

HB 951, HD 1

MEASURE TITLE

RELATING TO THE SERVICE OF PROCESS.

DESCRIPTION:

Specifies the persons authorized to serve legal process. Authorizes the Director of Public Safety to maintain a list of independent process servers. Shields the State and the Department of Public Safety from liability arising from the acts of independent process servers. (HB951 HD1)

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

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Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL (HB) 951, HOUSE DRAFT (HD) 1
A BILL FOR AN ACT RELATING TO
THE SERVICE OF PROCESS

By
Ted Sakai, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Tuesday, March 12, 2013, 2:45 p.m.
State Capitol, Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety (PSD) **supports** HB 951, HD 1 which specifies the persons authorized to serve legal process. HB 951, HD1 authorizes the Director of PSD to maintain a list of independent process servers and shields the State and PSD from liability arising from the acts of independent process servers.

Act 142 SLH 2012 amended the Hawaii Revised statutes to allow persons authorized by the rules of the court to also all types of civil process. As a result of this Act, PSD stopped providing lists of process servers to the Collections Bar. We had provided such lists for years prior to 2012. PSD was later informed by the Department of the Attorney General that the term "process" as indicated in the rules of the court did not include the following:

1. Order to Show Cause pursuant to Sections 603 and 604, HRS
2. Writs of Attachment and Execution pursuant to Section 631, HRS
3. Garnishment documents pursuant to Section 652, HRS
4. Writs of Replevin pursuant to Section 634, HRS and

5. Writs of Possession pursuant to Section 666, HRS:

The Collections Bar has indicated that it is now more difficult to identify process servers and obtain their services. Moreover, there is an increased reliance on Deputy Sheriffs, who are already undermanned. However, PSD has no authority to reinstate and maintain the list. Also, we are concerned any implication that a process server on the list is qualified and/or authorized by our Department.

The amendments being proposed in HB 951, HD 1, will give PSD time to work with interested parties in coming up with a more permanent solution to civil process servers.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 951, H.D. 1, RELATING TO THE SERVICE OF PROCESS.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL
AND MILITARY AFFAIRS

DATE: Tuesday, March 12, 2013

TIME: 2:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General has several comments about this bill.

This bill updates several statutes to clarify who may serve civil process as well as authorizes the Department of Public Safety (PSD) to create a list of independent civil process servers to serve orders to show cause under chapters 603 and 604, Hawaii Revised Statutes (HRS); garnishment under chapter 652, HRS; writs of replevin and attachment under chapter 634, HRS; writs of possession under chapter 501 and 666, HRS; and orders for examination under chapter 636, HRS.

Not all of the statutes listed in this bill have been amended to allow independent civil process servers from the list maintained by PSD to serve or execute the process addressed by these statutes. Sections 3, 4, 7, 9, 12, 14, and 18 of this bill, which amend sections 603-29, 604-6.2, 633-8, 634-12, 651-1, 652-2, and 654-2, HRS, respectively, should also be amended to include authorization of persons on the list to serve and execute such process.

It is also not clear if the amendment of section 666-21(b), HRS, in section 20 of this bill was intentionally not included in section 22 of this bill (the reenactment of the statutes in all other sections to the form in which they read on the day prior to the effective date of the bill). If unintended, section 666-21, HRS, should be added to section 22 of this bill.



The Judiciary, State of Hawai'i

**Testimony to the Senate Committee on Public Safety, Intergovernmental
and Military Affairs**

Senator Will Espero, Chair
Senator Rosalyn Baker, Vice Chair

Tuesday, March 12, 2013, 2:45 p.m.
State Capitol, Conference Room 224

by

Susan Pang Gochros
Chief Staff Attorney and Department Head
Intergovernmental and Community Relations Department

Bill No. and Title: House Bill No. 951, HD1 Relating to the Service of Process

Purpose: Specifies the persons authorized to serve legal process. Authorizes the Director of Public Safety to maintain a list of independent process servers. Shields the State and the Department of Public Safety from liability arising from the acts of independent process servers. (HB951 HD1)

Judiciary's Position:

The Judiciary supports this bill and appreciates that the Department of Public Safety stopped providing a list of independent process servers because of concerns related to (1) the Department's legal authority to provide this list; and (2) the implicit approval it appeared to give the independent process servers whose names were on the list.

This bill addresses the concerns of PSD by authorizing PSD to maintain a list of independent civil process servers to process writs; and providing guidance as to what criteria should be used in disallowing one's name on the list. It also provides immunity from liability for PSD, the state and individual employees.



