

Amend **HB 2491** on page 28, line 24, SECTION 21, by adding the following and by renumbering the subsequent sections appropriately.

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 all process issued or sanctioned by a civil court, except that the term does not include service of any writ that requires the actual taking of possession of a person, property, or thing or an enforcement action required of or directed to a peace officer related to the taking of possession of a person, property, or thing.
- (3) "Commission" means the Texas Commission of Licensing and Regulation.
- (4) "Constable" means a constable, deputy constable, or reserve deputy constable.
- (5) "Department" means the Texas Department of Licensing and Regulation.
- (6) "Executive director" means the executive director of the department.
- (7) "Person" means an individual.
- (8) "Private process server" means a person who serves or offers to serve civil process
- (9) "Public servant" has the meaning assigned by Section 1.07, Penal Code.
- (10) "Sheriff" means a sheriff, deputy sheriff, or reserve deputy sheriff.

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

(b) This chapter does not apply to an investigator who is a peace officer employed by a county or district attorney in this state engaged in the discharge of that person's official duties or in the delivery of nonjudicial notices. An investigator described by this subsection who serves civil process other than in the performance of official duties must be licensed under this chapter.

(c) This chapter does not limit or restrict the service of process in this state as provided by a court order in a specific civil case in which the presiding magistrate or judge has determined the credibility of the person designated to serve the process. A court may not issue a blanket or standing order authorizing service of process.

(d) This chapter does not apply to service of a subpoena by a court reporter certified under Chapter 52, Government Code.

[Sections 191.003-191.050 reserved for expansion]

#### SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 191.051. LICENSE REQUIRED. (a) Except as provided by Section 191.002, a person may not serve civil process in this state unless the person is licensed under this chapter.

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

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

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

(3) makes a return of service under a declaration under penalty of perjury.

(c) A person may not represent that the person is a licensed private process server unless the person is licensed under this chapter.

Sec. 191.052. LICENSE APPLICATION. (a) An applicant for a

process server license under this chapter must submit an application on a form prescribed by the commission. To be eligible for a license under this section, an applicant must:

- (1) be a least 18 years of age;
- (2) demonstrate honesty, trustworthiness, and integrity;
- (3) submit the nonrefundable application fee; and
- (4) comply with the requirements adopted under Subsection (b).

(b) Each license applicant must provide proof to the department in a manner acceptable to the department of completion of a department-approved 10-hour course on civil process consisting of a least eight hours of instruction on service of process and two hours of instruction on department regulation and rules.

Sec. 191.053. CRIMINAL HISTORY RECORD CHECK. (a) Each applicant for a process server license under this chapter shall disclose to the department in the manner prescribed by the commission any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

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

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

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

(c) On receipt of an application for renewal of a process server license, the department shall conduct a background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. The investigation must include examination by the department of law enforcement records maintained by a local, state, or federal law enforcement agency.

(d) A background check under this section and the

department's consideration of any criminal conviction is governed by:

- (1) this chapter;
- (2) Sections 411.093 and 411.122, Government Code; and
- (3) Chapter 53, Occupations Code.

(e) The conviction of an applicant of a crime does not automatically;

- (1) disqualify the applicant;
- (2) require revocation of a license; or
- (3) require denial of an application for renewal of a license.

(f) 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 shall be considered on the basis of the criteria set forth in Subsections (d) and (e).

Sec. 191.054. ISSUANCE OF LICENSES. (a) The department shall issue a process server license 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) Except as provided by Subsection (c), the department shall issue the license no later than the 60th day after the date on which the application is received by the department.

(c) If the department 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), the department shall notify the applicant of the delay.

Sec. 191.055. TERM OF LICENSE; RENEWAL. (a) A license issued under this chapter expires on the first anniversary of the date of issuance.

(b) The department shall send a renewal notice to each license holder not later than the 90th day before the date of expiration of the license.

(c) A license holder may renew the license by submitting to the department before the expiration date, on a form prescribed by the commission, a renewal application accompanied by the renewal

fee. To renew a license, the license holder must also present evidence satisfactory to the department of completion, before the expiration of the license, of department-approved continuing education consisting of at least four hours of instruction.

[Sections 191.056-191.100 reserved for expansion]

#### SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A license holder may serve civil process in the manner provided by law for service by sheriffs and constables. The person may serve the process anywhere in this state.

(b) A license holder may determine the location of an individual for the purpose of serving civil process.

(c) A license holder may serve all civil process, except for a citation in an action of forcible entry and detainer or a civil process requiring that an enforcement action be physically enforced by the person delivering the civil process.

