

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 all process issued or sanctioned by a civil court. 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

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) "Person" means an individual.

9 (8) "Private process server" means a person who, on
10 behalf of a private process service business, serves or offers to
11 serve civil process.

12 (9) "Private process service business" means a person
13 or business entity registered with the department as a business
14 that serves or offers to serve civil process.

15 (10) "Public servant" has the meaning assigned by
16 Section 1.07, Penal Code.

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

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

24 (b) This chapter does not apply to an investigator who is a
25 peace officer employed by a county or district attorney in this
26 state engaged in the discharge of that person's official duties or
27 in the delivery of nonjudicial notices. An investigator described

1 by this subsection who serves civil process other than in the
2 performance of official duties must be licensed or registered under
3 this chapter.

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

10 (d) This chapter does not apply to a court reporter
11 certified under Chapter 52, Government Code.

12 [Sections 191.003-191.050 reserved for expansion]

13 SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

14 Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a)

15 Except as provided by Section 191.002, a person may not serve civil
16 process in this state unless the person is licensed under this
17 chapter and serves the process through a private process service
18 business.

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

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

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

26 (3) returns to the issuing court, not later than the
27 10th business day after the date service is completed, a sworn

1 return of service verifying the truthfulness of the return.

2 (c) A person or business entity may not represent that the
3 person or business entity is a private process server or private
4 process service business unless the person is licensed, or the
5 business entity is registered, under this chapter.

6 Sec. 191.052. PRIVATE PROCESS SERVICE BUSINESS
7 APPLICATION. An applicant for registration as a private process
8 service business must submit an application on a form prescribed by
9 the commission. To be eligible to register under this section, the
10 applicant must:

11 (1) submit the nonrefundable application fee; and

12 (2) have a person licensed under this chapter assigned
13 as the responsible party for the business.

14 Sec. 191.053. LICENSE APPLICATION. (a) An applicant for a
15 process server license under this chapter must submit an
16 application on a form prescribed by the commission. To be eligible
17 for a license under this section, an applicant must:

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

19 (2) demonstrate the applicant's honesty,
20 trustworthiness, and integrity;

21 (3) submit the nonrefundable application fee; and

22 (4) comply with the requirements adopted under
23 Subsection (b).

24 (b) Each license applicant must provide proof to the
25 department in a manner acceptable to the department of completion
26 of a department-approved 10-hour course on civil process and
27 regulation and rules consisting of at least eight hours of

1 instruction on service of process and two hours of instruction on
2 department regulation and rules.

3 Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each
4 applicant for a process server license under this chapter shall
5 disclose to the department in the manner prescribed by the
6 commission any conviction of the applicant for a misdemeanor
7 involving moral turpitude or a felony.

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

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

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

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

25 (d) A background check under this section and the
26 department's consideration of any criminal conviction is governed
27 by:

1 (1) this chapter;

2 (2) Sections 411.093 and 411.122, Government Code; and

3 (3) Chapter 53, Occupations Code.

4 (e) The conviction of an applicant of a crime does not
5 automatically:

6 (1) disqualify the applicant;

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

8 or

9 (3) require denial of an application for renewal of a
10 license or registration.

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

15 Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS.

16 (a) The department shall issue a business registration or process
17 server license to an applicant who complies with the appropriate
18 requirements of this chapter, passes the criminal history record
19 check, as applicable, and pays all required fees.

20 (b) Except as provided by Subsection (c), the department
21 shall issue the license or registration not later than the 60th day
22 after the date on which the application is received by the
23 department.

24 (c) If the department is notified by the Department of
25 Public Safety that a criminal history record check affecting an
26 applicant will not be completed within the 60 days prescribed by
27 Subsection (b), the department shall notify the applicant of the

1 delay.

2 Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL;
3 RESPONSIBLE PARTY TERMINATION. (a) A license or business
4 registration issued under this chapter expires on the first
5 anniversary of the date of issuance.

6 (b) The department shall send a renewal notice to each
7 license holder and registered business not later than the 90th day
8 before the date of expiration of the license or registration.

9 (c) A license holder or registered business may renew the
10 license or registration by submitting to the department before the
11 expiration date, on a form prescribed by the commission, a renewal
12 application accompanied by the renewal fee. To renew a license, the
13 license holder must also present evidence satisfactory to the
14 department of completion, before the expiration of the license, of
15 a department-approved continuing education seminar consisting of
16 at least four hours of instruction in civil process and two hours of
17 instruction in department rules.

18 (d) A registered business shall notify the department in
19 writing not later than the 14th day after the date on which the
20 employment of a private process server designated as a responsible
21 party is terminated.

22 [Sections 191.057-191.100 reserved for expansion]

23 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

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

1 state.

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

4 (c) A license holder may serve all civil process, except for
5 a writ of attachment, writ of sequestration, distress warrant, writ
6 of forcible entry and detainer, temporary ex parte protective
7 order, protective order, writ of habeas corpus, writ of mandamus,
8 trial of right of property, turnover order, or writ of certiorari.

9 (d) A license holder may not serve a civil process in any
10 action in which the license holder or the registered business that
11 employs the license holder is an interested party.

12 (e) An employee of an attorney or a law firm may not serve a
13 civil process, except a subpoena for a trial or for an oral
14 deposition, relating to an action in which the employing attorney
15 or law firm is counsel to a party.

