

# STATE OF NEW YORK

8559

2019-2020 Regular Sessions

## IN ASSEMBLY

August 23, 2019

Introduced by M. of A. COOK, STECK -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law and the civil practice law and rules, in relation to process servers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 89-t of the general business law, as added by chapter 397 of the laws of 1973 and as redesignated by chapter 336 of the laws of 1992, is amended to read as follows:

2 § 89-t. Definitions. 1. For this article, a "process server" is a person other than an attorney or a party to an action acting on his own behalf who: (a) derives income from the service of papers in an action; or (b) has effected service of process in five or more actions or proceedings in the twelve month period immediately preceding the service in question. A person who serves interlocutory papers upon an attorney or who serves papers on behalf of a federal, state or local governmental agency in the course of his employment by such agency shall not be deemed a process server within the meaning of this article by virtue of such service. For the purposes of this chapter the service of five or more process in any one year shall be deemed to constitute doing business as a process server.

16 2. "Department" shall mean department of state.

17 3. "Secretary" shall mean secretary of state.

18 § 2. Article 8 of the general business law is amended by adding a new section 89-x to read as follows:

20 § 89-x. Process server, licensing, penalties. 1. Issuance, renewal, suspension and revocation of a license. On or after October first, two thousand twenty, no person shall act as a process server without first having obtained a license in accordance with the provisions of this article, and without first being in compliance with all other applicable laws, rules and regulations.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1     2. (a) All licenses issued pursuant to this article shall be valid for  
2 two years unless sooner suspended or revoked. The secretary shall estab-  
3 lish by regulation the expiration date of such licenses.

4     (b) The fee for a license or renewal thereof shall be five hundred  
5 dollars.

6     3. (a) Each person applying for a process server license or renewal  
7 thereof shall file an application in such form and detail as the secre-  
8 tary may prescribe and shall pay the fee required by this section.

9     (b) In addition to any other information required, the secretary shall  
10 require the following information, and shall, as appropriate, require  
11 such information not only of the applicant but also of any of its prin-  
12 cipals, partners, officers and directors, or any person or entity  
13 controlling an interest greater than ten percent:

14     (i) the name and residence address of the applicant;

15     (ii) the business name, if other than applicant;

16     (iii) the place, including the city, town or village, with the street  
17 and number, where the business is to be located;

18     (iv) the business telephone of the applicant;

19     (v) the length of time that the applicant has been a process server;

20     (vi) a statement indicating whether the applicant has:

21     (A) been convicted of any crime or is a debtor on any unpaid civil  
22 judgment relating to work as a process server; and

23     (B) at any time in the past been issued a license pursuant to this  
24 article, or has been issued a license for process serving activities by  
25 any other state or local authority, and if so, whether such license was  
26 ever revoked or suspended;

27     (vii) a detailed description of the business practices or methods  
28 used, or intended to be used, by the applicant to confirm that the  
29 actions of its employees are in compliance with applicable laws, in  
30 particular with regard to employees carrying out the New York require-  
31 ments of service of process as set forth in the civil practice law and  
32 rules;

33     (viii) an applicant who is a non-resident of the state shall provide  
34 the name and address of a registered agent within the state or designate  
35 the secretary as his or her agent upon whom process or other notifica-  
36 tion may be served.

37     4. In determining whether to issue or renew a license, the secretary  
38 shall consider the character, competency and integrity of the applicant.  
39 The secretary may refuse to issue or renew a license to any person, firm  
40 or corporation whom he or she finds has: been convicted of any crime  
41 defined in article one hundred fifty-five of the penal law or article  
42 twenty-two-A of this chapter or failed to pay any final civil judgment  
43 relating to work as a process server, if such refusal, in the judgment  
44 of the secretary, best promotes the interests of the people of this  
45 state.

46     5. Notice in writing in the manner and form prescribed by the depart-  
47 ment shall be given to the department at its offices in Albany within  
48 ten days of changes of name or address by licensed process server. The  
49 fee for filing each change of name or address notice shall be ten  
50 dollars.

51     6. The fees established by this section shall not be refundable.

