

SENATE BILL REPORT

SB 6824

As Reported By Senate Committee On:
Judiciary, February 06, 2008

Title: An act relating to process servers.

Brief Description: Changing provisions relating to process servers.

Sponsors: Senators McDermott, Schoesler and Kline.

Brief History:

Committee Activity: Judiciary: 2/5/08, 2/6/08 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6824 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, McDermott, Roach and Weinstein.

Staff: Robert Kay (786-7405)

Background: At present, persons serving legal process for a fee in Washington must register at the office of the county auditor in the county in which the process server resides or in which the person serving legal process operates his or her principal place of business. There is no express statutory requirement that persons registered as process servers who are serving process in this state be residents of Washington. The registration requirement does not apply to:

- a sheriff, deputy sheriff, marshal, constable, or government employee who is acting in the course of employment;
- an attorney or the attorney's employee, who is not serving process on a fee basis;
- a person who is court appointed to serve the court's process;
- an employee of a registered process server;
- a person who does not receive a fee or wage for serving process.

The federal Driver's Privacy Protection Act limits who may obtain addresses associated with names or vehicle license plate numbers in government databases. Process servers are allowed under the federal law to obtain this information. Under state law a business entity is allowed to obtain this information from the Department of Licensing (DOL) for use in the course of its business, but first must specify in writing the purpose for which the information will be used. The business entity must also enter into a disclosure agreement with the DOL in which the entity is required to promise that it will use the information only for the purpose stated and

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that it will not use it for the purpose of making unsolicited business contacts. DOL considers registered process servers to be business entities.

Under state law, where both a mailing address and residential addresses are listed in a vehicle record, only the mailing address is to be disclosed, except in response to requests from courts, law enforcement agencies or other government entities with enforcement, investigative, or taxing authority, and only for use in the normal course of government business.

By existing statute, DOL is required to maintain a file of all negatives of photos taken by the department as authorized by other statutes. The public is not allowed to have access to these negatives. However, DOL may make the file of negatives available to: (1) official government agencies to assist in investigating by the agencies of suspected criminal activity; (2) the office of the Secretary of State, to assist in maintenance of the statewide voter registration database; and (3) the next of kin of a deceased driver.

Summary of Bill: The bill as referred to committee was not considered.

SUMMARY OF BILL (Recommended Substitute): A person who serves legal process for a fee or wage in the state of Washington must be a resident of the state of Washington.

DOL may release to process servers both the mailing and residence addresses when both are included in a vehicle record which it is allowed to review under state law.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute as Passed Committee): Section 3 of the first proposed substitute, which would have made DOL photos available to registered process servers, is deleted.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: This bill provides registered process servers with tools needed in the business. The reason for the provision in the bill that registered process servers be residents of Washington is that Oregon process servers are allowed to serve process in Washington State and charge a fee, but Washington process servers are not allowed to serve process in Oregon. The requirement of residency in Washington will encourage Oregon process servers to request a change in Oregon law for reciprocity in the treatment of out-of-state process servers. Process servers need access to the residence addresses in vehicle records in cases where both a mailing address and residence address are in the record. Mailing addresses are not useful to process servers. Access to the file of photos held by the Department of Licensing (DOL) will result in a more efficient service of process, and will enable process servers to spot attempts by a target of service to dissemble, and claim that they are not the person named in the process. Some people avoid service for years by successfully tricking process servers into thinking that they are not the target of service. A photo would prevent this.

This bill should be kept alive even if there is debate about the section regarding access to DOL photos. Photos will also help speed identification of targets of service of domestic violence restraining orders where time is sometimes of the essence. Having a photo during service to recent immigrants, who are sometimes reluctant to speak with process servers, will allow quick identification of the target of the service. Making the process of service easier makes it safer for the process server.

OTHER: DOL wants residents of Washington to have the tools necessary to do their jobs. However, the provision of this bill allowing access to DOL photos seems to contradict the tradition of respect for privacy in Washington law. DOL is concerned about the privacy issue on behalf of DOL's customers. Under existing law, DOL is required to restrict narrowly who can obtain DOL photos. The Secretary of State is allowed access to maintain the state's voter registration database, and the next of kin of a deceased driver may obtain a photo of the deceased. Other than this access, DOL is allowed to release photos only to official government agencies to assist in the investigation by the agencies of suspected criminal activity. This is a significant restriction of access; there is no requirement of public disclosure of these photos. The photos are stored electronically since 2001. The prints are of high resolution.

There are no strict requirements to register as a process server in Washington. One only need pay a small fee at the county auditor's office and fill out a form. Since there is no registration card provided by the auditor's office, DOL would have to create a system to confirm that an applicant for vehicle records is in fact a registered process server. Also, there is no penalty in the bill as written that would be imposed on a process server who redisclosed the photos in violation of the language in the bill.

Persons Testifying: PRO: Robin Mullins, President, Washington State Process Servers Association; Steve Lindstrom, Washington State Process Servers Association.

OTHER: Mike Gable, Assistant Director for Driver's Services, Department of Licensing.