

By: Gallegos

S.B. No. 666

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of service of process; providing criminal and administrative 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 notice, or a subpoena for a trial or for an oral deposition. The term does not include service of written interrogatories, service of a writ that requires the actual taking of possession of a person, property, or thing, or delivery of a notice to vacate under Section 24.005, Property Code.

(3) "Commission" means the Texas Commission of

1 Licensing and Regulation.

2 (4) "Constable" means a constable, a deputy constable,
3 or a reserve deputy constable described by Article 2.12(2), Code of
4 Criminal Procedure.

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

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

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

12 (8) "Person" means an individual.

13 (9) "Sheriff" means a sheriff, a deputy sheriff, or a
14 reserve deputy sheriff described by Article 2.12(1), Code of
15 Criminal Procedure.

16 Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter
17 does not apply to a sheriff or constable who serves civil process in
18 the performance of the person's official duties or other than in the
19 performance of the person's official duties.

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

22 (c) This chapter does not apply to a court reporter
23 certified under Chapter 52, Government Code.

24 [Sections 191.003-191.050 reserved for expansion]

25 SUBCHAPTER B. LICENSE REQUIREMENTS

26 Sec. 191.051. LICENSE REQUIRED. (a) A person may not
27 serve civil process in this state unless the person is licensed

1 under this chapter.

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

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

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

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

12 Sec. 191.052. LICENSE APPLICATION; GRACE PERIOD. (a) An
13 applicant for an initial process server license under this chapter
14 must submit a sworn application on a form prescribed by the
15 commission. To be eligible for a license under this section, an
16 applicant must:

17 (1) be at least 21 years of age unless the person has:

18 (A) completed and received credit for at least 60
19 hours of study at an accredited college or university; or

20 (B) received an honorable discharge from the
21 United States armed forces after at least two years of service; and

22 (2) not have been convicted of a misdemeanor involving
23 moral turpitude or a felony or have received probation, deferred
24 adjudication, or community supervision under the laws of this or
25 another state or under federal law;

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 course with
6 specified learning objectives on civil process consisting of at
7 least 12 hours of instruction;

8 (2) passing a written exam proctored by an independent
9 testing center; and

10 (3) maintenance of insurance coverage as required by
11 rules adopted by the commission.

12 (c) A person who has filed a license application under this
13 chapter may serve civil process while the person's application is
14 being considered by the department. This grace period ends
15 immediately when the department issues the person a license under
16 this chapter or disapproves the person's application or when the
17 person withdraws the person's application from consideration. The
18 commission shall take punitive action against any person who
19 continues to serve civil process after the person's license
20 application has been withdrawn or denied. During the grace period,
21 an applicant's failure to comply with the requirements of the
22 application process, the insurance requirements, the standards of
23 qualification for license issuance, and other requirements under
24 this chapter will result in the denial of the person's application.

25 Sec. 191.053. AGENTS PROHIBITED. A person may not act as
26 the agent of a license holder to execute civil process on behalf of
27 the license holder.

1 Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each
2 applicant for a process server license under this chapter shall
3 disclose to the department, in the manner prescribed by the
4 commission, any conviction of the applicant for a misdemeanor
5 involving moral turpitude or a felony or whether the applicant has
6 received deferred adjudication or been placed on community
7 supervision as a result of a misdemeanor involving moral turpitude
8 or a felony.

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

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

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

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

23 (1) this chapter;

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

25 (3) Chapter 53, Occupations Code.

26 Sec. 191.055. ISSUANCE OF LICENSES. (a) The department
27 shall issue a process server license to an applicant who complies

1 with the appropriate requirements of this chapter, passes the
2 criminal history record check, and pays all required fees.

3 (b) Except as provided by Subsection (c), the department
4 shall issue or deny the license not later than the 60th day after
5 the date on which the application is received by the department.

6 (c) If the department is notified by the Department of
7 Public Safety that a criminal history record check affecting an
8 applicant will not be completed within the 60 days prescribed by
9 Subsection (b), the department shall notify the applicant of the
10 delay.

11 Sec. 191.056. INSURANCE REQUIREMENT. (a) The commission
12 by rule shall prescribe the insurance coverage that a process
13 server license holder must maintain to be eligible for a license
14 under this chapter.

15 (b) The rules adopted under Subsection (a) shall require:

16 (1) a license holder to maintain insurance coverage in
17 an amount set by the commission which shall not be less than \$1
18 million;

19 (2) a license holder to annually submit to the
20 commission, in the form and manner specified by the commission,
21 proof of renewal of required insurance coverage; and

22 (3) the commission to approve insurance policies and
23 policy renewals contracted for by license holders and applicants.

24 Sec. 191.057. TERM OF LICENSES; RENEWAL. (a) A license
25 issued under this chapter expires on the first anniversary of the
26 date of issuance.

27 (b) The department shall send a renewal application to each

1 license holder not later than the 45th day before the date of
2 expiration of the license.

3 (c) A license holder may renew the license by submitting to
4 the department before the expiration date, on a form prescribed by
5 the commission, a renewal application accompanied by the renewal
6 fee. To renew the license, each license holder must also present
7 evidence satisfactory to the department of completion, before the
8 expiration of the license, of a department-approved continuing
9 education seminar consisting of at least 12 hours of instruction in
10 civil process.

