



AN ACT TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security patrol officers and investigators. (1) There is a board of private security patrol officers and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

- (a) one contract security company, as defined by 37-60-101;
- (b) one proprietary security organization, as defined by 37-60-101;
- (c) one city police department;
- (d) one county sheriff's office;
- (e) one member of the public;
- (f) one member of the peace officers' standards and training advisory council; and
- (g) a licensed private investigator or a registered process server.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or

unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 25-1-1101, MCA, is amended to read:

"25-1-1101. Registered process server -- levying officer -- use of title reserved. (1) ~~Any~~ Except as provided in subsection (2), a person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which the person resides or in which the person's principal place of business is located. A registered process server may make service of process in any county in this state must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall exchange that registration certificate for a new certificate that expires on March 31, 2009.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) A registered process server may make service of process in any county in this state.

(5) A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60."

Section 3. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

~~(2) Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed~~ The board of private security patrol officers and investigators, established in 2-15-1781, shall develop and administer an examination for applicants for registration as a process server based on the handbook and administered by the board of private security patrol officers and

investigators provided for in 2-15-1784.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 4. Section 25-1-1107, MCA, is amended to read:

"25-1-1107. Proof of service -- requirements. A proof of service of process signed by a registered process server must indicate the county in which he is registered and the include the process server's registration number assigned to him under 25-1-1105."

Section 5. Section 25-1-1111, MCA, is amended to read:

"25-1-1111. Bond required -- levy limited. (1) ~~The clerk of the district court may not accept a certificate of registration as a~~ After completing the requirements in Title 37, chapter 60, for registration, a process server unless the certificate is accompanied by shall provide the board of private security patrol officers and investigators with proof of a surety bond of \$10,000 per for an individual or \$100,000 per for a firm, conditioned upon compliance with this part and, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond."

Section 6. Section 25-1-1112, MCA, is amended to read:

"25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) If there has been recovery against a registered process server's bond, the ~~registrant must~~ registered process server shall file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the ~~county attorney~~ board of private security patrol officers and investigators must shall revoke the ~~registrant's certificate~~ process server's registration within a timeframe established by rule."

Section 7. Section 25-3-105, MCA, is amended to read:

"25-3-105. Person serving process -- penalty for obstruction -- exception. (1) A process server

registered under ~~chapter 1, part 11~~ Title 37, chapter 60, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

(2) A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

(3) An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant."

Section 8. Section 25-3-201, MCA, is amended to read:

"25-3-201. Delivery of papers to officer. (1) (a) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such a district court or his the party's agent or attorney; to forward by mail any process, summons, or other papers required in the cause; and it,

(b) It is the duty of the sheriff, registered process server, or other officer to whom said the process, summons, or papers described in subsection (1)(a) may be directed to receive the same process, summons, or papers at the place where the same the documents are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) ~~If any a~~ sheriff, registered process server, or other officer refuses to receive ~~any a~~ summons or other process at the point where it was directed to him or refuses to serve the same summons or process, he the sheriff, registered process server, or other officer is guilty of a misdemeanor and upon conviction thereof ~~thereof must shall~~ be fined ~~in any a~~ sum not exceeding \$100."

Section 9. Section 25-3-203, MCA, is amended to read:

"25-3-203. Prepayment of cost of service. ~~In no case shall the~~ An officer or registered process server receiving papers for service may not be required to serve ~~the same papers for service~~ unless the person ~~in on~~ whose behalf the service is made or ~~his~~ that person's agent or attorney first ~~pay~~ pays the cost of the service upon a demand ~~therefor~~ by the officer or registered process server."

Section 10. Section 25-3-204, MCA, is amended to read:

"25-3-204. Officer to exhibit process. The officer or registered process server executing ~~such a service~~ of process ~~must~~ shall display the service of process, all attached papers, and an identification card upon request by an interested party; then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein at any time during execution of the service of process."

Section 11. Section 25-3-302, MCA, is amended to read:

"25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the ~~facts in such return stated~~ proof of the process or notices having been served as stated."

Section 12. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of the individual's duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of the individual's duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1781.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of

business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of labor and industry provided for in 2-15-1701.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory of the United States.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or

property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(16)~~ (16) "Process server" means a person described in 25-1-1101(1).

~~(16)~~(17) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(17)~~(18) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

~~(18)~~(19) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

~~(19)~~(20) (a) "Security alarm system" means an assembly of equipment and devices or a single device, such as a solid state unit that plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises and to which signals police, private security guards, or alarm response runners are expected to respond.

(b) The term does not include alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises.

~~(20)~~(21) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

~~(24)~~(22) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of the individual's duties.

~~(22)~~(23) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear or carry a firearm

in the performance of those duties."

Section 13. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel ~~and~~, private investigators, and process servers in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel ~~or~~, private investigators, or process servers."

Section 14. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. ~~This~~ (1) Except as provided in subsection (2), this chapter does not apply to:

(~~1~~) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of ~~such that~~ employer only and ~~where~~ when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure ~~which that~~ at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some ~~of his~~ work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

~~(2)(c)~~ (c) an officer or employee of the United States, ~~of America~~ or of this state, ~~or of~~ a political subdivision ~~thereof~~ of the United States or this state while ~~such the~~ officer or employee is engaged in the performance of his official duties;

~~(3)(d)~~ (d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

~~(4)(a)~~ (e) an attorney at law ~~in~~ while performing his duties as an attorney at law;

~~(b)(f)~~ (f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

~~(c)(g)~~ (g) a law student who is serving a legal internship;

~~(5)(h)~~ (h) a collection agency or finance company licensed to do business under the laws of this state, or an employee ~~thereof~~ of a collection agency or finance company licensed in this state while acting within the scope

of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his the debtor's property ~~where~~ when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent ~~thereof~~;

~~(6)~~(i) special agents employed by railroad companies, provided that the railroad company notifies the board that ~~such~~ its agents are operating in the state;

~~(7)~~(j) insurers and insurance producers and insurance brokers licensed by the state; while performing duties in connection with insurance transacted by them;

~~(8)~~(k) an insurance adjuster, as defined by in 37-60-101~~(40)~~; or

~~(9)~~(l) an internal investigator or auditor; while making an investigation incidental to the business of the agency or company by which ~~he~~ the investigator or auditor is singularly and regularly employed.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 15. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, qualifying agents, licensees, ~~and~~ holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

(3) (a) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

- (7) requiring the maintenance of records;
- (8) requiring licensees, except process servers, to file an insurance policy with the board; and
- (9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination."

Section 16. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required -- process server registration required. (1) (a) Except as provided in 37-60-105 and 37-60-315, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

Section 17. Section 37-60-303, MCA, is amended to read:

"37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

- (a) is at least 18 years of age;
- (b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear or carry a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board."

Section 18. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses and registration -- application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard or registered as a process server;

(e) one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the ~~applicant's~~ moral character of each applicant other than an applicant under 37-60-303(7)(a).

(4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 19. Section 37-60-405, MCA, is amended to read:

"37-60-405. Approval of weapons. The weapons to be carried by armed licensees or ~~identification card holders~~ of identification cards as private security personnel or private investigators must be approved by the board."

Section 20. Repealer. Sections 25-1-1103, 25-1-1105, and 25-1-1106, MCA, are repealed.

Section 21. Effective date. [This act] is effective July 1, 2007.

- END -

I hereby certify that the within bill,
SB 0209, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 209
INTRODUCED BY J. ESSMANN

AN ACT TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE.

