

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

Senate Bill 838 (Senator Frosh)
 Judicial Proceedings

Private Process Servers - Licensing

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

Fiscal Summary

State Effect: General fund expenditures increase for the Department of State Police (DSP) by \$587,900 in FY 2015 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 – potentially significantly – biennially beginning in FY 2015 from licensing 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 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$587,900	\$296,200	\$328,100	\$348,000	\$352,600
Net Effect	(-)	(-)	(-)	(-)	(-)

Local Effect: Local government finances and operations are not materially affected.

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 of any individual not otherwise exempt who provides private process service in the State. The Secretary of State Police is responsible for the licensing and regulation of private process servers. The Secretary may (1) adopt regulations to implement the bill; (2) use any member of DSP as necessary to implement and enforce the bill; (3) charge specified fees for licensure; and (4) establish and assess specified penalties. The Secretary must keep a roster of individuals licensed as private process servers. The Secretary must adopt by regulation a schedule of fines for violation of the bill and 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; (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; or (4) an individual who provides private process service fewer than 10 times in a calendar year.

Licensure as a Private Process Server

Except in limited circumstances, an individual must be licensed by the Secretary as a private process server before the individual personally provides or solicits to provide private process service in the State. The applicant must be at least age 18, possess a high school diploma or equivalent, and have successfully completed a training program approved by the Secretary. Unless the applicant shows good cause for the issuance of a license, an applicant does not qualify for a license if the individual has been convicted of a felony or other specified crimes.

An applicant for licensure must (1) submit an application on the form that the Secretary provides and any other relevant documents that the Secretary requires; (2) pay to the Secretary an application fee of \$200; (3) pay to the Secretary the necessary fee for criminal history records checks (CHRCs); and (4) submit fingerprints. The application form must contain a statement advising the applicant that willfully making a false statement on an application is a misdemeanor and subject to a fine and/or imprisonment. The bill includes additional requirements and conditions for nonresident applicants for licensure.

DSP must apply to the Central Repository of the Criminal Justice Information System (CJIS) for a State and national CHRC 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 qualification and application requirements.

Licenses must contain specified identifying information. While the license is in effect, it authorizes the licensee to provide private process service for compensation and represent the licensee to the public as a private process server.

A licensee must carry the license at any time that the individual provides private process service. The licensee must show his or her license on request from a law enforcement officer. A licensee may wear or carry a badge (the design of which must be approved) *only* if authorized by the Secretary to do so.

In addition to specified bonding 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. The licensee must submit written notice to the Secretary within five days of any change in the address of the licensee's principal office.

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. A licensee is required to keep a bond that meets these requirements in effect at all times. If a licensee's bond is cancelled, forfeited, or terminated by the surety, the surety immediately must notify the Secretary. If the Secretary is not notified, the bond remains in effect.

License Renewal

The Secretary must stagger the terms of the licenses by regulation. Unless renewed for a two-year term, an initial license expires on the date the Secretary sets. The Secretary must mail a renewal notice and renewal application to the licensee at least one month before the license expires. A licensee may renew the license if the licensee meets specified renewal requirements. The Secretary must renew the license of each licensee who meets the renewal requirements. The renewal fee is \$200.

Grounds for Disciplinary Action

The Secretary may deny a license to any applicant, reprimand any licensee, fine any licensee, or suspend or revoke a license on various grounds, including (1) fraudulently or deceptively obtaining or attempting to obtain a license; (2) fraudulently or deceptively using a license; (3) soliciting to engage in or willfully engaging in providing private

process service while not licensed; (4) willfully making a false statement or misrepresentation in any application, renewal application, or other document that the Secretary requires to be submitted; and (5) willfully making a false statement in an affidavit of service or any other document filed with a court.

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 grounds for disciplinary action. In general, before the Secretary takes any final action, the Secretary must give the person against whom the action is contemplated an opportunity for a hearing before the Secretary. A person aggrieved by a final decision of the Secretary in a contested case may appeal as specified in current law.

Prohibited Acts and Penalties

An individual may not provide, attempt to provide, offer to provide, or solicit to provide private process service in the State unless licensed as a private process server by the Secretary. Additional requirements and prohibitions are specified regarding the conduct of licensees.

Generally, violation of the bill is a misdemeanor and is subject to a fine of up to \$1,000 and/or one year imprisonment. Each violation is a separate offense.

The fines assessed in a disciplinary action may be up to \$5,000 per violation, or a maximum of \$10,000 per 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. Within five days after the Secretary suspends or revokes a license, the person must surrender the license to the Secretary. The Secretary may not refund any fee paid by a person whose license is suspended or revoked.

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.

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

State Fiscal Effect: DSP advises that it will need to establish a new unit within its Licensing Division to process and verify licensure applications from private process servers. Based on similar programs for security systems technicians, private detectives, and security guards, it estimates the need for one State trooper and two office clerks. The Department of Legislative Services (DLS) concurs with this level of staffing, given the need to review CHRCs for all licensees as well as verify required documentation, assess late fees as necessary, and investigate complaints. Therefore, general fund expenditures increase by \$587,900 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring one State trooper and two office services clerks to investigate applications and to license and otherwise regulate private process servers. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses; one-time contractual information technology expenditures of \$250,000 are to establish an automated licensing and recordkeeping system.

Positions	3
Salaries and Fringe Benefits	\$172,343
State Trooper Vehicle	35,453
Contractual Information Technology Services	250,000
Other Operating Expenses	<u>130,118</u>
Total FY 2015 State Expenditures	\$587,914

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. This estimate assumes that DSP can approve a training course for private process servers with existing resources.

CJIS can handle the anticipated increase in CHRCs 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 significantly beginning in fiscal 2015 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 5,000 individuals as private process servers in fiscal 2015, general fund revenues increase by \$1.0 million. However, actual licensure may vary substantially from this estimate.

Additional general fund revenues 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 requirements – at a minimum each company must pay \$200 for an initial license and \$54.50 in required background check fees, plus the cost of a \$15,000 surety bond, to serve private process in the State. Further, the bill does not allow for any grace period under which private process servers can continue to operate while the licensing program is developed and implemented by DSP.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Office of

Administrative Hearings; Carroll, Cecil, and Montgomery counties; Fordham Law School; Department of Legislative Services

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