

By: Hartnett

H.B. No. 1741

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of private process servers; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Civil Practice and Remedies Code is amended by adding Title 8 to read as follows:

TITLE 8. CIVIL PROCESS

Chapter 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. In this chapter:

(1) "Civil court" includes:

(A) a civil district court;

(B) a family district court;

(C) a county court at law;

(D) a probate court;

(E) a justice court; and

(F) a small claims court.

(2) "Civil process" means a citation, a temporary restraining order, a notice, a writ of garnishment, a writ of forcible entry and detainer, or a subpoena for a trial or for an oral deposition. The term does not include service of written interrogatories or a writ that requires the actual taking of possession of a person, property, or thing.

(3) "Commission" means the Texas Commission of

1 Licensing and Regulation.

2 (4) "Constable" means a constable, deputy constable,
3 or reserve deputy constable.

4 (5) "Department" means the Texas Department of
5 Licensing and Regulation.

6 (6) "Executive director" means the executive director
7 of the department.

8 (7) "License holder" means an individual who has
9 complied with the licensing requirements of this chapter and has
10 been issued a license by the department.

11 (8) "Person" means an individual.

12 (9) "Public servant" has the meaning assigned by
13 Section 1.07, Penal Code.

14 (10) "Registered agent" means an individual who has
15 complied with the registration requirements adopted under this
16 chapter and has been issued an agent registration by the
17 department.

18 (11) "Sheriff" means a sheriff, deputy sheriff, or
19 reserve deputy sheriff.

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

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

27 (c) This chapter does not apply to a court reporter

1 certified under Chapter 52, Government Code.

2 [Sections 191.003-191.050 reserved for expansion]

3 SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

4 Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) A
5 person may not serve civil process in this state unless the person
6 is licensed or registered under this chapter.

7 (b) A person who is not a license holder or registered agent
8 and who is not exempt under Section 191.002 may serve outside this
9 state a civil process issued by a civil court of this state if the
10 person is:

11 (1) authorized by law, rule, or court order in the
12 person's jurisdiction to serve process;

13 (2) a disinterested person competent to make an oath
14 of that fact; and

15 (3) has the return of service acknowledged by an
16 officer authorized to administer oaths in the jurisdiction in which
17 the civil process was served.

18 Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a)
19 An applicant for an initial process server license under this
20 chapter must submit a sworn application on a form prescribed by the
21 executive director. To be eligible for a license under this
22 section, an applicant must:

23 (1) be at least 18 years of age;

24 (2) not have been convicted of a misdemeanor involving
25 moral turpitude or a felony;

26 (3) submit the nonrefundable application fee and the
27 license fee; and

1 (4) comply with the requirements adopted under
2 Subsection (b).

3 (b) Each license applicant must provide proof to the
4 department in a manner acceptable to the department of:

5 (1) completion of a department-approved seminar on
6 civil process consisting of at least eight hours of instruction;
7 and

8 (2) maintenance of insurance coverage as required by
9 rules adopted by the executive director.

10 (c) The executive director shall issue a temporary license
11 not later than the 30th day after the date an applicant submits
12 evidence satisfactory to the department that the applicant has
13 properly completed the application, has paid all required fees, and
14 meets all of the qualifications established by this chapter and by
15 rule of the executive director. A temporary license is valid for
16 not more than 90 days after the date of issuance. If, on completion
17 of the license application process, the executive director denies
18 an application for a license, the applicant shall return the
19 applicant's temporary license and immediately stop serving process
20 under this chapter.

21 Sec. 191.053. AGENT REGISTRATION. (a) A person registered
22 under this chapter as the agent of a license holder may execute
23 civil process under this chapter on behalf of the license holder.

24 (b) An applicant for an agent registration shall submit a
25 sworn application to the department on a form prescribed by the
26 executive director. To be eligible for registration under this
27 section, an applicant must:

- 1 (1) be at least 18 years of age;
2 (2) not have been convicted of a misdemeanor involving
3 moral turpitude or a felony; and
4 (3) submit the nonrefundable application fee and the
5 registration fee.

6 Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each
7 applicant for a process server license or an agent registration
8 under this chapter shall disclose to the department in the manner
9 prescribed by the executive director any conviction of the
10 applicant for a misdemeanor involving moral turpitude or a felony.

11 (b) On receipt of an original application for a process
12 server license or agent registration, the department shall conduct
13 a thorough background investigation of each individual applicant to
14 determine whether the applicant is qualified under this chapter.
15 The investigation must include:

16 (1) the submission of fingerprints by the applicant
17 for processing through appropriate local, state, and federal law
18 enforcement agencies; and

19 (2) the examination by the department of law
20 enforcement records maintained by a local, state, or federal law
21 enforcement agency.

22 (c) A background check under this section and the
23 department's consideration of any criminal conviction is governed
24 by:

- 25 (1) this chapter;
26 (2) Section 411.122, Government Code; and
27 (3) Chapter 53, Occupations Code.

1 (d) The conviction of an applicant of a crime does not
2 automatically:

3 (1) disqualify the applicant;

4 (2) require revocation of a license or registration;

5 or

6 (3) require denial of an application for renewal of a
7 license or registration.

8 Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS. (a)

9 The executive director shall issue a process server license or an
10 agent registration to an applicant who complies with the
11 appropriate requirements of this chapter, passes the criminal
12 history record check, and pays all required fees.

13 (b) Except as provided by Subsection (c), the executive
14 director shall issue the license or registration not later than the
15 60th day after the date on which the application is received by the
16 department.

17 (c) If the department is notified by the Department of
18 Public Safety that a criminal history record check affecting an
19 applicant will not be completed within the 60 days prescribed by
20 Subsection (b), the department shall notify the applicant of the
21 delay.