52     7. Each process server engaged in serving process shall communicate  
53 his or her license number upon the request of any interested party. Any  
54 advertisement, letterhead, receipt or other printed matter of a licensee  
55 must contain the license number assigned to the licensee by the depart-  
56 ment. Such license number shall be clearly and conspicuously displayed.

1 8. No person, firm or corporation shall: (a) present, or attempt to  
2 present, as his, her or its own, the license number of another;

3 (b) knowingly give false evidence of a material nature to the depart-  
4 ment for the purpose of procuring a license;

5 (c) falsely represent themselves to be a licensed process server;

6 (d) use or attempt to use a license which has expired;

7 (e) offer to perform or perform any service of process without having  
8 a current license as is required under this article; or

9 (f) represent in any manner that his, her or its license constitutes  
10 an endorsement of the quality of workmanship or competency of the proc-  
11 ess server.

12 9. Licenses issued to process servers shall not be transferable or  
13 assignable.

14 10. The secretary shall issue each process server a unique license  
15 number.

16 11. The secretary shall maintain and publish a registry of all  
17 licensed process servers which shall list and identify all licensed  
18 process servers doing business in this state. The secretary shall make  
19 the registry available on its website. (a) The secretary shall adopt  
20 such rules and regulations as he or she may determine are necessary for  
21 the administration and enforcement of this article, and shall provide  
22 written notification of the provisions of this article to all process  
23 servers licensed pursuant to this article;

24 (b) In addition to any other powers of the secretary, not in limita-  
25 tion thereof, he or she shall have the power to enforce the provisions  
26 of this article, to investigate any violation thereof, to investigate  
27 the business, business practices and business methods of any process  
28 server, and to conduct routine examinations of the financial solvency of  
29 any process server, if in the opinion of the secretary, such investi-  
30 gation or examination is warranted. Each process server shall be  
31 obliged, on request of the secretary of state, to supply such informa-  
32 tion, books, papers or records as may be required concerning his, her or  
33 its business, business practices or business methods, or proposed busi-  
34 ness practices or methods. Failure to comply with a lawful request of  
35 the secretary shall be a ground for denying an application for a  
36 license, or for revoking, suspending, or failing to renew a license  
37 issued under this article;

38 (c) The department shall have the power to revoke or suspend any  
39 license, or in lieu thereof to impose a fine not less than one hundred  
40 dollars nor more than two thousand dollars per violation or instance,  
41 payable to the department, or reprimand any licensee or deny an applica-  
42 tion for a license or renewal thereof upon proof:

43 (i) that the applicant or licensee has violated any of the provisions  
44 of this article or the rules and regulations promulgated pursuant to  
45 this article;

46 (ii) that the applicant or licensee has practiced fraud, deceit or  
47 misrepresentation;

48 (iii) that the applicant or licensee has made a material misstatement  
49 in the application for or renewal of his or her license; or

50 (iv) that the applicant or licensee has demonstrated incompetence or  
51 untrustworthiness in his or her actions.

52 12. The department shall before denying an application for a license  
53 or before revoking or suspending any license, or imposing any fine or  
54 reprimand, and at least fifteen days prior to the date set for the hear-  
55 ing, and upon due notice to the complainant or objector, notify in writ-  
56 ing the applicant, or the holder of such license, of any charge made and

1 shall afford such applicant or licensee an opportunity to be heard in  
2 person or by counsel in reference thereto. Such written notice may be  
3 served personally to the applicant or licensee, or by certified mail to  
4 the last known business address of such applicant or licensee.

5 13. The hearing on such charges shall be at such time and place as the  
6 department shall prescribe and shall be conducted by such officer or  
7 person in the department as the secretary may designate, who shall have  
8 the power to subpoena and bring before the officer, or person so desig-  
9 nated, any person in this state and administer an oath to and take  
10 testimony of any person or cause his or her deposition to be taken. A  
11 subpoena issued under this section shall be regulated by the civil prac-  
12 tice law and rules. Such officer or person in the department designated  
13 to take such testimony shall not be bound by common law or statutory  
14 rules of evidence or by technical or formal rules of procedure.

