

PROPOSED LEGISLATION

THE PETITIONER

The petitioner of this proposed legislative change is Arizona Association of Certified Process Servers, a non-profit organization representing Arizona certified process servers statewide.

LEGISLATION AFFECTED

The legislation affected by the proposed changes herein is A.R.S. § 28-455 at C. 4.

BACKGROUND AND DISCUSSION

The authority of the certified process server is established in A.R.S. § 11- 445 I.

Certified process server is designated “an officer of the court” in A. R. S. § 11-445 I, which reads in pertinent part, “[A] private process server is an officer of the court.”

Regulation of certified process servers is vested in the Supreme Court Licensing and Regulation Division.

Certification and administration of process servers is vested in the superior court, specifically the superior Court in the county in which the certified process server resides.

Certified process servers undergo a criminal background investigation as required in A.R.S. § 11-445 I, which reads in pertinent part, “[A]s a condition of registration, the Supreme Court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine suitability of the applicant.”

Certified process servers undergo examination prior to certification as required in the Arizona Code of Judicial Administration § 7-204 at E. Initial Certification 3. Examination, which reads in pertinent part, “[E]ach applicant for certification or renewal shall personally take and pass the examination provided by the director and administered and scored by the clerk of the superior court.”

Certified process servers must undergo ten hours of continuing education per year of certification as required in the Arizona Code of Judicial Administration § 7-204 at F. Role and Responsibilities of Certificate Holders. 7. Continuing Education, which reads in pertinent part, “[C]ertified private process servers shall complete ten hours of continuing education each twelve months...”.

Certified process servers renew their certifications every three years, and a criminal background investigation is accompanied by a fingerprint card submission for both a state and federal criminal records check.

Currently certified process servers who are acting within their capacity of officers of the court and who are attempting to locate intended recipients for service of process must employ a private investigator, often at significant expense and at delay, to secure the motor vehicle division records necessary to locate the party in furtherance of the service of process, or certified process servers (or their pro per clients) must secure the services of an attorney for the same purposes, all to secure records to which this officer of the court already has a permissible purpose to request and possess by statute A.R.S. § 28-455, which reads in pertinent part, “[F]or use by an attorney licensed to practice law or by a licensed private investigator in connection with any civil, criminal, administrative or arbitration proceeding in any court or government agency or before any self-regulatory body, including the service of process, ...”

Certified process servers who are acting within their capacity of officers of the court in attempting to locate parties upon whom service of process is being sought should have the authority to directly secure applicable motor vehicle division records rather than employing a third party to do so on their behalf.

Currently certified process servers undergo a similar pre-certification background check and criminal history check on a state and federal level as registered private investigators, and certified process servers undergo a pre-certification examination and are required to participate in ten hours of continuing education every twelve months, both unlike registered private investigators, who are not required to engage in either extra-licensure practice [supra].

PURPOSE AND INTENT OF PROPOSED LEGISLATION

It is the purpose and intent of this proposed legislation to provide to Arizona certified process servers the authority to directly secure motor vehicle records from the Arizona Motor Vehicle Division, said records for which a permissible purpose already exists in the statutes to secure for the purpose of facilitating service of process. The further purpose and intent of this proposed legislation is to increase field efficiency and effectiveness in the service of process, speed service of process, diminish avoidance by sought after parties, and reduce the costs to the public of service of process.

IMPACT UPON STATE FUNDS AND ARIZONA TAXPAYERS

The proposed revision of A.R.S. § 28-455 shall have no negative impact whatsoever upon state funds nor shall the revision have a negative impact upon Arizona taxpayers, as it seeks neither funding nor tax relief of any sort.

IMPACT UPON THE PUBLIC, CERTIFIED PROCESS SERVERS, AND COURTS

The proposed legislation aids the public by:

- a. enhancing the opportunity for personal service of process, which is the optimum mode of notification, and
- b. reducing the need for plaintiffs to incur additional costs and expenses associated with requiring third parties to secure the required records, and
- c. reducing the time needed to serve process and thus commence actions.

The proposed legislation aids certified process servers by:

- a. allowing for timely retrieval of records necessary to locate parties for the service of process, and
- b. significantly reducing the costs for securing records necessary to locate parties for the service of process, and
- c. improving the incidence of successful service of process by authorizing certified process servers in the field to proceed directly to the motor vehicle division office as deemed necessary to secure needed records.

The proposed legislation aids the courts by:

- a. increasing the efficiency and effectiveness of certified process servers, and
- b. reducing the incidence of avoidance of service of process, and
- c. reducing the instances to consider Motions for Alternative Methods of Service of Process, and
- d. having actions commenced more timely via more timely service of process.

FEDERAL AND OTHER STATE'S LEGISLATIVE APPROACHES

It is noted that most other states do not have a certified process server program like that in Arizona. Arizona has one of the most evolved and sophisticated certified process server programs in the United States.

Other states that do have private process server programs have encountered similar problems in the absence of appropriate legislation and have successfully addressed their respective issues legislatively as follows:

- a. Florida: The State of Florida passed legislation as Title X, Chapter 119, § 0712, which reads in pertinent part,

(2) “[D]EPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

(b) Personal information contained in motor vehicle records made confidential and exempt by this section may be released by the department for any of the following uses:

5. “For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:

a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.”

b. Federal: The Federal government in the Drivers Privacy Protection Act uses legislation that is similar to that in Arizona. 18 U. S. C. § 2721. Prohibition on release and use of certain personal information from State motor vehicle records, which reads in pertinent part,

(b) “[P]ermissible Uses...

(4) [F]or use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process...”

PROPOSED STATUTORY REVISION

The proposed statutory revision to A.R.S. § 28-455 at C. 4. shall add wording as follows in bold type:

4. For use by an attorney licensed to practice law, **a Certified Process Server** or by a licensed private investigator in connection with any civil, criminal, administrative or arbitration proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders, or pursuant to a court order.