

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 554 (Senator Frosh)
 Judicial Proceedings

Business Occupations and Professions - Private Process Service - Licensing and Certification

This bill establishes requirements, conditions, and processes for the licensing, certification, and regulation of private process service providers in the State.

Fiscal Summary

State Effect: General fund expenditures increase for the Department of State Police (DSP) by \$749,600 in FY 2014 for staff and additional resources needed to implement the bill. Future year expenditures reflect annualization and the elimination of one-time costs. General fund revenues may increase by approximately \$1.5 million biennially beginning in FY 2014 from licensing and certification fees required under the bill; however, the exact increase cannot be reliably quantified because reliable data regarding the number of private process servers in the State is unavailable. General fund revenues from penalties assessed under the bill are anticipated to be minimal.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
GF Expenditure	\$749,600	\$469,100	\$510,800	\$565,200	\$552,100
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The penalty provisions are not expected to materially affect local government finances. The impact on service of process by sheriff's offices is unclear.

Small Business Effect: Meaningful for small businesses that serve private process in the State.

Analysis

Bill Summary: The bill establishes the “Maryland Private Process Servers Act,” which requires the licensure as a private process service agency of any individual or firm not otherwise exempt that provides private process service. In general, an individual employed by a licensee must also be certified by the Secretary of State Police as a private process server before the individual personally may provide any private process service in the State. The Secretary is responsible for the licensing of private process service agencies and the regulation of those persons who provide private process service in the State. The Secretary may charge specified fees for licensure and certification under the bill. The Secretary must pay all money collected under the bill into the general fund.

The bill does not apply to (1) an officer or employee of any unit of federal, state, or local government while performing a duty of the office or employment; (2) a lawyer, while performing any activity that relates to the lawyer’s regular practice of law in the State; or (3) an individual who, as a regular part-time or full-time employee of a lawyer, provides services that relate to the lawyer’s regular practice of law in the State.

Licensure as Private Process Service Agency

A person must be licensed by the Secretary as a private process service agency before the individual or firm may conduct business that provides private process service in the State.

If the applicant is an individual, the applicant must be of good character and reputation. If the applicant is a firm, the firm must appoint a firm member as a representative member to make an application on behalf of the firm, and each firm member must be of good character and reputation. An individual applicant or representative member of a firm must be age 18 or older.

An applicant for licensure must (1) pay to the Secretary an application fee of \$200 if the applicant is an individual or \$375 if the applicant is a firm; (2) pay to the Secretary the necessary fee for criminal history record checks (CHRCs) (if a firm, the fee for all members must be paid); and (3) submit fingerprints. DSP must apply to the Central Repository of the Criminal Justice Information System (CJIS) for a State and national criminal history records check for each applicant and submit the applicable fees. The Central Repository must forward a printed statement of the applicant’s criminal history records information to the applicant and DSP.

The Secretary must issue a license to each applicant who meets the specified requirements of the bill. The Secretary must issue an agency license certificate and a branch office certificate as applicable. The Secretary must stagger the terms of the licenses by regulation.

A private process service agency is responsible for the acts of each of its employees while the employee is conducting the business of the agency. The offices of each private process service agency must be supervised by an individual who holds the license of a private process service agency or is the appointed representative member of the private process service agency. If a private process service agency is a firm, the agency must notify the Secretary about the identity of the individual serving as the representative member of the agency and each vacancy in that position. A licensed private process agency generally must fill any vacancies at that position within 90 days, or the agency's license is suspended automatically and remains suspended until the agency fills the vacancy. The Secretary may adopt regulations to implement these requirements.

Each licensee must maintain an office in the State and keep all files or other records that are made in the State and relate to process served in the State.

Subject to specified hearing requirements, the Secretary may deny a license to any applicant, reprimand or fine a licensee or agency, or suspend or revoke a license for specified acts of fraud and other violations of the Act. The Secretary may also deny certification as a private process server to any applicant, reprimand or fine any individual certified as a private process server, or suspend or revoke an individual's certification.

The bill includes specific requirements and conditions for nonresident applicants for licensure.

Bonding Requirement for Licensure

An applicant for a license is required to execute a bond that is conditioned on the faithful and honest conduct of the applicant and runs to the State for the benefit of any person injured by any wrongful act of the applicant that is willful or malicious. The amount of the bond required must be no less than \$15,000, if the applicant is an individual, or no less than \$1 million if the applicant is a firm. If a licensee's bond is cancelled, forfeited, or terminated by the surety, the surety immediately must notify the Secretary.

