

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 694  
Committee Substitute Favorable 5/31/95  
Committee Substitute #2 Favorable 6/19/95

Short Title: Wake Service of Process.

(Local)

Sponsors:

Referred to:

March 30, 1995

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE FOR PRIVATE SERVICE OF PROCESS IN WAKE  
COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made~~ made, a private process server appointed by the clerk of court, or some other person duly authorized by law to serve summons. Upon the request of the plaintiff or the plaintiff's agent or attorney, service shall be made by a private process server appointed by the clerk of court. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

1           Sec. 2. Article 12 of Chapter 7A of the General Statutes is amended by adding  
2 a new section to read:

3 **"§ 7A-114. Appointment of private process server.**

4       (a) Qualifications. – The clerk of court of each county shall appoint persons as  
5 private process servers in accordance with this section. To be appointed as a private  
6 process server, a person must apply to the clerk of court for the appointment and must  
7 meet all of the following qualifications:

8           (1) Be at least 21 years old.

9           (2) Be a resident of this State.

10          (3) Have no mental or legal disability.

11          (4) Not be the defendant in a pending criminal action.

12          (5) Not have been convicted of a felony.

13          (6) In the five-year period before the date the application is filed, not have  
14 been convicted of a misdemeanor involving moral turpitude or  
15 dishonesty.

16          (7) Pass a written examination given by the clerk testing the applicant's  
17 knowledge of the laws and rules of procedure concerning the service of  
18 process.

19          (8) Post with the clerk a performance bond in the amount of one hundred  
20 thousand dollars (\$100,000).

21          (9) Pay the application fee and the examination fee set by the clerk.

22       (b) Exam. – The clerk of court shall determine the content of the examination an  
23 applicant must take to become a private process server and the passing grade for the  
24 examination. The clerk shall determine the number of times and the locations at which  
25 the examination is given in a year. The clerk shall give the examination at least once a  
26 year.

27       (c) Bond. – A performance bond required for appointment as a private process  
28 server must be approved by the clerk of court and must be filed for the benefit of any  
29 person injured by malfeasance, misfeasance, neglect of duty, or incompetence in  
30 performing the duties of a private process server. If an applicant is or will be employed  
31 by an entity whose employees are covered by a bond of the employer, the applicant is not  
32 required to post a bond if the employer gives a written statement to the clerk affirming  
33 that the employer's bond applies or will apply to the applicant in performing the duties of  
34 a private process server.

35       The clerk of court may redeem, in whole or in part, a performance bond filed by a  
36 private process server when the clerk determines that a person has been injured by the  
37 malfeasance, misfeasance, neglect of duty, or incompetence of the private process server  
38 in serving process. Before the clerk redeems a bond, the clerk must hold a hearing on the  
39 matter.

40       (d) Appointment. – The clerk of court shall appoint a person who meets the  
41 qualifications set in subsection (a) of this section as a private process server. The clerk  
42 shall issue each person appointed an identification number and an identification card.  
43 The card shall bear the process server's identification number, printed name, signature,

1 photograph, and date the appointment expires. The clerk of court may contract with the  
2 City-County Bureau of Identification to make the identification cards. The person to  
3 whom a card is issued shall pay the fee required for issuance of the card. The clerk shall  
4 maintain a list of persons who hold appointments as private process servers.

5 (e) Effect. – A person appointed as a private process server is authorized to serve  
6 civil process. A person appointed as a private process server shall take an oath that the  
7 person will honestly, diligently, and faithfully exercise the duties of a private process  
8 server. Process served by a private process server has the same effect as if it had been  
9 served by a sheriff.

10 (f) Renewal of Appointment. – An appointment as a private process server expires  
11 one year after the date the clerk of court makes the appointment. An appointment may be  
12 renewed by filing an application for renewal with the clerk. The clerk shall renew an  
13 appointment if the process server has properly fulfilled the duties of a private process  
14 server during the year and the bond posted by the process server remains in effect.

15 (g) Revocation or Refusal to Renew Appointment. – The clerk of court may  
16 revoke or refuse to renew a person's appointment as a private process server whenever the  
17 clerk determines that the private process server has not fully and properly discharged the  
18 duties of a private process server. Before the clerk revokes or refuses to renew an  
19 appointment for cause, the clerk must hold a hearing on the matter.

20 (h) Hearing. – A clerk of court must notify a private process server of the time and  
21 date of a hearing. At the hearing, the process server may cross-examine witnesses,  
22 present evidence, and be heard. If the clerk decides to redeem the process server's bond  
23 or to revoke or to refuse to renew the process server's appointment, the clerk must make a  
24 written record of the findings of fact and set out in detail the reasons why the clerk  
25 decided to take that action. A person whose bond is redeemed or whose appointment is  
26 revoked or not renewed may appeal the action to the superior court of the county whose  
27 clerk made the appointment.

28 (i) Fees. – The clerk of court shall set fees for filing an application to become a  
29 private process server, taking an examination to become a private process server, and  
30 issuing an identification card to a person appointed as a private process server. The  
31 application fee may not exceed one hundred dollars (\$100.00). The fee for an  
32 identification card may not exceed ten dollars (\$10.00).

33 The fee set in G.S. 7A-311 for service of civil process applies to process served by a  
34 private process server. The person who engages a private process server to serve process  
35 shall pay the fee set by that statute to the appropriate county at the time required by that  
36 statute.

37 The amount charged by a private process server for serving process is governed by the  
38 agreement between the process server and the person who engages the process server.

39 (j) Offense. – A private process server who, knowing that the person served is not  
40 the person named, serves process on a person not named in the paper is guilty of a Class  
41 1 misdemeanor."

42 Sec. 3. This act applies to Wake County only.

43 Sec. 4. This act is effective upon ratification.