(d) A license holder may not serve a civil process in any action in which the license holder is an interested party.

(e) An employee of an attorney or a law firm may not serve a civil process, except a subpoena under Rule 176, Texas Rules of Civil Procedure, in an action in which the employing attorney or law firm is counsel to a party.

(f) A license holder may not have 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. A weapon may not be visible during the delivery of civil process.

Sec. 191.102. COSTS. A fee charged and collected by a license holder for service of process may be charged as costs in a judicial proceeding. Fees charged by a license holder for service of process exceeding the service of process fees set by the commissioners court in the county in which the case is pending may not be charged as costs in a judicial proceeding unless otherwise approved by the judge presiding over the case.

Sec. 191.103. PUBLIC SERVANT. An assault on a license holder during the delivery of civil process shall be treated as an assault on a public servant. 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) The department shall issue to each license holder a unique identification number:

(b) The unique identification number of the private process server must be included on or attached to each valid process return and each copy of process served. The license holder is not required to provide with the service any other department information. Failure to include the person's unique identification number on each valid process return or on the copy does not render the service of process invalid.

(c) The department shall issue to each license holder a photo identification card with the person's unique identification number on the card. The department shall determine the size, design, and content of the identification card. The card remains the property of the state and must be returned on demand by the department.

(d) A license holder shall produce the license holder's identification card to any person requesting it during the performance of service of process.

(e) An identification card, badge, insignia, seal, patch, or other form of identification that may be construed to be that of a peace officer may not be worn or displayed by a license holder.

Sec. 191.105. RETURN OF SERVICE OF PROCESS. The return of service completed by the license holder may be attached to a court-issued return of service. The return of service is not required to be verified but must be signed by the license holder, under penalty of perjury, verifying the truthfulness of the return of any process delivered. The return of service shall be returned to the party requesting service or, at the party's direction, filed with the appropriate court.

[Sections 191.106-191.150 reserved for expansion]

#### SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission may deny, suspend, or revoke a license and the commission may impose an administrative penalty under Subchapter F, Chapter 51, Occupations Code, on a finding that the license holder has:

(1) refused to permit an examination by the department of the records required to be maintained under rules adopted by the commission;

(2) violated this chapter, a rule implementing this chapter, or an order of the executive director or commission;

(3) knowingly made a false or fraudulent return of service; or

(4) been convicted of a misdemeanor that directly relates to the duties and responsibilities involved in performing the duties of a process server or of any felony.

(b) Proceedings for the denial, revocation, or suspension of a license, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51, Occupations Code, and Chapter 2001, Government Code.

(c) The commission may not suspend or revoke a license or impose an administrative penalty on the basis of a determination that the license holder has:

(1) made not more than three unintentionally defective returns of service in any 12-month period as long as a corrected return is made to the appropriate recipient within a reasonable time; or

(2) effected service employing a deceptive or misleading method as long as the method is legal.

[Sections 191.152-191.200 reserved for expansion]

#### SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an offense if the person practices as a private process server and is not authorized to do so under this chapter. An offense under this subsection is a Class C misdemeanor, unless it is shown on the trial of the offense that the defendant has previously been convicted under this subsection, in which the offense is a Class A misdemeanor.

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

SECTION 2. Subsection (d), Section 154.005, Local Government Code, is amended to read as follows:

(d) A constable may receive, in addition to Subsection (c), all fees, commissions, or payments for delivering notices required by Section 24.005, Property Code, relating to eviction actions. Notices may only be delivered when not in conflict with the official duties and responsibilities of the constable. A constable delivering said notices must not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while delivering said notices. ~~[For purposes of collecting fees for serving said notices, a constable is considered a private process server.]~~

SECTION 3. (a) Except as provided by Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 2005.

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

SECTION 4. Notwithstanding Section 191.052, Civil Practice and Remedies Code, as added by this Act, a person who provides proof to the Texas Department of Licensing and Regulation in a manner satisfactory to the department that the person is named or included, by the terms of standing orders promulgated by any county of this state that required named persons to have completed process server training equivalent to that required by Section 191.052, Civil Practices and Remedies Code, as added by this Act, as one authorized to serve civil process in this state, is entitled to a license under this chapter without complying with the requirement of instruction on service of civil process if the person meets all other requirements of that section, including the completion of two hours of instruction on law and rules.

SECTION 5. Except as provided by Section 3 of this Act, this Act takes effect September 1, 2005.