

BILL ANALYSIS

Senate Research Center
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S.B. 165
By: Wentworth
Jurisprudence
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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 liability insurance to protect the public against fraudulent servers. As proposed, S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

TITLE 8. CIVIL PRACTICES

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," "public servant," "registered agent," and "sheriff."

Sec. 191.002. APPLICABILITY OF CHAPTER. Sets forth applicability of this chapter.

[Reserves Sections 191.003-191.050 for expansion.]

SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

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

(b) Authorizes a person who is not a license holder or registered agent 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 meets certain requirements.

Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a) Requires an applicant for an initial process server license to submit a sworn application on a form prescribed by the Texas Commission of Licensing and Regulation (commission). Requires an applicant to meet certain criteria to be eligible for a license.

(b) Requires each license applicant to provide proof of seminar instruction and insurance coverage to the Texas Department of Licensing and Regulation (department).

(c) Requires the department to issue a temporary license, valid for 90 days, not later than the 30th day after the date an applicant submits satisfactory evidence that the applicant has met all application requirements. Provides that, if the commission denies an application for license, the applicant is required to return the temporary license immediately and stop serving process.

Sec. 191.053. AGENT REGISTRATION. (a) Authorizes the agent of a license holder to execute civil process on behalf of the license holder.

(b) Requires an applicant for an agent registration to submit a sworn application to the department on a form prescribed by the commission. Requires an applicant to meet certain criteria to be eligible for registration.

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license or an agent registration to disclose to the department any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

(b) Requires the department to conduct a thorough background investigation of each individual applicant on receipt of an original application. Provides that the investigation must include certain aspects.

(c) Provides that a background check under this section and the department's consideration of any criminal conviction is governed by certain laws.

(d) Provides that the conviction of an applicant of a crime does not automatically disqualify the applicant, require the revocation of a license or registration, or require the denial of an application for renewal of a license or registration.

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

(b) Requires the department to issue licenses or registrations not later than the 60th day after the date on which the application is received, except as provided by Subsection (c).

(c) Requires the department to notify the applicant of a delay in the event that the Department of Public Safety cannot complete the criminal history record check within 60 days.

Sec. 191.056. INSURANCE REQUIREMENT. Requires the commission, by rule, to prescribe the insurance coverage that a process server license holder must maintain to be eligible for a license.

Sec. 191.057. TERM OF LICENSES AND REGISTRATION; RENEWAL; AGENT TERMINATION. (a) Provides timeline for license or agent registration expiration.

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

(c) Sets forth guidelines for the renewal of a license or registration.

(c) Requires a license holder to notify the department in writing not later than the 14th day after the date on which the employment of a registered agent by the license holder is terminated.

[Reserves Sections 191.058-191.100 for expansion.]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

Sec. 191.101. **POWERS AND DUTIES OF LICENSE HOLDERS AND REGISTERED AGENTS.** (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 on any day of the week anywhere in the state.

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

(c) Authorizes a license holder or registered agent to serve a writ of garnishment but prohibits said individual from serving a writ of attachment, a writ of sequestration, or a distress warrant.

(d) Prohibits a license holder or registered agent from serving a civil process in any action in which said person is an interested party.

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

Sec. 191.102. **COSTS.** Provides that a fee charged and collected by a license holder or registered agent for service of process may be charged as costs in a judicial proceeding.

Sec. 191.103. **PUBLIC SERVANT; OFFICER OF COURT.** Requires each license holder and registered agent to be considered to be a public servant when performing duties related to serving process and considered to be an officer of the civil courts of this state, but may not be considered to be a peace officer based on that license or registration. Requires an assault on a license holder or registered agent to be treated as an assault on a public servant.

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

(b) Sets forth requirements for the issuance, content, and return of personal identification cards.

[Reserves Sections 191.105-191.150 for expansion.]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. **DISCIPLINARY ACTIONS.** (a) Authorizes the commission to deny, suspend, or revoke a license or registration and to impose an administrative penalty under Subchapter F, Chapter 51 (Administrative Penalty), Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

(b) Provides that proceedings for the denial, revocation, or suspension of a license or registration, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51 (Texas Department of Licensing and Regulation), 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. (a) Provides that a person commits an offense if the person practices as a process server or registered agent in violation of this chapter and that such an offense is a felony of the third degree.

(b) Provides that a person commits an offense if the person knowingly or intentionally falsifies a return of civil process and that such an offense is a Class A misdemeanor or, in certain situations, a state jail felony.

SECTION 2. Provides that a person who provides proof to the Texas Department of Licensing and Regulation of at least two years' experience in serving civil process before the effective date of this Act is entitled to a license without complying with the educational requirement if the person meets all other requirements.

SECTION 3. (a) Provides that, except as set forth in Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, takes effect September 1, 2005.

(b) Provides that Sections 191.051 and 191.201, Civil Practices and Remedies Code, as added by this Act, take effect March 1, 2006.

SECTION 4. Effective date: September 1, 2005, except as provided by SECTION 3 of this Act.