

STATE OF NEW YORK

4473

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

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
3 person other than an attorney or a party to an action acting on his own
4 behalf who: (a) derives income from the service of papers in an action;
5 or (b) has effected service of process in five or more actions or
6 proceedings in the twelve month period immediately preceding the service
7 in question. A person who serves interlocutory papers upon an attorney
8 or who serves papers on behalf of a federal, state or local governmental
9 agency in the course of his employment by such agency shall not be
10 deemed a process server within the meaning of this article by virtue of
11 such service. For the purposes of this chapter the service of five or
12 more process in any one year shall be deemed to constitute doing busi-
13 ness as a process server.

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

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

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

17 § 89-x. Process server, licensing, penalties. 1. Issuance, renewal,
18 suspension and revocation of a license. On or after October first, two
19 thousand twenty-two, no person shall act as a process server without
20 first having obtained a license in accordance with the provisions of
21 this article, and without first being in compliance with all other
22 applicable laws, rules and regulations.

23 EXPLANATION--Matter in italics (underscored) is new; matter in brackets
24 [-] 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 693 of the laws of 2019, 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 county of Rockland, the county of Putnam,
32 the county of Westchester, or the Nassau county department of consumer
33 affairs, or the department of state pursuant to section eighty-nine-u of
34 the general business law, the complaint shall allege, as part of the
35 cause of action, that plaintiff was duly licensed at the time of
36 services rendered and shall contain the name and number, if any, of such
37 license and the governmental agency which issued such license. The fail-
38 ure of the plaintiff to comply with this subdivision will permit the
39 defendant to move for dismissal pursuant to paragraph seven of subdivi-
40 sion (a) of rule thirty-two hundred eleven of this chapter.

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