

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 1293 (Delegate Vaughn, *et al.*)
 Economic Matters

Business Occupations and Professions - Private Process Servers - Registration

This bill establishes requirements, conditions, and processes for the registration and regulation of private process servers in the State. The Department of Labor, Licensing, and Regulation (DLLR) must report to the General Assembly by December 31, 2016, on the number of complaints filed under the bill, the nature of the complaints, and any other information DLLR considers relevant.

Fiscal Summary

State Effect: General fund expenditures increase for DLLR by \$231,300 in FY 2015 for staff and additional resources needed to implement the bill. Future year expenditures reflect annualization and the elimination of start-up costs after FY 2016. General fund revenues increase – potentially significantly – beginning in FY 2015 from registration fees required under the bill; however, the exact increase cannot be reliably quantified because data regarding the number of private process servers in the State is unavailable. Moreover, the renewal period is to be determined by regulation. General fund revenues from penalties assessed under the bill are anticipated to be minimal. The Judiciary can handle the bill’s requirements with existing budgeted resources.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$231,300	\$285,300	\$272,100	\$284,600	\$297,600
Net Effect	(\$231,300)	(\$285,300)	(\$272,100)	(\$284,600)	(\$297,600)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate 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 registration of any individual not otherwise exempt who provides private process service in the State. The Secretary of Labor, Licensing, and Regulation is responsible for the registration and regulation of private process servers in the State. The Secretary may adopt regulations to implement the bill.

The bill does not apply to (1) a law enforcement officer while performing an activity that relates to the regular duties of the officer or (2) a lawyer who is admitted to the Bar of the State and is a member in good standing of the Maryland State Bar Association, while performing an activity that relates to the lawyer’s regular practice of law in the State.

Registration as a Private Process Server

Except in limited circumstances, an individual must be registered with DLLR as a private process server before the individual provides private process service in the State. A business or firm that employs individuals who provide private process service is not required to register under the bill.

An applicant for registration must be at least age 18 and be a citizen of the United States. An applicant must (1) submit an application on the form that the Secretary provides and other required documents; (2) pay to the Secretary an application fee set by the Secretary; (3) pay to the Secretary the necessary fee for criminal history records checks (CHRCs); and (4) submit fingerprints. An applicant who is licensed as a private detective does not have to submit the fee for CHRCs or fingerprints under specified conditions.

The application form must require (1) the name, age, address, and telephone number of the applicant; (2) a statement by the applicant that the applicant has not been convicted of a felony within the last 10 years and has never been convicted of fraud; (3) a statement by the applicant that the applicant will perform the duties of a private process server in accordance with State law and the Maryland Rules; and (4) any other information the Secretary requires. The application form must be signed under oath by the individual.

After submission of the application, DLLR must issue a 60-day temporary registration card that authorizes the applicant to provide private process service until the applicant receives a registration card.

DLLR must apply to the Central Repository of the Criminal Justice Information System (CJIS) for a State and national CHRC for each applicant not otherwise exempt and submit the applicable fees. The Central Repository must forward a printed statement of the applicant's criminal history record information to the applicant and DLLR.

The Secretary must register and issue a registration card to each applicant who meets the qualification and application requirements. Subject to specified requirements, the Secretary determines the form and content of the registration card. Registration cards must contain the registration number and a statement that in substance affirms that the individual is registered by the Secretary as a private process server.

A registrant must carry the registration card at any time that the individual provides private process service. The registrant must provide his or her registration number on all documents filed in court by the individual. If a registration card is lost, the individual must immediately notify the Secretary of the loss and the circumstances regarding the loss.

The Secretary must establish requirements for periodic renewal of a registration by regulation. The regulations must require a State and National CHRC of each registrant at least once every three years.

Standards of Conduct

The Secretary, in consultation with the Maryland Judiciary, must establish professional standards of conduct for private process servers and the appropriate length of suspension for a violation of the standards. The standards must require private process servers to (1) act with complete integrity in all matters concerning service of process; (2) be completely truthful in all professional reports, statements, and testimony and not make misleading, deceptive, or untrue statements in the course of serving process; and (3) make every reasonable effort to provide professional services in a complete and efficient manner that does not delay a court action.

The standards must prohibit private process servers from (1) engaging in the practice of law, giving legal advice, or otherwise acting in a manner that a reasonable person would interpret as engaging in the practice of law; (2) knowingly associating with or permitting use of the process server's name or firm name by a person or firm that the individual knows or has reason to believe is engaging in a professional practice in a fraudulent or dishonest manner; or (3) knowingly serving process in violation of applicable State laws, rules of court, or DLLR directives concerning service of process.

Grounds for Disciplinary Action

The Secretary may deny a registration to any applicant, reprimand any registrant, fine any registrant, or suspend or revoke a registration if the individual (1) fraudulently or deceptively obtains or attempts to obtain a registration; (2) fails to maintain the standards of conduct established by the Secretary; or (3) has made a service of process that does not comply with the laws governing service of process in the State.

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 under oath to the Secretary by any person who is subject to the service of process on which the complaint is based. 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.

If an individual's registration is revoked for any reason, the individual may apply for reinstatement with the Secretary, subject to specified conditions.

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 registered as a private process server by the Secretary. An individual may not willfully make a false statement on any application form or other document submitted to the Secretary under the bill. An individual may not serve process in any case to which the individual is a party. A violation of the bill is subject to a fine of up to \$500.

Current Law: The State does not have any education, licensure, registration, 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.

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

State Fiscal Effect: DLLR advises that it needs to establish a new unit to register individuals as private process servers, as current staff resources are constrained. Therefore, general fund expenditures increase by \$231,344 in fiscal 2015, which accounts for the bill’s October 1, 2014 effective date. This estimate reflects the cost of hiring one executive director, one investigator, one board secretary, and one *half-time* assistant Attorney General to process applications, investigate complaints, adopt regulations, and to register and otherwise regulate private process servers. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and contractual information technology expenditures of \$25,000.

Positions	3.5
Salaries and Fringe Benefits	\$181,451
Contractual Information Technology Services	25,000
Other Operating Expenses	<u>24,893</u>
Total FY 2015 State Expenditures	\$231,344

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. The estimate also includes an additional \$25,000 contractual information technology expenditure in fiscal 2016 for a registration *renewal* system.

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 registration fees required under the bill; however, the exact increase cannot be reliably quantified because data regarding the number of private process servers in the State is unavailable. As the renewal period is to be determined by regulation, it is not clear whether registration would be required annually, biennially, or (along with CHRCs) triennially. Moreover, it is assumed that renewal, through regulation, would also require a fee – although the bill does not specify a fee for renewal.

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

The Judiciary can handle the bill's requirements with existing budgeted resources.

Small Business Effect: The Department of Legislative Services advises that most private process service companies located in the State are small businesses. These businesses are affected by the bill's registration requirement and regulatory structure established for their employees. At a minimum each individual must pay a registration fee set by the Secretary and \$54.50 in required background check fees 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 registration program is developed and implemented by DLLR.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Fordham Law School; Department of Legislative Services

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