

By: Hartnett

H.B. No. 397

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, 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

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 serves  
10 or offers to serve civil process.

11 (9) "Public servant" has the meaning assigned by  
12 Section 1.07, Penal Code.

13 (10) "Sheriff" means a sheriff, deputy sheriff, or  
14 reserve deputy sheriff.

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

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

26 (c) This chapter does not limit or restrict the service of  
27 process in this state as provided by a court order in a specific

1 civil case in which the presiding magistrate or judge has  
2 determined the credibility of the person designated to serve the  
3 process. A court may not issue a blanket or standing order  
4 authorizing service of process.

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

7 [Sections 191.003-191.050 reserved for expansion]

8 SUBCHAPTER B. LICENSE REQUIREMENTS

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

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

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

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

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

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

24 Sec. 191.052. LICENSE APPLICATION. (a) An applicant for a  
25 process server license under this chapter must submit an  
26 application on a form prescribed by the commission. To be eligible  
27 for a license under this section, an applicant must:

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

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

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

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

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

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

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

7       (d) A background check under this section and the  
8 department's consideration of any criminal conviction is governed  
9 by:

10           (1) this chapter;

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

12           (3) Chapter 53, Occupations Code.

13       (e) The conviction of an applicant of a crime does not  
14 automatically:

15           (1) disqualify the applicant;

16           (2) require revocation of a license; or

17           (3) require denial of an application for renewal of a  
18 license.

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

23       Sec. 191.054. ISSUANCE OF LICENSES. (a) The department  
24 shall issue a process server license to an applicant who complies  
25 with the appropriate requirements of this chapter, passes the  
26 criminal history record check, as applicable, and pays all required  
27 fees.

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

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

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

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

15       (c) A license holder may renew the license by submitting to  
16 the department before the expiration date, on a form prescribed by  
17 the commission, a renewal application accompanied by the renewal  
18 fee. To renew a license, the license holder must also present  
19 evidence satisfactory to the department of completion, before the  
20 expiration of the license, of department-approved continuing  
21 education consisting of at least four hours of instruction.

22       [Sections 191.056-191.100 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 in the manner provided by law  
26 for service by sheriffs and constables. The person may serve the  
27 process anywhere in this state.

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

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

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

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

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

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

25       Sec. 191.103. PUBLIC SERVANT. An assault on a license  
26 holder during the delivery of civil process shall be treated as an  
27 assault on a public servant. A county is not liable for the actions

1 of a license holder unless the license holder is an employee of the  
2 county.

3 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department  
4 shall issue to each license holder a unique identification number.

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

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

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

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

24 Sec. 191.105. RETURN OF SERVICE OF PROCESS. The return of  
25 service completed by the license holder may be attached to a  
26 court-issued return of service. The return of service is not  
27 required to be verified but must be signed by the license holder,



1 under penalty of perjury, verifying the truthfulness of the return  
2 for any process delivered. The return of service shall be returned  
3 to the party requesting service or, at the party's direction, filed  
4 with the appropriate court.

5 [Sections 191.106-191.150 reserved for expansion]

6 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

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

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

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

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

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

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

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

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

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

7           [Sections 191.152-191.200 reserved for expansion]

8                           SUBCHAPTER E. PENALTIES

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

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

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

23           (d) A constable may receive, in addition to Subsection (c),  
24 all fees, commissions, or payments for delivering notices required  
25 by Section 24.005, Property Code, relating to eviction actions.  
26 Notices may only be delivered when not in conflict with the official  
27 duties and responsibilities of the constable. A constable

1 delivering said notices must not be wearing upon his or her person a  
2 uniform or any insignia which would usually be associated with the  
3 position of constable nor may the constable use a county vehicle or  
4 county equipment while delivering said notices. [~~For purposes of~~  
5 ~~collecting fees for serving said notices, a constable is considered~~  
6 ~~a private process server.~~]

7 SECTION 3. (a) Except as provided by Subsection (b) of  
8 this section, Chapter 191, Civil Practice and Remedies Code, as  
9 added by this Act, takes effect September 1, 2009.

10 (b) Sections 191.051 and 191.201, Civil Practice and  
11 Remedies Code, as added by this Act, take effect March 1, 2010.

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

25 SECTION 5. Except as provided by Section 3 of this Act, this  
26 Act takes effect September 1, 2009.