House Bill No. 951,HD1 Relating to the Service of Process
Senate Committee on Public Safety, Intergovernmental and Military Affairs
Tuesday, March 12, 2013
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We suggest that perhaps the bill should be amended to **mandate** the provision of the list by PSD instead of simply **authorizing** the list. If mandated by law to provide the list, it may: (1) alleviate concerns about whether “de-listing” may occur in the future; and (2) re-enforce the immunity provision by ensuring that the list provision is a legal requirement.

Thank you for the opportunity to provide comments on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 10, 2013 7:38 AM
To: FCMTestimony
Cc:
Subject: *Submitted testimony for HB951 on Mar 12, 2013 14:45PM*

HB951

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Among Jr	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 11, 2013 11:50 AM
To: PSMTestimony
Cc: doug.jorg@gmail.com
Subject: Submitted testimony for HB951 on Mar 12, 2013 14:45PM
Attachments: HB951 Testimony.pdf

HB951

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Doug Jorg	Individual	Support	No

Comments: My testimony attached. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony on HB 951

By Doug Jorg, Process Server

As someone who has been providing process services for the past 12 years, I do partially support this bill.

Yes, the Office of Public Safety should maintain a list of qualified process servers. My understanding is the list was pulled last year without warning leaving the average citizen requiring process services without a current list of process servers to contact.

Yes, a reasonable registration fee paid to the State of Hawaii by process servers is acceptable.

No, the State should not regulate prices charged by process servers. Process servers are independent business people that have to cover the costs of doing business. The State should allow the competitive market place to determine the costs charged by process servers. Requiring fix costs is detrimental to business profit as rising costs of gas, admin, etc. cut into our profits.

The costs proposed by this bill are outdated. For example, the bill sets a cost per mile at \$.40. The current IRS rate is \$.555 per mile. That rate is based on average fuel costs in the nation. Hawaii's costs usually run an average of \$1.00 more per gallon, even higher on the neighbor islands.

Thank you,

Doug Jorg

Testimony for Public Hearing on House Bill 951, HD1, to the
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY
AFFAIRS

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Tuesday, March 12, 2013,
State Capitol, Conference Room 224

WRITTEN TESTIMONY ONLY

By
Jeannie C. Jorg Domingo
77-6425 Kuakini Highway, C2-1
Kailua-Kona, HI 96740

Chair Espero, Vice Chair Baker, and Members of the Committee:

My name is Jeannie C. Jorg Domingo. I am writing today in support of House Bill 951. I also wish to submit suggestions to change this bill, in regards to fees.

I have been a self-employed process server in Hawaii County since 1996. When I first started, I was commissioned by the Public Safety Department and my title was Civil Deputy Sheriff. I received a training in the proper methods of process serving and managing evictions. I was never paid a salary by the State of Hawaii. I have always been responsible for all the expenses associated with running a small business in Hawaii. Just a few examples are: advertising, office supplies, purchase & maintenance of vehicles, insurances, GET taxes, income taxes and bonds.

A few years ago, the DPS decided that they would keep us as commissioned servers and change our title to Civil Process Servers. They created a list of servers that was provided to the courts and any interested parties who requested it. For a certain amount of time, anyone who wished to be placed on this list, regardless of their knowledge in process serving or evictions (Writ of

Possession), was allowed on.

As process servers, we provide an important civil function, which is to notify a party that a legal action is being taken against them. The act of serving process and managing evictions can be challenging. There are many considerations to take into account and each job I receive has the potential for safety risk. On the Big Island, we are also dealing with service destinations that are further spread apart than on other islands. I believe that the fee structure charged should be agreed upon between the server and his/her client. What I charge to clients is the "fair market value" for the job performed. I do not believe that the fees I charge to my clients should be mandated by the HRS. I believe this is unconstitutional in a capitalist society. The fee structure that is currently in effect is outdated. That structure was created when the Public Safety Department enlisted Police Officers and Sheriffs to serve civil documents. There used to be a support staff and use of vehicles that were paid for by the State of Hawaii. The stated fees are not realistic to cover the expenses of private business owners, which we process servers are.

In conclusion, I believe that bill HB 951 should be passed, with amendments to allow "as agreed upon" fees between process servers and their clients.

Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeannie C. Jorg Domingo', with a stylized, cursive script.

Jeannie C. Jorg Domingo