11 [Sections 191.058-191.100 reserved for expansion]

12 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

13 Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A
14 license holder or registered agent may serve civil process issued
15 by the courts of this state in the manner provided by law for
16 service by sheriffs and constables, including Rule 6, Texas Rules
17 of Court.

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

20 (c) A license holder may not execute writs, serve forcible
21 entry and detainer citations, or serve any writ or order related to
22 an allegation of or the prevention of family violence under the
23 Family Code.

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

26 (e) A license holder who is employed by an attorney or a law
27 firm may not serve a civil process relating to an action in which

1 the employing attorney or law firm is counsel to a party.

2 Sec. 191.102. COSTS. A fee charged and collected by a
3 license holder for service of process may be charged as costs in a
4 judicial proceeding. A license holder may charge a fee set by the
5 commissioners court in the county where the process was issued or as
6 prescribed by any other law or statute in this state.

7 Sec. 191.103. PUBLIC SERVANT. A license holder shall
8 be considered to be a public servant when performing duties related
9 to serving process, but shall not be considered to be a peace
10 officer or an officer of the court based on that license.

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

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

22 (c) A license holder shall include the person's unique
23 identification number on each valid process return and on each
24 delivery copy of process served.

25 (d) A license holder shall wear the person's identification
26 card in a visible manner at all times when performing the function
27 of a private process server and shall produce the identification to

1 any person requesting it during the performance of service of
2 process.

3 (e) An identification card, badge, insignia, seal, patch,
4 or other form of identification that may be construed to be that of
5 a peace officer or employee of any county or state agency may not be
6 worn or displayed by a license holder. A license holder who
7 violates this subsection commits an offense under Section 37.11 or
8 37.12, Penal Code. The commission shall pursue prosecution against
9 any person who violates this subsection.

10 [Sections 191.105-191.150 reserved for expansion]

11 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

12 Sec. 191.151. DISQUALIFICATION; DISCIPLINARY ACTIONS.

13 (a) The commission shall deny or revoke a license and the
14 commission may impose an administrative penalty under Subchapter F,
15 Chapter 51, Occupations Code, on a finding that:

16 (1) a license holder has:

17 (A) failed to maintain the insurance coverage
18 required by this chapter;

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

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

24 (2) a license holder has:

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

27 (B) knowingly made a false or fraudulent return

1 of service; or

2 (C) been convicted of a misdemeanor involving
3 moral turpitude or a felony or has received probation, deferred
4 adjudication, or community supervision under the laws of this or
5 another state or under federal law.

6 (b) For the purposes of this chapter, a person is considered
7 to have been convicted of a felony if a court enters a conviction or
8 deferred adjudication of guilt against a person on a felony offense
9 regardless of whether:

10 (1) the person's sentence is subsequently probated and
11 the person is discharged from community supervision;

12 (2) an accusation, complaint, information, or
13 indictment against the person is dismissed and the person is
14 released from all penalties and disabilities resulting from the
15 offense; or

16 (3) the person is pardoned for the offense, unless the
17 pardon is granted expressly for subsequent proof of innocence.

18 (c) The commission, on receipt of a certified copy of a
19 court judgment under Article 42.0111, Code of Criminal Procedure,
20 shall note on the person's license records the conviction,
21 probation, deferred adjudication, or community supervision
22 indicated by the judgment.

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

27 [Sections 191.152-191.200 reserved for expansion]

1 SUBCHAPTER E. PENALTIES

2 Sec. 191.201. CRIMINAL PENALTIES. A person commits an
3 offense if the person practices as a process server in violation of
4 this chapter or a rule adopted under this chapter or if the person
5 knowingly or intentionally falsifies a return of civil process. An
6 offense under this section is a felony of the third degree.

7 SECTION 2. Chapter 42, Code of Criminal Procedure, is
8 amended by adding Article 42.0111 to read as follows:

9 Art. 42.0111. JUDGMENT AFFECTING A PRIVATE PROCESS SERVER.
10 If a person licensed under Chapter 191, Civil Practice and Remedies
11 Code, is charged with the commission of a felony and a court that
12 knows the person is licensed under that chapter convicts the person
13 or places the person on probation, deferred adjudication, or
14 community supervision, the clerk of the court shall send to the
15 Texas Commission of Licensing and Regulation, by mail or
16 electronically, the identification number of the person and a
17 certified copy of the court's judgment reflecting that the person
18 has been convicted or placed on probation, deferred adjudication,
19 or community supervision.

20 SECTION 3. Subsections (b) and (d), Section 86.021, Local
21 Government Code, are amended to read as follows:

22 (b) A constable may execute any civil or criminal process
23 throughout the state [~~county in which the constable's precinct is~~
24 ~~located~~] and in other locations as provided by the Code of Criminal
25 Procedure or by any other law.

26 (d) Regardless of the Texas Rules of Civil Procedure, all
27 civil process may be served by a constable anywhere in the state

1 ~~[constable's county or in a county contiguous to the constable's~~
2 ~~county]~~, except that a constable who is a party to or interested in
3 the outcome of a suit may not serve any process related to the suit.

4 SECTION 4. (a) Except as provided by Subsection (b) of
5 this section, this Act takes effect September 1, 2005.

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