License Renewal

Licenses expire on the date set by the Secretary unless renewed for a *two-year* term. The Secretary must renew the license of each licensee who meets the renewal requirements of the bill. The renewal fee is \$200 for an individual and \$400 for a firm. Supporting documentation required for license renewal includes certification or other authorized documentation that the licensed private process service agency:

- has paid all withholding and Social Security taxes;
- has paid all other obligations payable for the employees of the licensee;

- has in effect workers' compensation insurance for its covered employees, as defined in current law; and
- has paid the State income tax of the agency for the past three years.

If the Secretary does not receive the above supporting documentation at least 15 days before the license expiration date, the Secretary must charge the licensee a late fee of \$10 per day until the documents are received. The Secretary may inspect any of the business records of a licensee that relate to the renewal certification or documentation requirements.

Certification as Private Process Server

In general, an individual must be certified by the Secretary as a private process server before the individual *personally* provides any private process service in the State. An individual who is not certified as a private process server may provide private process service in the State under specified conditions.

An individual qualifies for certification as a private process server if the individual (1) holds a license as a private process service agency; (2) is a firm member of a licensed private process service agency; or (3) is an employee of or an applicant for employment with a licensed private process service agency and meets the necessary requirements.

To qualify for certification as a private process server, an employee of or applicant for employment with a licensed private process service agency must (1) meet the standards set by the Secretary; (2) submit to the Secretary a sworn application on the form the Secretary provides and the necessary fingerprints for CHRCs; and (3) pay to the Secretary an application fee of \$15 and other necessary fees required. The Secretary is required to certify each individual who meets the requirements of the bill. The Secretary must stagger the terms of the certifications by regulation.

While certification of an individual as a private process server is in effect, the certification authorizes the individual to provide private process service only on behalf of the private process service agency through which the individual obtained the certification and while that private process service agency is licensed. The Secretary is required to issue each individual who is certified as a private process server a certification card that identifies the individual as a certified private process server. At any time that a certified private process server provides private process service, the private process server must carry the certification card. On request of a law enforcement office, a certified private process server must show the certification card.

The Secretary must adopt regulations that set standards for the certification of employees of private process service agencies as private process servers. The Secretary must also

keep a roster of individuals certified as private process servers, including (1) the names of certified individuals; (2) the name of the licensed private process service agency with which each individual is associated or by which each individual is employed and; (3) any other information that the Secretary considers appropriate.

Certification Renewal

Certifications expire on the date set by the Secretary unless renewed for a *three-year* term. The Secretary must renew the certification of each individual who meets the renewal requirements of the bill. At least 90 days before the certification expires, an applicant must submit a renewal application form, a renewal fee of \$10, and any necessary late fee, as determined by the Secretary. Conditions for the renewal of certifications are specified in the bill and include a CHRC at each renewal.

The Secretary must assess a late fee of \$5 per day, up to \$150 total, if a complete application for certification renewal is not received by the Secretary at least 30 calendar days before the certification expires, except for limited exceptions.

Complaint Investigations

Subject to specified hearing, notification, and investigation requirements, the Secretary must commence proceedings on the Secretary's own complaint or on a written complaint made to the Secretary by any person alleging facts that are violations of specified licensing or certification requirements. In general, before the Secretary takes any final action, the Secretary must give the individual against whom the action is contemplated an opportunity for a hearing before the Secretary. If the Secretary suspends or revokes the license of a person, the person must surrender to the Secretary the agency license certificate and each branch office certificate of the person within five days. The Secretary may not refund any fee to a person whose license is suspended under the Act. Similarly, if the Secretary suspends or revokes the certification of an individual as a private process server, the individual must surrender any certification card or badge issued to the individual by the Secretary. Any person aggrieved by a final decision of the Secretary in a contested case may appeal as specified in current law.

Violations of the Maryland Private Process Servers Act

A person may not engage in, attempt to engage in, offer to engage in, or solicit to engage in a business for the purpose of providing private process service in the State unless licensed as a private process service agency by the Secretary. An individual may not provide, attempt to provide, offer to provide, or solicit to provide private process service in the State unless certified as a private process server by the Secretary. The bill includes

additional prohibitions and restrictions regarding the representation, equipment, badges, and display of certificates by licensees.

A violation of the bill is a misdemeanor and is subject to a maximum penalty of a \$1,000 fine and/or one-year imprisonment. A fine imposed by the Secretary in a disciplinary action may not exceed \$5,000 per violation, up to \$10,000 for a two-year license term, and must be paid to the Secretary within 10 days after final adjudication of any hearing or on the waiver of any hearing. The Secretary may fine either the licensed agency or the individual working on behalf of the licensed agency, but not both, for the same violation. The Secretary must also adopt by regulation a schedule of fines for violations of the bill that may be assessed.

Current Law: The State does not have any education, licensure, or certification requirements for private process servers. Service of process may be made by a sheriff or, except as otherwise provided, by a competent person age 18 or older, including an attorney of record, but not by a party to the action. All process requiring execution other than delivery, mailing, or publication must be executed by the sheriff of the county where execution takes place, unless the court orders otherwise.

