a sheriff or constable engaged in the discharge of that person's official duties. Requires a sheriff or constable who serves civil process other than in the performance of official duties to be licensed or registered under this chapter.

(b) Provides that this chapter does not limit or restrict the service of process in this state as provided by a court order.

(c) Provides that this chapter does not apply to a court reporter certified under Chapter 52, Government Code.

[Reserves Sections 191.003-191.050 for expansion.]

SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) Prohibits a person from serving civil process in this state unless the person is licensed or registered under this chapter.

(b) Authorizes a person who is not a license holder or registered agent and who is

not exempt under Section 191.002 to serve outside this state a civil process issued by a civil court of this state under certain circumstances.

Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a) Requires an applicant for an initial process server license under this chapter to submit a sworn application on a form prescribed by the executive director of the Texas Department of Licensing and Regulation (executive director). Sets for the requirements to be eligible for a license under this section.

(b) Requires each license applicant to provide proof of certain information to the Texas Department of Licensing and Regulation (TDLR) in a manner acceptable to TDLR.

(c) Requires the executive director to issue a temporary license, not later than the 30th day after the date an applicant submits evidence satisfactory to TDLR that the applicant has properly completed the application, has paid all required fees, and meets all of the qualifications established by this chapter and by rule of the executive director. Provides that a temporary license is valid for not more than 90 days after the date of issuance. Requires the applicant, if, on completion of the license application process, the executive director denies an application for a license, to return the applicant's temporary license and immediately stop serving process under this chapter.

Sec. 191.053. AGENT REGISTRATION. (a) Authorizes a person registered under this chapter as the agent of a license holder to execute civil process under this chapter on behalf of the license holder.

(b) Requires an applicant for an agent registration to submit a sworn application to TDLR on a form prescribed by the executive director. Sets for the requirements to be eligible for registration under this section.

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license or an agent registration under this chapter to disclose to TDLR any conviction of the applicant for a misdemeanor involving moral turpitude or a felony, in the manner prescribed by the executive director.

(b) Requires TDLR, on receipt of an original application for a process server license or agent registration, to conduct a thorough background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. Sets forth the required content of the investigation.

(c) Provides that a background check under this section and the department's consideration of any criminal conviction is governed by this chapter; Section 411.122 (Command by Governor), Government Code; and Chapter 53 (Consequences of Criminal Conviction), Occupations Code.

(d) Provides that the conviction of an applicant of a crime does not automatically disqualify the applicant, require revocation of a license or registration, or require denial of an application for renewal of a license or registration.

Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS. (a) Requires the executive director to issue a process server license or an agent registration to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, and pays all required fees.

(b) Requires the executive director, except as provided by Subsection (c), to issue the license or registration not later than the 60th day after the date on which the application is received by TDLR.

(c) Requires TDLR, if is notified by the Department of Public Safety that a criminal history record check affecting an applicant will not be completed within the 60 days prescribed by Subsection (b), to notify the applicant of the delay.

Sec. 191.056. **INSURANCE REQUIREMENT.** Requires the executive director, by rule, to prescribe the insurance coverage that a process server license holder must maintain to be eligible for a license under this chapter.

Sec. 191.057. **TERM OF LICENSES AND REGISTRATION; RENEWAL; AGENT TERMINATION.** (a) Provides that a license or an agent registration issued under this chapter expires on the second anniversary of the date of issuance.

(b) Requires TDLR to send a renewal application to each license holder or registered agent not later than the 45th day before the date of expiration of the license or registration.

(c) Authorizes a license holder or registered agent to renew the license or registration by submitting to TDLR before the expiration date, on a form prescribed by the executive director, a renewal application accompanied by the renewal fee. Requires each license holder and registered agent to also present evidence satisfactory to TDLR of completion, before the expiration of the license or registration, of a TDLR-approved continuing education seminar consisting of at least eight hours of instruction in civil process, to renew the license or registration.

(d) Requires a license holder to notify TDLR, in writing, not later than the 14th day after the date on which the employment of a registered agent by the license holder is terminated.

[Reserves Sections 191.058-191.100 for expansion.]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

Sec. 191.101. **POWERS AND DUTIES OF LICENSE HOLDERS AND REGISTERED AGENTS.** (a) Authorizes a license holder or registered agent to serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables. Authorizes the person to serve the process on any day of the week anywhere in this state.

(b) Authorizes a license holder or registered agent to determine the location of an individual for the purpose of serving civil process.

(c) Authorizes a license holder or registered agent to serve a writ of garnishment, but prohibits a license holder from serving a writ of attachment, a writ of sequestration, or a distress warrant.

(d) Prohibits a license holder or registered agent from serving a civil process in any action in which the license holder or registered agent is an interested party.

(e) Prohibits a license holder or registered agent who is employed by an attorney or a law firm from serving a civil process relating to an action in which the employing attorney or law firm is counsel to a party.

Sec. 191.102. **COSTS.** Authorizes a fee charged and collected by a license holder or registered agent for service of process to be charged as costs in a judicial proceeding.

Sec. 191.103. **PUBLIC SERVANT; OFFICER OF COURT.** Requires each license holder and registered agent to be considered to be a public servant when performing duties related to serving process and considered to be an officer of the civil courts of this

state, but prohibits each license holder and registered agent from being considered to be a peace officer based on that license or registration. Requires an assault on a license holder or registered agent to be treated as an assault on a public servant.

Sec. 191.104. IDENTIFICATION NUMBER. (a) Requires TDLR to issue to each license holder and registered agent a unique identification number. Requires the license holder or registered agent to list that unique number on each return of service made by that person that is filed with the clerk of the appropriate court.

(b) Requires TDLR to issue to each license holder and registered agent a photo identification card with the person's unique identification number on the card. Requires TDLR to determine the size, design, and content of the identification card. Provides that the card remains the property of the state and must be returned on demand by TDLR.

[Reserves Sections 191.105-191.150 for expansion.]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) Authorizes the executive director to deny, suspend, or revoke a license or registration, as appropriate, and the Texas Commission on Licensing and Regulation (commission) to assess an administrative penalty under Chapter 51F (Administrative Penalty), Occupations Code, on certain findings.

(b) Provides that proceedings for the denial, revocation, or suspension of a license or registration, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, and Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 191.152-191.200 for expansion.]

SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. (a) Provides that a person commits an offense if the person practices as a process server or registered agent in violation of this chapter or a rule adopted under this chapter. Provides that an offense under this subsection is a felony of the third degree.

(b) Provides that a person commits an offense if the person knowingly or intentionally falsifies a return of civil process. Provides that an offense under this subsection is a Class A misdemeanor unless the person's intent is to defraud or harm another, in which event the offense is a state jail felony.

SECTION 2. Amends Section 411.093(a), Government Code, to provide that TDLR is entitled to obtain from the department criminal history record information maintained by the department that relates to certain persons.

SECTION 3. Provides that, notwithstanding Section 191.052, Civil Practice and Remedies Code, as added by this Act, a person who provides proof to the TDLR in a manner satisfactory to that department of at least two years' experience in serving civil process before the effective date of this Act is entitled to a license without complying with the educational requirement if the person meets all other requirements under that section.

SECTION 4. (a) Provides that, except as provided by Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, takes effect September 1, 2003.

(b) Effective date: March 1, 2004 for Sections 191.051 and 191.201, Civil Practice and Remedies Code, as added by this Act.

SECTION 5. Effective date: September 1, 2003, except as provided by Section 4 of this Act.