22 Sec. 191.056. INSURANCE REQUIREMENT. The executive
23 director by rule shall prescribe the insurance coverage that a
24 process server license holder must maintain to be eligible for a
25 license under this chapter.

26 Sec. 191.057. TERM OF LICENSES AND REGISTRATION; RENEWAL;
27 AGENT TERMINATION. (a) A license or an agent registration issued

1 under this chapter expires on the second anniversary of the date of
2 issuance.

3 (b) The department shall send a renewal application to each
4 license holder or registered agent not later than the 45th day
5 before the date of expiration of the license or registration.

6 (c) A license holder or registered agent may renew the
7 license or registration by submitting to the department before the
8 expiration date, on a form prescribed by the executive director, a
9 renewal application accompanied by the renewal fee. To renew the
10 license or registration, each license holder and registered agent
11 must also present evidence satisfactory to the department of
12 completion, before the expiration of the license or registration,
13 of a department-approved continuing education seminar consisting
14 of at least eight hours of instruction in civil process.

15 (d) A license holder shall notify the department in writing
16 not later than the 14th day after the date on which the employment
17 of a registered agent by the license holder is terminated.

18 [Sections 191.058-191.100 reserved for expansion]

19 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

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

25 (b) A license holder or registered agent may determine the
26 location of an individual for the purpose of serving civil process.

27 (c) A license holder or registered agent may serve a writ of

1 garnishment, but may not serve a writ of attachment, a writ of
2 sequestration, or a distress warrant.

3 (d) A license holder or registered agent may not serve a
4 civil process in any action in which the license holder or
5 registered agent is an interested party.

6 (e) A license holder or registered agent who is employed by
7 an attorney or a law firm may not serve a civil process relating to
8 an action in which the employing attorney or law firm is counsel to
9 a party.

10 Sec. 191.102. COSTS. A fee charged and collected by a
11 license holder or registered agent for service of process may be
12 charged as costs in a judicial proceeding.

13 Sec. 191.103. PUBLIC SERVANT; OFFICER OF COURT. Each
14 license holder and registered agent shall be considered to be a
15 public servant when performing duties related to serving process
16 and considered to be an officer of the civil courts of this state,
17 but may not be considered to be a peace officer based on that
18 license or registration. An assault on a license holder or
19 registered agent shall be treated as an assault on a public servant.

20 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department
21 shall issue to each license holder and registered agent a unique
22 identification number. The license holder or registered agent
23 shall list that unique number on each return of service made by that
24 person that is filed with the clerk of the appropriate court.

25 (b) The department shall issue to each license holder and
26 registered agent a photo identification card with the person's
27 unique identification number on the card. The department shall

1 determine the size, design, and content of the identification card.
2 The card remains the property of the state and must be returned on
3 demand by the department.

4 [Sections 191.105-191.150 reserved for expansion]

5 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

6 Sec. 191.151. DISCIPLINARY ACTIONS. (a) The executive
7 director may deny, suspend, or revoke a license or registration, as
8 appropriate, and the commission may assess an administrative
9 penalty under Subchapter F, Chapter 51, Occupations Code, on a
10 finding that:

11 (1) a license holder has:

12 (A) failed to maintain the insurance coverage
13 required by this chapter;

14 (B) refused to permit an examination by the
15 department of the records required to be maintained by a license
16 holder under rules adopted under this chapter; or

17 (C) allowed a person to serve process who the
18 license holder knows is not legally authorized to do so; or

19 (2) a license holder or registered agent has:

20 (A) violated this chapter, a rule adopted under
21 this chapter, or an order of the executive director or commission;

22 (B) knowingly made a false or fraudulent return
23 of service; or

24 (C) been convicted of a felony or misdemeanor
25 that directly relates to the duties and responsibilities involved
26 in performing the duties of a process server.

27 (b) Proceedings for the denial, revocation, or suspension

1 of a license or registration, for the imposition of an
2 administrative penalty, and for an appeal from the proceeding are
3 governed by Chapter 51, Occupations Code, and Chapter 2001,
4 Government Code.

5 [Sections 191.152-191.200 reserved for expansion]

6 SUBCHAPTER E. PENALTIES

7 Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an
8 offense if the person practices as a process server or registered
9 agent in violation of this chapter or a rule adopted under this
10 chapter. An offense under this subsection is a felony of the third
11 degree.

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

17 SECTION 2. Section 411.093(a), Government Code, is amended
18 to read as follows:

19 (a) The Texas Department of Licensing and Regulation is
20 entitled to obtain from the department criminal history record
21 information maintained by the department that relates to a person
22 who is:

23 (1) an applicant for a license or the holder of a
24 license under Chapter 2052, Occupations Code [~~the Texas Boxing and~~
25 ~~Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes)]; or~~

26 (2) an applicant for a license or registration or the
27 holder of a license or registration under Chapter 191, Civil

1 Practice and Remedies Code [~~that Act~~].

2 SECTION 3. Notwithstanding Section 191.052, Civil Practice
3 and Remedies Code, as added by this Act, a person who provides proof
4 to the Texas Department of Licensing and Regulation in a manner
5 satisfactory to that department of at least two years' experience
6 in serving civil process before the effective date of this Act is
7 entitled to a license without complying with the educational
8 requirement if the person meets all other requirements under that
9 section.

10 SECTION 4. (a) Except as provided by Subsection (b) of this
11 section, Chapter 191, Civil Practice and Remedies Code, as added by
12 this Act, takes effect September 1, 2003.

13 (b) Sections 191.051 and 191.201, Civil Practice and
14 Remedies Code, as added by this Act, take effect March 1, 2004.

15 SECTION 5. Except as provided by Section 4 of this Act, this
16 Act takes effect September 1, 2003.