

BILL ANALYSIS

C.S.S.B. 165
By: Wentworth
Judiciary
Committee Report (Substituted)

BACKGROUND 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 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 uniform qualification to serve process throughout the state. C.S.S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution. However, the rulemaking authority of the Texas Department of Licensing and Regulation is implicitly expanded to cover the subject matter of the act. It is anticipated that rules will be adopted by the TDLR to implement this bill.

ANALYSIS

The bill establishes a statewide licensing requirement and sets uniform standards for private process servers. Civil process is defined to include all process issued or sanctioned by a trial level court. All unexempted persons are prohibited from serving civil process unless the person is licensed, and the bill contains requirements for out of state service of Texas civil process. To obtain a license, a person must be at least 18 years old, demonstrate honesty, trustworthiness and integrity, pay a fee and complete a 10 hour course of instruction. In addition, applicants must disclose convictions for felonies and misdemeanors involving moral turpitude. The TDLR will conduct local, state and federal criminal background checks on all applicants. The license must be renewed annually and renewal requires 4 hours on continuing education and payment of another fee. A license holder may serve all civil process except for a citation in an action of forcible entry and detainer and process requiring that physical enforcement action be taken by the person delivering the process. Law firm employees and certified court reporters are exempted from the act with regard to service of subpoenas under Rule 176. License holders are required to produce their TDLR issued identification cards to any person requesting it during service. Servers may not carry a firearm unless they are peace officers or honorably retired peace officers. Enforcement of the act is by license suspension or revocation or by criminal prosecution. A first offense for violation is a class C misdemeanor. Subsequent offenses are class A.

The act does not apply to a sheriff or constable while on duty. The act prohibits standing or so called blanket orders authorizing service of process, but retain the right to issue the right to unlicensed persons to serve process in individual cases.

EFFECTIVE DATE

Sections 191.051 and 191.201, Civil Practice and Remedies Code, as added by the act, take effect March 1, 2006, otherwise the act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes the dual licensing requirement of the original by eliminating the requirement of a business license. The substitute deletes references in the original to business

registration. The substitute also deletes several types of process from the prohibitions in the original bill against service by private process servers and adds a prohibition against service of civil process requiring that an enforcement action be physically enforced by the person delivering the civil process. The requirement that returns of service be made within 5 business days is deleted. The exception from the act for court reporters is limited to subpoenas. The substitute reduces the continuing education requirement for renewal of a license to four hours from six hours. The provision in the original bill for summary suspension of a license is deleted. The substitute contains restrictions on the ability of the Department of Licensing and Regulation to suspend a license based on good faith mistakes in returns of service or obtaining service through deceptive means. The substitute amends the provision regarding law firm employees to allow them to serve subpoenas under Rule 176. The substitute amends the criminal penalty to make a first offense for serving process without a license a Class C rather than a Class A misdemeanor. Subsequent offenses would be Class A misdemeanors. The substitute contains a new section providing an exemption to certain private process servers applying for licenses from a portion of the initial education requirements.