

Assembly Bill No. 2493

Passed the Assembly June 30, 2002

Chief Clerk of the Assembly

Passed the Senate June 27, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 22353 of the Business and Professions Code, and to amend Sections 415.50, 699.080, and 706.108 of the Code of Civil Procedure, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

AB 2493, Robert Pacheco. Service of process.

Existing law provides for the registration by the county clerk of legal document assistants, unlawful detainer assistants, and process servers, as specified.

This bill would make technical, nonsubstantive changes to those provisions.

Existing law provides the methods by which a summons is served, as specified. Existing law provides alternative service by publication if the party cannot with reasonable diligence be served in another manner.

This bill would prohibit a court, in making a determination that a party cannot be served in another manner, from conducting a search of public databases that restrict access to residential addresses, including, but not limited to, the Department of Motor Vehicles' records.

Existing law proscribes the manner in which a registered process server is to levy a writ of execution on specified types of property.

This bill would permit a registered process server to levy more than once under a valid writ of execution.

Upon a judgment creditor's delivery of an application for issuance of an earnings withholding order, existing law authorizes a registered process server to issue an earnings withholding order to the county where the judgment debtor's employer is served a writ of execution. Existing law provides that the fee for these services be allowed as a recoverable cost, as specified, but not to exceed \$1.50.

This bill would delete the monetary limitation and provide that the fee for these services be allowed as a recoverable cost, under specified provisions.



The people of the State of California do enact as follows:

SECTION 1. Section 22353 of the Business and Professions Code is amended to read:

22353. (a) A certificate of registration shall be accompanied by a bond of two thousand dollars (\$2,000), executed by an admitted surety insurer and conditioned upon compliance with the provisions of this chapter and all laws governing the service of process in this state. The total aggregate liability on the bond is limited to two thousand dollars (\$2,000). As an alternative to the bond, the registrant may deposit with the clerk, cash or a money order in the amount of two thousand dollars (\$2,000).

(b) The county clerk shall, upon filing the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registered process server. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars (\$7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for the notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

SEC. 2. Section 415.50 of the Code of Civil Procedure is amended to read:

415.50. (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of



the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served and direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of Motor Vehicles.

SEC. 3. Section 699.080 of the Code of Civil Procedure is amended to read:

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

(1) Real property, pursuant to Section 700.015.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.

(3) Personal property in the custody of a levying officer, pursuant to Section 700.050.

(4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(5) Deposit accounts, pursuant to Section 700.140.



(6) Property in a safe-deposit box, pursuant to Section 700.150.

(7) Accounts receivable or general intangibles, pursuant to Section 700.170.

(8) Final money judgments, pursuant to Section 700.190.

(9) Interest of a judgment debtor in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) Before levying under the writ of execution, the registered process server shall deposit a copy of the writ with the levying officer and pay the fee provided by Section 26721 of the Government Code.

(c) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030 on a form provided by the registered process server.

(d) Within five days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of levy on other persons, as required by Article 4 (commencing with Section 700.010).

(4) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26721 of the Government Code has been paid, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be levied upon.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.



(g) A registered process server may levy more than once under the same writ of execution, provided that the writ is still valid.

SEC. 4. Section 706.108 of the Code of Civil Procedure is amended to read:

706.108. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may deliver an application for issuance of an earnings withholding order to a registered process server who may then issue an earnings withholding order.

(b) If the registered process server has issued the earnings withholding order, the registered process server, before serving the earnings withholding order, shall deposit with the levying officer a copy of the writ of execution, the application for issuance of an earnings withholding order, and a copy of the earnings withholding order, and shall pay the fee provided by Section 26750 of the Government Code.

(c) A registered process server may serve an earnings withholding order on an employer whether the earnings withholding order was issued by a levying officer or by a registered process server, but no earnings withholding order may be served after the time specified in subdivision (b) of Section 699.530. In performing this function, the registered process server shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to the employee of the earnings withholding order.

(4) A copy of the employer's instructions referred to in Section 706.127, except as otherwise prescribed in rules adopted by the Judicial Council.

(d) Within five days after service under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution, if it is not already in the hands of the levying officer.

(2) Proof of service on the employer of the papers listed in subdivision (c).



(3) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26750 of the Government Code has been paid, the levying officer shall perform all other duties required by this chapter as if the levying officer had served the earnings withholding order. If the registered process server does not comply with subdivisions (b), where applicable, and (d), the service of the earnings withholding order is ineffective and the levying officer is not required to perform any duties under the order and may terminate the order and may release any withheld earnings to the judgment debtor.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.



Approved _____, 2002

Governor