15 14. In the event that the department shall deny the application for,  
16 or revoke or suspend any such license, or impose any fine or reprimand,  
17 its determination shall be in writing and officially signed. The  
18 original of such determinations, when so signed, shall be filed in the  
19 office of the department and copies thereof shall be mailed to the  
20 applicant or licensee and to the complainant within two days after such  
21 filing.

22 15. The department, acting by the office or person designated to  
23 conduct the hearing pursuant to subdivision thirteen of this section or  
24 by such other officer or person in the department as the secretary of  
25 state may designate, shall have the power to suspend the license of any  
26 licensee who has been convicted in this state or any other state or  
27 territory of a felony or of any misdemeanor for a period not exceeding  
28 thirty days pending a hearing and a determination of charges made  
29 against him or her. If such hearing is adjourned at the request of the  
30 licensee, or by reason of any act or omission by him or her or on his or  
31 her behalf, such suspension may be continued for the additional period  
32 of such adjournment.

33 16. The action of the department in granting or refusing to grant or  
34 to renew a license under this article or in revoking or suspending or  
35 refusing to revoke or suspend such a license or imposing any fine or  
36 reprimand shall be subject to review by a proceeding instituted under  
37 article seventy-eight of the civil practice law and rules at the  
38 instance of the applicant for such license, the holder of a license so  
39 revoked, suspended, fined or reprimanded.

40 17. For the purpose of this article, licensees may be held responsible  
41 for statements, representations, promises or acts of their employees or  
42 their agents within the scope of their authority; provided, however,  
43 that licensees shall not be held responsible for statements, representa-  
44 tions, promises or acts which are contrary to instructions or which  
45 constitute gross negligence or intentional torts unless specifically  
46 authorized by the licensee. (a) Any person, firm or corporation that  
47 operates as a process server without a license shall be required to pay  
48 a civil penalty to the department of not more than five hundred dollars  
49 per attempt to serve process in violation of this section;

50 (b) In addition to any other penalties, if a person is found to have  
51 committed repeated, multiple or persistent violations of any provision  
52 of this article, such person may be responsible for the cost of the  
53 department's investigation.

54 18. (a) As a condition of obtaining a license pursuant to this arti-  
55 cle, every process server applicant who is applying for a license and  
56 employs between one and four individuals engaged in the service of proc-

1 ess shall obtain and continue in full force and effect a bond, contract  
2 of indemnity, or irrevocable letter of credit in the amount of ten thou-  
3 sand dollars to be filed with the secretary;

4 (b) As a condition to obtaining a license pursuant to this article,  
5 every process server applicant who is applying for a license and employs  
6 between five and nine individuals engaged in the service of process  
7 shall obtain and continue in full force and effect a bond, contract of  
8 indemnity, or irrevocable letter of credit in the amount of twenty-five  
9 thousand dollars to be filed with the secretary as a condition to  
10 obtaining a license pursuant to this article, every process server  
11 applicant who is applying for a license and employs between ten and  
12 twenty individuals engaged in the service of process shall obtain and  
13 continue in full force and effect a bond, contract of indemnity, or  
14 irrevocable letter of credit in the amount of fifty thousand dollars to  
15 be filed with the secretary;

16 (c) As a condition to obtaining a license pursuant to this article,  
17 every process applicant who is applying for a license and employs twenty  
18 or more individuals engaged in the service of process shall obtain and  
19 continue in full force and effect a bond, contract of indemnity, or  
20 irrevocable letter of credit, in the amount of seventy-five thousand  
21 dollars to be filed with the secretary;

22 (d) Such surety bond, contract of indemnity, or irrevocable letter of  
23 credit shall be conditioned that the applicant will comply with this  
24 article, article twenty-nine-H, and article twenty-nine-HH of this chap-  
25 ter and pay all civil penalties, fines, or other obligations imposed by  
26 the secretary or a court of law, investigatory costs required to be  
27 paid, or any final judgment against the licensee pursuant to such arti-  
28 cles;

29 (e) The total liability imposed on the surety bond under this section  
30 for all breaches of the bond condition is limited to the face amount of  
31 the bond. Such liability is limited to the amount of the penalty or  
32 investigatory costs. In no event will the surety on a bond be liable for  
33 total claims in excess of the bond amount, regardless of the number or  
34 nature of claims made against the bond or the number of years the bond  
35 remained in force;

36 (f) Any surety issuing a bond pursuant to this section and any licen-  
37 see shall be required to provide thirty days notice to the secretary  
38 prior to the effective date of cancellation of the bond. The failure to  
39 maintain such a bond shall operate to revoke the license of the process  
40 server upon notice and hearing.

