STATE OF NEW YORK

3602

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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:

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:

§ 89-t. Definitions. **1.** For this article, a [~~process server~~] **"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 processes in any one year shall be deemed to constitute doing business as a process server.**

2. "Department" shall mean department of state.

3. "Secretary" shall mean secretary of state.

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

§ 89-x. Process server, licensing, penalties. 1. Issuance, renewal, suspension and revocation of a license. On or after the first of October next succeeding the effective date of this section, 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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2. (a) All licenses issued pursuant to this article shall be valid for two years unless sooner suspended or revoked. The secretary shall establish by regulation the expiration date of such licenses.

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

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

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

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

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

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

(iv) the business telephone of the applicant;

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

(vi) a statement indicating whether the applicant has:

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

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

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

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

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

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

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

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

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

(b) knowingly give false evidence of a material nature to the department for the purpose of procuring a license;

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

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

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

(f) represent in any manner that his, her or its license constitutes an endorsement of the quality of workmanship or competency of the process server.

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

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

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

(b) In addition to any other powers of the secretary, not in limitation thereof, he or she shall have the power to enforce the provisions of this article, to investigate any violation thereof, to investigate the business, business practices and business methods of any process server, and to conduct routine examinations of the financial solvency of any process server, if in the opinion of the secretary, such investigation or examination is warranted. Each process server shall be obliged, on request of the secretary of state, to supply such information, books, papers or records as may be required concerning his, her or its business, business practices or business methods, or proposed business practices or methods. Failure to comply with a lawful request of the secretary shall be a ground for denying an application for a license, or for revoking, suspending, or failing to renew a license issued under this article;

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

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

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

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

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

12. The department shall before denying an application for a license or before revoking or suspending any license, or imposing any fine or reprimand, and at least fifteen days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant, or the holder of such license, of any charge made and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules;

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

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

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

§ 3. Subdivision (e) of rule 3015 of the civil practice law and rules, as amended by chapter 693 of the laws of 2019, is amended to read as follows:

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

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.