

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 165
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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 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. C.S.S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

TITLE 8. CIVIL PRACTICES

CHAPTER 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. Defines "civil court," "civil process," "commission," "constable," "department," "executive director," "person," "private process server," "private process service business," "public servant," and "sheriff."

Sec. 191.002. APPLICABILITY OF CHAPTER. Sets forth applicability of this chapter.

[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, except as provided by Section 191.002, from serving civil process in this state unless the person is licensed or registered under this chapter and serves the process through a private process service business.

(b) Authorizes a person who is not a license holder 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 if the person meets certain requirements.

(c) Prohibits a person or business entity from representing that the person or business entity is a private process server or private process service business unless the person is licensed, or the business entity is registered, under this chapter.

Sec. 191.052. PRIVATE PROCESS SERVICE BUSINESS APPLICATION. Requires an applicant for registration as a private process service business to submit an application

on a form prescribed by the Texas Commission of Licensing and Regulation (commission). Sets forth terms of applicant eligibility to register under this section.

Sec. 191.053. LICENSE APPLICATION. (a) Requires an applicant for a process server license to submit an application on a form prescribed by the commission. Requires an applicant to meet certain criteria to be eligible for a license.

(b) Requires each license applicant to provide proof of seminar instruction, including at least eight hours of instruction on service of process and two hours of instruction on department regulation and rules, to the Texas Department of Licensing and Regulation (department).

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license under this chapter to disclose to the department any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

(b) Requires the department to conduct a thorough background investigation of each individual applicant on receipt of an original application. Requires the investigation to include certain aspects.

(c) Requires the department, on receipt of an application for renewal of a process server license, to conduct a background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. Requires the investigation to include certain aspects.

(d) Provides that a background check under this section and the department's consideration of any criminal conviction is governed by certain laws.

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

(f) Requires an application for issuance or renewal of a license by a person who has pled guilty to a crime and been placed on deferred adjudication in any jurisdiction to be considered on the basis of the criteria set forth in Subsections (d) and (e).

Sec. 191.055. ISSUANCE OF LICENSE AND REGISTRATIONS. (a) Requires the department 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, as applicable, and pays all required fees.

(b) Requires the department to issue licenses or registrations not later than the 60th day after the date on which the application is received, except as provided by Subsection (c).

(c) Requires the department to notify the applicant of a delay in the event that the Department of Public Safety cannot complete the criminal history record check within 60 days.

Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL; RESPONSIBLE PARTY TERMINATION. (a) Provides timeline for license or business registration expiration.

(b) Requires the department to send a renewal application to each license holder and registered business not later than the 90th day before the date of expiration.

(c) Sets forth guidelines for the renewal of a license or registration.

(d) Requires a registered business to notify the department 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 191.057-191.100 for expansion.]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) Authorizes a license holder to serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables anywhere in the state.

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

(c) Authorizes a license holder to serve all civil process, excepting certain writs and orders.

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

(e) Prohibits an employee who is employed by an attorney or a law firm from serving a civil process, except a subpoena for a trial or for an oral deposition, relating to an action in which the employer is counsel to a party.

(f) Prohibits a license holder from having a firearm on the license holder's person when in the act of serving civil process, unless the license holder is also a peace officer or an honorably retired peace officer authorized to carry a firearm. Prohibits a weapon from being visible during the delivery of civil process.

(g) Prohibits a license holder from being assigned as the responsible party for more than one registered business in which the person does not have an ownership interest of more than 50 percent of the business.

Sec. 191.102. COSTS. Authorizes a fee charged and collected by a license holder or registered business for service of process to be charged as costs in a judicial proceeding. Prohibits fees charged by a license holder or registered business for service of process exceeding the service of process fees set by the commissioners court in a judicial proceeding unless otherwise approved by the judge presiding over the case.

Sec. 191.103. PUBLIC SERVANT. Requires an assault on a license holder during the delivery of civil process to be treated as an assault on a public servant. Provides that a county is not liable for the actions of a license holder unless the license holder is an employee of the county.

Sec. 191.104. IDENTIFICATION NUMBER. (a) Requires the department to issue a unique identification number to each license holder and registered business who are then required to provide that number with each return of service made by that person for the registered business that is filed with the clerk of the appropriate court.

(b) Requires the unique number of the private process server and the registered business on behalf of which the server is working to be provided to each person served. Requires a license holder to include the license holder's unique identification number on each valid process return and on each delivery copy of process served. Provides that failure to include the registered business's or person's unique identification number on each valid process return does not render the service of process invalid.

- (c) Sets forth requirements for the issuance, content, and return of personal identification cards.
- (d) Requires a license holder to produce the license holder's identification card to any person requesting it during the performance of service of process.
- (e) Prohibits an identification card, badge, insignia, seal, patch, or other form of identification that could be construed to be that of a peace officer or employee of a county or state agency from being worn or displayed by a license holder.

Sec. 191.105. RETURN OF SERVICE OF PROCESS. Requires a registered business or license holder to return to the issuing court a sworn return of service verifying the truthfulness of the return for any process served in this state. Requires the return of service to be returned to the issuing court not later than the fifth business day after the date service is completed.

[Reserves Sections 191.106-191.150 for expansion.]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) Authorizes the commission to deny, suspend, or revoke a license or registration and to impose an administrative penalty under Subchapter F, Chapter 51 (Administrative Penalty), Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

- (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.

Sec. 191.152. SUMMARY SUSPENSION. (a) Authorizes the department to summarily suspend a person's license upon receiving written notice from the Department of Public Safety or another law enforcement agency that a person licensed under this chapter has been arrested for or charged with an offense constituting a Class B misdemeanor or a greater offense.

- (b) Requires the department to serve notice to the person and to any registered business that has assigned the person as a responsible party to initiate a proceeding under Subsection (a). Requires the notice to include certain information.
- (c) Provides that the suspension is effective at the time the notice is served.
- (d) Authorizes the individual, at the summary suspension hearing, to show cause why, pending final hearing on the suspension, the suspension should not continue.
- (e) Authorizes a final hearing to be scheduled at a time after the final disposition of the charges that resulted in the summary suspension.
- (f) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a proceeding under this section, except for the final administrative hearing.
- (g) Provides that the dismissal of a complaint, information, or indictment, or an acquittal, releases the person from the automatic grounds for summary suspension under this section.

[Reserves Sections 191.153-191.200 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 and is not authorized to do so and that such an offense is a Class A misdemeanor.

(b) Provides that a person commits an offense if the person knowingly or intentionally falsifies a return of civil process or fails to produce the identification card to a person requesting it during the service of process and that such an offense is a Class A misdemeanor or, in certain situations, a state jail felony.

SECTION 2. Amends Section 154.005(d), Local Government Code, to delete existing text providing that a constable is considered a private process server for the purposes of collecting fees for serving certain notices.

SECTION 3. (a) Provides that, except as set forth in Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 2005.

(b) Provides that Sections 191.051 and 191.201, Civil Practices and Remedies Code, as added by this Act, take effect March 1, 2006.

SECTION 4. Effective date: September 1, 2005, except as provided by SECTION 3 of this Act.