16 (f) A license holder may not have a firearm on the license
17 holder's person when in the act of serving civil process, unless the
18 license holder is also a peace officer or an honorably retired peace
19 officer authorized to carry a firearm. A weapon may not be visible
20 during the delivery of civil process.

21 (g) A license holder may not be assigned as the responsible
22 party for more than one registered business in which the person does
23 not have an ownership interest of more than 50 percent of the
24 business.

25 Sec. 191.102. COSTS. A fee charged and collected by a
26 license holder or registered business for service of process may be
27 charged as costs in a judicial proceeding. Fees charged by a

1 license holder or registered business for service of process
2 exceeding the service of process fees set by the commissioners
3 court in the county in which the case is pending, may not be charged
4 as costs in a judicial proceeding unless otherwise approved by the
5 judge presiding over the case.

6 Sec. 191.103. PUBLIC SERVANT. An assault on a license
7 holder during the delivery of civil process shall be treated as an
8 assault on a public servant. A county is not liable for the actions
9 of a license holder unless the license holder is an employee of the
10 county.

11 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department
12 shall issue to each license holder and registered business a unique
13 identification number. The license holder and registered business
14 shall provide that unique number with each return of service made by
15 that person for the registered business that is filed with the clerk
16 of the appropriate court.

17 (b) The unique number of the private process server and the
18 registered business on behalf of which the server is working must be
19 provided to each person served. A license holder shall include the
20 license holder's unique identification number on each valid process
21 return and on each delivery copy of process served. Failure to
22 include the registered business's or person's unique identification
23 number on each valid process return does not render the service of
24 process invalid.

25 (c) The department shall issue to each license holder a
26 photo identification card with the person's unique identification
27 number on the card. The department shall determine the size,

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

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

7 (e) An identification card, badge, insignia, seal, patch,
8 or other form of identification that may be construed to be that of
9 a peace officer or employee of a county or state agency may not be
10 worn or displayed by a license holder.

11 Sec. 191.105. RETURN OF SERVICE OF PROCESS. A registered
12 business or license holder shall return to the issuing court a sworn
13 return of service verifying the truthfulness of the return for any
14 process served in this state. The return of service must be
15 returned to the issuing court not later than the fifth business day
16 after the date service is completed.

17 [Sections 191.106-191.150 reserved for expansion]

18 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

19 Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission
20 may deny, suspend, or revoke a license or registration, as
21 appropriate, and the commission may impose an administrative
22 penalty under Subchapter F, Chapter 51, Occupations Code, on a
23 finding that:

24 (1) a registered business has:

25 (A) refused to permit an examination by the
26 department of the records required to be maintained by a registered
27 business under rules adopted under this chapter; or

1 (B) allowed a person to serve process on the
2 registered business's behalf while knowing that the person is not
3 legally authorized to do so; or

4 (2) a license holder has:

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

7 (B) knowingly made a false or fraudulent return
8 of service; or

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

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

17 Sec. 191.152. SUMMARY SUSPENSION. (a) On receiving
18 written notice from the Department of Public Safety of the State of
19 Texas or another law enforcement agency that a person licensed
20 under this chapter has been arrested for or charged with an offense
21 constituting a Class B misdemeanor or a greater offense, the
22 department may summarily suspend the person's license.

23 (b) To initiate a proceeding under Subsection (a), the
24 department must serve notice to the person and to any registered
25 business that has assigned the person as a responsible party. The
26 notice must:

27 (1) inform the person of the right to a hearing on the

1 summary suspension;

2 (2) state the alleged violations that constitute the
3 grounds for the summary suspension;

4 (3) indicate the date and place of the hearing on the
5 summary suspension, which must be not earlier than the fifth day and
6 not later than the 14th day after the date notice is issued;

7 (4) be personally served on the person or mailed to the
8 person by certified or registered mail, return receipt requested,
9 to the individual's mailing address as it appears on department
10 records; and

11 (5) be sent by registered or certified mail, return
12 receipt requested, to any registered business required to be
13 notified.

14 (c) The suspension is effective at the time the notice is
15 served.

16 (d) At the summary suspension hearing, the individual may
17 show cause why, pending final hearing on the suspension, the
18 suspension should not continue.

19 (e) A final hearing may be scheduled at a time after the
20 final disposition of the charges that resulted in the summary
21 suspension.

22 (f) Chapter 2001, Government Code, does not apply to a
23 proceeding under this section, except for the final administrative
24 hearing.

25 (g) The dismissal of a complaint, information, or
26 indictment, or an acquittal, releases the person from the automatic
27 grounds for summary suspension under this section.

1 [Sections 191.153-191.200 reserved for expansion]

2 SUBCHAPTER E. PENALTIES

3 Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an
4 offense if the person practices as a private process server and is
5 not authorized to do so under this chapter. An offense under this
6 subsection is a Class A misdemeanor.

7 (b) A person commits an offense if the person knowingly or
8 intentionally falsifies a return of civil process or fails to
9 produce the identification card to a person requesting it during
10 the service of process. An offense under this subsection is a Class
11 A misdemeanor unless the person's intent is to defraud or harm
12 another, in which event the offense is a state jail felony.

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

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

26 SECTION 3. (a) Except as provided by Subsection (b) of
27 this section, Chapter 191, Civil Practice and Remedies Code, as

1 added by this Act, takes effect September 1, 2005.

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

4 SECTION 4. Except as provided by Section 3 of this Act, this
5 Act takes effect September 1, 2005.