41 19. (a) Wherever there shall be a violation of this article, an appli-  
42 cation may be made by the attorney general in the name of the people of  
43 the state of New York to a court or justice having jurisdiction by a  
44 special proceeding to issue an injunction, and upon notice to the  
45 defendant of not less than five days, to enjoin or restrain the contin-  
46 uance of such violation; and if it shall appear to the satisfaction of  
47 the court or justice that the defendant has, in fact, violated this  
48 section, an injunction may be issued by such court or justice, enjoining  
49 and restraining any further violation, without requiring proof that any  
50 person has, in fact, been injured or damaged thereby. In any such  
51 proceeding, the court may make allowances to the attorney general as  
52 provided in paragraph six of subdivision (a) of section eighty-three  
53 hundred three of the civil practice law and rules, and direct restitu-  
54 tion. Whenever the court shall determine that a violation of this  
55 section has occurred, the court may impose a civil penalty of not less  
56 than one hundred dollars nor more than ten thousand dollars for each



1 violation. In connection with any such proposed application, the attor-  
2 ney general is authorized to take proof and make a determination of the  
3 relevant facts and to issue subpoenas in accordance with the civil prac-  
4 tice law and rules;

5 (b) Any person who has been injured by reason of any violation of this  
6 article may bring an action in his or her own name to enjoin such unlaw-  
7 ful act or practice, an action to recover his or her actual damages or  
8 one thousand dollars, whichever is greater, or both such actions. The  
9 court may, in its discretion, increase the award of damages to an amount  
10 not to exceed three times the actual damages up to ten thousand dollars,  
11 if the court finds the defendant willfully violated this article. In the  
12 case of any successful action to enforce the foregoing liability, the  
13 court may award the costs of the action together with reasonable attor-  
14 ney's fees.

15 20. (a) This article shall apply to all process servers, provided,  
16 however, that a political subdivision may impose other requirements that  
17 are in addition to the minimum standards set forth in this article.

18 (b) The provisions of this article shall not be construed to limit in  
19 any way the authority of a political subdivision to enact, implement and  
20 continue to enforce local laws and regulations governing process servers  
21 that were in effect prior to the effective date of this section, or to  
22 enact, implement and enforce any amendments thereto after the effective  
23 date of this section.

24 § 3. Subdivision (e) of rule 3015 of the civil practice law and rules,  
25 as amended by chapter 21 of the laws of 2013, is amended to read as  
26 follows:

27 (e) License to do business. Where the plaintiff's cause of action  
28 against a consumer arises from the plaintiff's conduct of a business  
29 which is required by state or local law to be licensed by the department  
30 of consumer affairs of the city of New York, the Suffolk county depart-  
31 ment of consumer affairs, the Westchester county department of consumer  
32 affairs/weight-measures, the county of Rockland, the county of Putnam or  
33 the Nassau county department of consumer affairs, or the department of  
34 state pursuant to section eighty-nine-u of the general business law, the  
35 complaint shall allege, as part of the cause of action, that plaintiff  
36 was duly licensed at the time of services rendered and shall contain the  
37 name and number, if any, of such license and the governmental agency  
38 which issued such license. The failure of the plaintiff to comply with  
39 this subdivision will permit the defendant to move for dismissal pursu-  
40 ant to paragraph seven of subdivision (a) of rule thirty-two hundred  
41 eleven of this chapter.

42 § 4. This act shall take effect on the one hundred eightieth day after  
43 it shall have become a law. Effective immediately, the addition, amend-  
44 ment and/or repeal of any rule or regulation necessary for the implemen-  
45 tation of this act on its effective date are authorized to be made and  
46 completed on or before such effective date.