

BILL ANALYSIS

Senate Research Center
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S.B. 1276
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Regulating and licensing private process servers provides a mechanism for protecting the public against unreasonable contact with fraudulent process servers and serves to provide added credibility to those process servers.

Since 1978, private process servers have been granted the authority to deliver and serve subpoenas by the Texas Supreme Court. In 2005, the court further expanded the authority of private process servers to deliver all citations under Rule 103, Texas Rules of Criminal Procedure.

As proposed, S.B. 1276 prohibits a person from serving civil process in this state unless the person is licensed under Chapter 191 (Private Process Servers).

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Section 191.056, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Civil Practice and Remedies Code by adding Title 8, as follows:

TITLE 8. CIVIL PROCESS

CHAPTER 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. Defines "civil court," "civil process," "commission," "constable," "department," "executive director," "license holder," "person," and "sheriff."

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

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

(c) Provides that this chapter does not apply to a court reporter certified under Chapter 52 (Court Reporters and Shorthand Reporting Firms), Government Code.

[Reserves Sections 191.003-191.050 for expansion.]

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 191.051. LICENSE REQUIRED. (a) Prohibits a person from serving civil process in this state unless the person is licensed under this chapter.

(b) Authorizes a person who is not a license holder and who is not exempt under Section 191.002 to serve outside this state a civil process issued by a civil court of

this state if the person is authorized by law, rule, or court order in the person's jurisdiction to serve process; is a disinterested person competent to make an oath of that fact; and has the return of service acknowledged by an officer authorized to administer oaths in the jurisdiction in which the civil process was served.

Sec. 191.052. LICENSE APPLICATION; GRACE PERIOD. (a) Requires an applicant for an initial process server license under this chapter to submit a sworn application on a form prescribed by the Texas Commission of Licensing and Regulation (commission). Requires an applicant, to be eligible for a license under this section, to meet certain requirements.

(b) Requires each license applicant to provide proof to Texas Department of Licensing and Regulation (TDLR), in a manner acceptable to TDLR, of completing a TDLR-approved course with specified learning objectives on civil process consisting of at least 12 hours of instruction, passing a written exam proctored by an independent testing center, and maintenance of insurance coverage as required by rules adopted by the commission.

(c) Authorizes a person who has filed a license application under this chapter to serve civil process while the person's application is being considered by TDLR. Provides that this grace period ends immediately when TDLR issues the person a license under this chapter or disapproves the person's application or when the person withdraws the person's application from consideration. Requires the commission to take punitive action against any person who continues to serve civil process after the person's license application has been withdrawn or denied. Provides that during the grace period, an applicant's failure to comply with the requirements of the application process, the insurance requirements, the standards of qualification for license issuance, and other requirements under this chapter will result in the denial of the person's application.

Sec. 191.053. AGENTS PROHIBITED. Prohibits a person from acting as the agent of a license holder to execute civil process on behalf of the license holder.

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license under this chapter to disclose to TDLR, in the manner prescribed by the commission, any conviction of the applicant for a misdemeanor involving moral turpitude or a felony or whether the applicant has received deferred adjudication or been placed on community supervision as a result of a misdemeanor involving moral turpitude or a felony.

(b) Requires TDLR, on receipt of an original application for a process server license, to conduct a thorough background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. Requires that the investigation include the submission of fingerprints by the applicant for processing through appropriate local, state, and federal law enforcement agencies and the examination by TDLR of law enforcement records maintained by local, state, or federal law enforcement agencies.

(c) Provides that a background check under this section and TDLR's consideration of any criminal conviction is governed by this chapter, Sections 411.093 (Access to Criminal History Record Information: Texas Department of Licensing and Regulation) and 411.122 (Access to Criminal History Record Information: Commission on Law Enforcement Officer Standards and Education), Government Code, and Chapter 53 (Consequences of Criminal Conviction), Occupations Code.

Sec. 191.055. ISSUANCE OF LICENSES. (a) Requires TDLR to issue a process server license to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, and pays all required fees.

Sec. 191.056. **INSURANCE REQUIREMENT.** (a) Requires the commission by rule to prescribe the insurance coverage that a process server license holder is required maintain to be eligible for a license under this chapter.

(b) Requires that the rules adopted under Subsection (a) require a license holder to maintain insurance coverage in an amount set by the commission, but not less than a minimum total aggregate of \$1 million for all occurrences; a license holder to annually submit to the commission, in the form and manner specified by the commission, proof of renewal of required insurance coverage; and the commission to approve insurance policies and policy renewals contracted for by license holders and applicants.

Sec. 191.057. **TERM OF LICENSES; RENEWAL.** (a) Provides that a license issued under this chapter expires on the first anniversary of the date of issuance.

(b) Requires TDLR to send a renewal application to each license holder not later than the 45th day before the date of expiration of the license.

(c) Authorizes a license holder to renew the license by submitting to TDLR before the expiration date, on a form prescribed by the commission, a renewal application accompanied by the renewal fee. Requires each license holder, to renew the license, to also present evidence satisfactory to TDLR of completion, before the expiration of the license, of a TDLR-approved continuing education seminar consisting of at least 12 hours of instruction in civil process.

