

LEGISLATION TO LICENSE PROCESS SERVERS PENDING IN THREE STATES



Alan H. Crowe

Bills to license private process servers are now pending in Hawaii, Tennessee, and Texas.

HAWAII

The Hawaii legislation (House Bill 979) was introduced on 2/6/03 and is currently in the House Judiciary Committee. The legislation would establish a Civil Process Commission which would administer the service of civil process throughout the State.

Proposed Section 634-C of the Hawaii Revised Statutes provides that any natural person who makes more than 10 services within the State during one calendar year for compensation, shall file and maintain a verified certificate of registration as a process server with the civil process commission.

Private process server applicants are required to 1) be a United States citizen; 2) have a high school diploma or equivalent; 3) be at least 21 years of age; 4) possess a valid driver's license; 5) pass a 25 question examination demonstrating knowledge of the Hawaii Rule of Civil Procedure; 6) be bonded for not less than \$25,000 and 7) pay an annual registration fee of \$100.

The legislation is replete with mandatory requirements concerning professionalism in such matters as the maintenance of records, preservation of client confidentiality, personal dress and appearance, and the process server's ethical conduct in dealing with the client and in serving the papers. There's also a requirement that the process server "be courteous and refrain from using profanity or vulgarity in contact with others."

TENNESSEE

The Tennessee legislation (House Bill 1898) is known as the "Private Process Servers Regulatory Act." It would make it an offense for any individual to serve process in

Tennessee unless he or she acquired a license as a licensed process server. The license would permit the process server to serve any civil warrant, writ, garnishment or any other papers issued by the general sessions court.

Licenses and badges will be issued by the secretary of state and each licensee will be given an identification number which the licensee must affix to all returns made to the courts. The licensing fee will be no more than \$200 and the annual renewal fee no more than \$100.

The legislation does not specify the qualifications required to be a licensed process server, but I am informed by **Charlie Fineberg**, President of the Tennessee Association of Professional Process Servers (TAPPS) that there will be no requirements for testing or continuing education.

Members may recall that the Tennessee Association last year, after years of struggle, was able to pass legislation permitting any person 18 years of age and not a party to serve civil process in general sessions court. This ended the sheriffs' long-time stranglehold over the local licensing of process servers.

When asked why TAPPS chose to introduce this new legislation for statewide licensing, Mr. Fineberg explained it was necessary because many citizens in their area simply won't believe you're a legitimate process server unless you can show them a license and a badge.

TEXAS

The Texas legislation (House Bill 1741) is the third time in four years that the Texas Association has attempted to get licensing legislation in Texas. Prior efforts in 1999 and 2001 came close, but didn't make it. This time, however, there's a general feeling that it's all going to come together.

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The Bill proposes two forms of licenses - a process server license and an agent registration for those individuals who serve civil process on behalf of the license holder.

Applicants for a process server license must be at least 18 years of age and not have been convicted of a felony or a misdemeanor involving moral turpitude. Additionally, the applicant must have completed a seminar on civil process consisting of at least 8 hours of instruction and must have insurance coverage as required by rules to be adopted by the executive director. Those applicants, however, who can provide proof to the department of at least two years in serving civil process before the effective date of the Act (which is scheduled for September 1, 2003), will be entitled to a license without complying with the 8-hour educational requirement.

Applicants for both process server license and agent registrations must submit to a criminal history record check and a thorough background investigation.

Licenses will be renewed every two years and each license holder and registered agent must present evidence of completion of a department-approved continuing education seminar of at least 8 hours of instruction in civil process.

License holders and registered agents will be empowered to serve process issued by all Texas courts in the same manner provided by law for service by sheriffs and constables. And they may serve process *on any day of the week anywhere in Texas*. They may also determine the location of an individual for the purpose of serving process

A license holder and registered agent may serve a writ of garnishment, but may not serve a writ of attachment, a writ of sequestration, or a distress warrant. Also, a license holder or registered agent who is employed by an attorney or law firm may not serve civil process in an action in which the attorney or law firm is counsel to a party.

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.

Although the proposed legislation does not give the license holder or registered agent status as a peace officer, it does treat them as public servants when serving process and considers them to be officers of the civil courts

of the state. Moreover, the legislation provides that an assault on a license holder or registered agent shall be treated as an assault on a public servant.

I have spoken with **Lee Russell** and **Bob Feaster** about this bill and they have high expectations that this legislation is very promising and may actually be driven home. The Texas legislative session is scheduled to adjourn on June 2, 2003. Let's hope this ball makes it through the hoop.

Florida Proposes Service at Private Mail Box

There are currently only three states - California, Oregon and Washington - with laws that permit service at a private mailbox facility.

On 3/11/03 a bill was introduced in Florida that would amend Section 48.031 of the Florida Statutes to add the following language:

(c) When the only address available through public records of the person or business to be served is a private mailbox, substitute service may be made by leaving a copy of the process with the person apparently in charge of the private mailbox, only after determining that the person or business to be served does maintain a mailbox at that location.

Department of Justice Update

On April 15, 2003, the Department of Justice notified the Permanent Bureau of the Hague Conference that the contract for service of foreign process coming into the United States had been awarded to *Process Forwarding International* of Seattle (a subsidiary of ABC Legal Services Inc.) and would become effective on June 1, 2003, for a 5-year period.

The DOJ emphasized that this change has not led to the formal designation of a new Central Authority, but rather to the outsourcing of the activities conducted by the Central Authority, which formally remains the Department of Justice.

The notice further states that personal service will be the preferred method used on all requests, and that Process Forwarding International is required to complete service of documents and the certificate for return to the foreign applicant within six weeks of receipt of the request.

The fee charged for the service of all process received under the Hague Service Convention and Letters Rogatory from non-convention countries will be a flat \$89.00 for year 2003. It will increase to \$91.00 in 2004 and \$93.00 in 2005.