

SUBJECT: Lawsuit service of notice to nonresidents by secretary of state

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 5 ayes — T. Hunter, Hilbert, Moffat, Tillery, Zbranek

1 nay — Hartnett

3 absent — Alvarado, Culberson, Sadler

SENATE VOTE: On final passage, May 10 — 31-0

WITNESSES: *(On House companion bill, HB 2788 by Oliveira):*

For — Robert Walker; Aaron L. Jackson, Bob Walker; Mike Slack, Texas Trial Lawyers Association

Against — None

BACKGROUND: Whenever a nonresident defendant is sued by a Texas resident, service of process (notice of the commencement of a civil lawsuit) may be accomplished by serving the Texas secretary of state, who sends the service by certified mail to the out-of-state defendant. If a defendant fails to respond to the suit, a default judgment may be entered against that defendant by the court. A defendant may contest such a default judgment up to four years after it is entered by claiming that the defendant was improperly served.

DIGEST: SB 1306, as amended, would allow a plaintiff to inform the secretary of state of the defendant's name and the address where the plaintiff reasonably believes that the nonresident may be served with process.

If a default judgment is entered against a nonresident defendant and the defendant contests the default judgment because the service was improper, the service may be found proper if the defendant had actual knowledge or should have known about the service of process no later than 30 days before the entry of the default judgment.

The bill would apply to any cause of action on which process is requested to be served by the secretary of state after the effective date, September 1, 1995.

**SUPPORTERS
SAY:**

Nonresident defendants are able to elude service of process, and therefore strike default judgments, simply by not accepting the registered mail that would serve them with process. Even though nonresident defendants may have actual knowledge of the suit, so long as they can avoid being served, no judgment may be entered against them. SB 1306 would provide that if defendants are aware of suits against them, they would not be able to circumvent the plaintiff's rights merely by avoiding service.

The bill would not affect the due process rights of nonresident defendants but would merely require them to accept service of process when it is done properly.

**OPPONENTS
SAY:**

The ability of a plaintiff to effect service of process when the defendant *should have known* about the service is an extremely broad standard that could adversely affect a defendant's due process rights if held to be adequate for service of process.

NOTES:

The Senate-passed version would require the party requesting service to supply the secretary of state the address of the nonresident's home or home office where the plaintiff reasonable believes the defendant may be served. The committee amendment would allow the plaintiff to supply the name and address where the plaintiff reasonably believes process may be served.

The House companion, HB 2788 by Oliveira was placed on the House General State Calendar for May 11 but was not considered by the House.