



2007 ASSEMBLY BILL 938

March 11, 2008 – Introduced by Representatives STASKUNAS, SOLETSKI, HAHN and KESSLER, cosponsored by Senator LEHMAN. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to renumber and amend* 801.10 (1); *to amend* 440.08 (2) (a) 63i.,
2 subchapter II (title) of chapter 440 [precedes 440.26] and 440.27 (2) (c) and (3);
3 and *to create* 440.03 (13) (b) 56m., 440.08 (2) (a) 63i., 440.27 and 801.10 (1) (b)
4 of the statutes; **relating to:** regulation of process servers, granting
5 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, any adult resident of the state where service is made and who is not a party to the action may serve a summons in civil actions and special proceedings.

This bill requires a person to obtain certification as a process server from the Department of Regulation and Licensing (DRL) before the person may serve an order, a pleading, a summons, or other paper that is required to be personally served. The bill exempts from certification the following:

1. A resident of the state who is employed as a sheriff or a deputy sheriff.
2. A resident of the state who is a public officer or public employee.
3. A resident of the state who is employed by a landlord as a property manager and who, in the course of his or her duties as a property manager, serves papers in an eviction action against a tenant who lives in the property managed by the person.

In order to be certified as a process server, a person must be an adult resident of the state who holds the equivalent of an eighth grade education. In addition, the person must do all of the following:

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SECTION 5. 440.27 of the statutes is created to read:

440.27 Process servers; certification. (1) (a) **CERTIFICATE REQUIRED.** Except as provided in par. (b), no person may serve an order, pleading, summons, or other paper that is required to be personally served unless he or she is certified under this section.

(b) This section does not require certification of a person who satisfies any of the following:

1. The person is a resident of this state and is employed as a sheriff or a deputy sheriff.

2. The person is a resident of this state and a public officer or public employee of this state acting in his or her official capacity. In this subdivision, public officer and public employee have the meaning given in s. 939.22 (30).

3. The person satisfies all of the following:

a. The person is a resident of this state.

b. The person is employed by a landlord as a manager of the landlord's real property.

c. In the course of his or her duties as a manager, the person serves a summons and complaint in an eviction action, as required under s. 799.42, upon a tenant of the landlord who lives in the real property managed by the person.

(2) ISSUANCE OF CERTIFICATE. The department shall issue a certificate to a person who submits an application to the department on a form provided by the department and who satisfies all of the following:

(a) Is an adult resident of this state.

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1 (b) Holds the equivalent of an 8th grade education.

2 (c) Pays the fee specified in s. 440.05 (1).

3 (d) Subject to ss. 111.321, 111.322, and 111.335, submits evidence satisfactory
4 to the department that the person has not been convicted of a felony or of a
5 misdemeanor in which proof of theft, a false representation, or the person's
6 dishonesty is an element of the misdemeanor offense.

7 (e) Submits evidence satisfactory to the department that the person is familiar
8 with the requirements for serving papers under ch. 801 and with the duties and
9 responsibilities of a process server under ch. 801.

10 (f) Executes and files with the department a bond or liability insurance policy
11 that is approved by the department and satisfies all of the following:

12 1. Is in a form approved by the department.

13 2. Is furnished by a surety company or an insurer authorized to do a surety
14 business in this state.

15 3. Is in the amount of at least \$500.

16 **(3) RENEWAL OF CERTIFICATE.** Renewal applications shall be submitted to the
17 department, on a form provided by the department, on or before the date specified
18 in s. 440.08 (2) (a), and shall include the renewal fee specified in s. 440.08 (2) (a) and
19 evidence satisfactory to the department that the process server maintains a bond or
20 liability insurance policy that is approved under sub. (2) (f).

21 **(4) RULES.** The department may promulgate rules necessary to administer this
22 section.

23 **(5) DISCIPLINARY ACTIONS.** (a) Subject to the rules promulgated under s. 440.03
24 (1), the department may make investigations or conduct hearings to determine

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1 whether a violation of this section or any rule promulgated under this section has
2 occurred.

3 (b) Subject to the rules promulgated under s. 440.03 (1), the department may
4 reprimand a person certified under this section or deny, limit, suspend, or revoke a
5 certification issued under this section if the department finds that the applicant or
6 person has done any of the following:

7 1. Made a material misstatement in an application for certification or renewal
8 of certification.

9 2. Engaged in conduct while performing the duties and responsibilities of a
10 process server under ch. 801 that evidences a lack of knowledge or ability to comply
11 with the requirements for serving papers under ch. 801.

12 3. While performing the duties and responsibilities of a process server under
13 ch. 801, made a material misrepresentation to a party to a civil action or proceeding
14 or to a person on whose behalf service was made that was relied upon by the party
15 or person.

16 4. Advertised in a manner that is false, deceptive, or misleading.

17 5. Violated this section or a rule promulgated under this section.

18 **(6) PENALTIES.** (a) Any person who violates this section or a rule promulgated
19 under this section may be fined not less than \$100 nor more than \$500 or imprisoned
20 for not less than 3 months nor more than 6 months or both.

21 (b) In addition to or in lieu of the penalties under par. (a) and the remedies
22 under sub. (5), any person who violates this section or a rule promulgated under this
23 section may be required to forfeit not more than \$1,000 for each violation. Each day
24 of continued violation constitutes a separate violation.

ASSEMBLY BILL 938**SECTION 6**

1 **SECTION 6.** 440.27 (2) (c) and (3) of the statutes, as created by 2007 Wisconsin
2 Act (this act), are amended to read:

3 440.27 (2) (c) Pays the initial credential fee specified in s. 440.05 (1) determined
4 by the department under s. 440.03 (9) (a).

5 **(3) RENEWAL OF CERTIFICATE.** Renewal applications shall be submitted to the
6 department, on a form provided by the department, on or before the date specified
7 in s. 440.08 (2) (a) and shall include the renewal fee specified in s. 440.08 (2) (a)
8 determined by the department under s. 440.03 (9) (a) and evidence satisfactory to the
9 department that the process server maintains a bond or liability policy that is
10 approved under sub. (2).

11 **SECTION 7.** 801.10 (1) of the statutes is renumbered 801.10 (1) (a) and amended
12 to read:

13 801.10 (1) (a) ~~An~~ Except as provided in par. (b), an authenticated copy of the
14 summons may be served by any adult resident of the state where service is made who
15 is not a party to the action. Service shall be made with reasonable diligence.

16 **SECTION 8.** 801.10 (1) (b) of the statutes is created to read:

17 801.10 (1) (b) Except as provided in sub. (1m), within this state, an
18 authenticated copy of the summons may only be personally served by an adult
19 resident of the state who is not a party to the action and is either certified under s.
20 440.27 or exempted from the certification requirement by s. 440.27 (b). Service shall
21 be made with reasonable diligence.

22 **SECTION 9. Initial applicability.**

23 (1) This act first applies to the service of papers on the effective date of this
24 subsection.