[Reserves Sections 191.058-191.100 for expansion.]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

Sec. 191.101. **POWERS AND DUTIES OF LICENSE HOLDERS.** (a) Authorizes a license holder or registered agent to serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables, including Rule 6, Texas Rules of Civil Procedure.

(b) Authorizes a license holder to determine the location of an individual for the purpose of serving civil process.

(c) Prohibits a license holder from executing writs, serving forcible entry and detainer citations, or from serving any writ or order related to an allegation of or the prevention of family violence under the Family Code.

(d) Prohibits a license holder from serving a civil process in any action in which the license holder is an interested party.

(e) Prohibits a license holder who is employed by an attorney or a law firm from serving a civil process relating to an action in which the employing attorney or law firm is counsel to a party.

Sec. 191.102. **COSTS.** Authorizes a fee charged and collected by a license holder for service of process to be charged as costs in a judicial proceeding. Authorizes a license holder to charge a fee set by the commissioners court in the county where the process was issued or as prescribed by any other law or statute in this state.

Sec. 191.103. **PUBLIC SERVANT.** Requires a license holder to be considered to be a public servant when performing duties related to serving process, but is prohibited from being considered to be a peace officer or an officer of the court based on that license.

Sec. 191.104. **IDENTIFICATION NUMBER.** (a) Requires TDLR to issue to each license holder a unique identification number. Requires the license holder to list that unique number on each return of service made by that person that is filed with the clerk of the appropriate court.

(b) Requires TDLR to issue to each license holder a photo identification card with the person's unique identification number on the card. Requires TDLR to determine the size, design, and content of the identification card. Provides that the card remains the property of the state and is required to be returned on demand by TDLR.

(c) Requires a license holder to include the person's unique identification number on each valid process return and on each delivery copy of process served.

(d) Requires a license holder to wear the person's identification card in a visible manner at all times when performing the function of a private process server and to produce the identification to any person requesting it during the performance of service of process.

(e) Prohibits an identification card, badge, insignia, seal, patch, or other form of identification that may be construed to be that of a peace officer or employee of any county or state agency from being worn or displayed by a license holder. Provides that a license holder who violates this subsection commits an offense under Section 37.11 (Impersonating Public Servant) or 37.12 (False Identification as Peace Officer; Misrepresentation of Property), Penal Code. Requires the commission to pursue prosecution against any person who violates this subsection.

[Reserves Sections 191.105-191.150 for expansion.]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISQUALIFICATION; DISCIPLINARY ACTIONS. (a) Requires the commission to deny or revoke a license and authorizes the commission to impose an administrative penalty under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, on a finding that a license holder has failed to maintain insurance coverage required by this chapter; refused to permit an examination by TDLR of records required to be maintained by a license holder under rules adopted under this chapter; or allowed a person to serve process who the license holder knows is not legally authorized to do so; or a license holder has violated this chapter or a rule adopted under this chapter, or an order by the executive director of the commission; knowingly made a false or fraudulent return of service; or has been convicted of a misdemeanor involving moral turpitude or a felony, or has received probation, deferred adjudication, or community supervision under laws of this or another state or under federal law.

(b) Provides that, for the purpose of this chapter, a person is considered to have been convicted of a felony if a court enters a conviction or deferred adjudication of guilt against a person on a felony offense regardless of whether the person's sentence is subsequently probated and the person is discharged from community supervision; an accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

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

(d) Provides that 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 (Administrative Procedure), Government Code.

[Reserves Sections 191.152-191.200 for expansion.]

SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. Provides that a person commits an offense if the person practices as a process server in violation of this chapter or a rule adopted under this chapter or if the person knowingly or intentionally falsifies a return of civil process. Provides that an offense under this section is a felony of the third degree.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0111, as follows:

Art. 42.0111. JUDGMENT AFFECTING A PRIVATE PROCESS SERVER. Requires the clerk of the court, if a person licensed under Chapter 191, Civil Practice and Remedies Code, is charged with the commission of a felony and a court that knows the person is licensed under that chapter convicts the person or places the person on probation, deferred adjudication, or community supervision, to send to the commission, by mail or electronically, the identification number of the person and a certified copy of the court's judgment reflecting that the person has been convicted or placed on probation, deferred adjudication, or community supervision.

SECTION 3. Amends Sections 86.021(b) and (d), Local Government Code, as follows:

(b) Authorizes a constable to execute any civil or criminal process throughout the state, rather than throughout the county in which the constable's precinct is located, and other locations as provided by the Code of Criminal Procedure or by any other law.

(d) Authorizes all civil process, regardless of the Texas Rules of Civil Procedure, to be served by a constable anywhere in the state, rather than served by a constable in the constable's county or in a county contiguous to the constable's county, except that a constable who is a party to or interested in the outcome of a suit is prohibited from serving any process related to the suit.

SECTION 4. Effective date: Sections 191.051 and 191.201, Civil Practice and Remedies Code, as added by this Act: March 1, 2010.

SECTION 5. Effective date: September 1, 2009.