County sheriffs are entitled to collect fees for service of process and other actions during court proceedings involving the sheriff's office. These fees include:

- \$5 for service of summary ejectment papers;
- \$40 for service of a paper not including an execution or attachment;
- \$40 for service including an execution or attachment by taking a person into custody or seizing property;
- \$40 for service-of-process papers arising out of administrative agency proceedings where the party requesting the service of process is a nongovernmental entity; and
- \$60 for service of a paper originating from a foreign court.

Except in the case of summary ejectment papers, if the sheriff is unable to serve a paper, 50% of the fee must be refunded to the party requesting the service.

Background: According to a 2009 report prepared by Fordham Law School, 17 states have licensure, registration, certification, or similar requirements for private process servers. In general, regulation is administered through various courts, although some states regulate private process servers through executive agencies. Alaska and Hawaii, for example, require licensure through their respective departments of public safety.

Similar regulatory structures exist in the State for security systems technicians, security guards, and private detectives. In general, each occupation requires an agency licensure

and individual certification or registration by DSP before the applicable services may be provided. An applicant for licensure as a security systems technician agency must maintain general liability insurance of at least \$50,000 and must also execute a fidelity bond of at least \$50,000 to cover all individuals who are licensed to provide security systems services, among others. Applicants for licensure as a security guard agency that employs five or more individuals must maintain commercial general liability insurance of at least \$1 million.

Total fees for State and national criminal background checks through the CJIS Central Repository are \$54.50 per individual.

A surety bond requirement was repealed for private detective and security guard agencies and individuals by Chapter 517 of 2002 (HB 429). The amount of the bond required for licensure in either occupation was \$3,000 if the applicant was an individual or \$5,000 if the applicant was a firm.

State Fiscal Effect: DSP advises that it will need to establish a new unit to process and verify licensure and certification applications from private process servers. Based on similar programs for security systems technicians, private detectives, and security guards, it estimates the need for two State troopers and three office clerks. The Department of Legislative Services (DLS) concurs in this level of staffing given the need to review CHRCs for all licensees and certificate holders as well as verify required documentation, assess late fees as necessary, and investigate complaints. Although the bill allows existing staff within DSP to conduct investigations, DLS assumes any such diversion from existing duties would likewise necessitate additional resources. Therefore, general fund expenditures increase by \$749,600 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring two State troopers and three office services clerks to investigate applications and to license, certify, and otherwise regulate private process service agencies and private process servers. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5
Salaries and Fringe Benefits	\$285,214
State Trooper Vehicles	139,026
Contractual Information Technology Services	250,000
Other Operating Expenses	<u>75,344</u>
Total FY 2014 State Expenditures	\$749,584

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of

one-time costs for State troopers and for the elimination of one-time contractual licensing and certification software development services.

General fund expenditures for the Office of Administrative Hearings cannot be reliably estimated at this time, as the number of appeals of DSP licensure or certification decisions is unknown.

CJIS can handle the anticipated increase in criminal background checks with existing resources. There is no cost to the State for the checks, as applicants are responsible for payment of the fees.

General fund revenues may increase by up to \$1.5 million biennially beginning in fiscal 2014 from licensing and certification fees required under the bill; however, the exact increase cannot be reliably quantified because reliable data regarding the number of private process servers in the State is unavailable. *For illustrative purposes only*, if DSP licenses 1,000 firms and 5,000 individuals as private process service agencies, and certifies 8,000 individuals (assuming each firm has, on average, three individuals who must be certified) as private process servers in fiscal 2014, general fund revenues increase by \$1.5 million. However, actual licensures and certifications may vary substantially from this estimate.

Additional general fund revenue from penalties and late fees assessed under the bill cannot be reliably estimated at this time but are anticipated to be minimal.

Small Business Effect: DLS advises that most private process service companies located in the State are small businesses. These businesses are affected by the bill's licensure and certification requirements – at a minimum each company will pay \$375 for an initial license and \$15 for an initial certification to serve private process in the State. In addition, the bonding requirement in the bill is a significant cost to these small businesses. DLS, in consultation with the Maryland Insurance Administration, is unable to estimate the cost of such a bonding requirement – it is unclear whether a \$1 million bond of this nature *could* be purchased by a small business – but *for illustrative purposes only*, if the cost of the bond is 3% of the bond amount, each small business spends \$30,000 annually to meet the requirement. Further, the bill does not allow for any grace period under which private process servers could continue to operate while the licensing and certification program is developed and implemented in DSP.

Additional Information

Prior Introductions: None.

Cross File: HB 1291 (Delegate Hucker) - Economic Matters.

Information Source(s): Department of State Police, Office of Administrative Hearings, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Baltimore City, Fordham Law School, Department of Legislative Services

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