

- SUBJECT:** Regulating court reporting and shorthand reporting firms
- COMMITTEE:** Judicial Affairs — committee substitute recommended
- VOTE:** 7 ayes — Thompson, Hartnett, Capelo, Hinojosa, Solis, Talton, Uresti
0 nays
2 absent — Deshotel, Garcia
- WITNESSES:** For — *Registered but did not testify:* Bill D. Carroll, Jimmy Evans, Glenda Fuller, and Anthony Haley, Texas Court Reporters Association; Karol Rice, Esquire Deposition Services; Kim Tindall; Kwame Walker, Complex Legal Services, Esquire Deposition Services, and U.S. Legal Support

Against — None
- BACKGROUND:** Government Code, ch. 52, establishes the requirements for Texas Supreme Court certification of official court reporters and shorthand reporters and creates the Court Reporters Certification Board to administer examinations and collect fees.

Government Code, sec. 52.027 requires a person filing a complaint against a certified shorthand reporter to complete a specified complaint form, sign the form under oath, and attach any pertinent documentary evidence.
- DIGEST:** CSHB 3179 would amend several sections in Government Code, chapter 52, relating to court reporters, to include provisions regulating court reporting and shorthand reporting firms.

The bill would require court reporting and shorthand reporting firms to register with the Court Reporters Certification Board and pay a registration fee. The board could enforce this requirement against a firm or its affiliate by seeking an injunction or filing a complaint in the district court of the county in which the firm or its affiliate was located, or in Travis County.

After receiving a verified complaint against a shorthand reporting firm and giving the firm an opportunity for a hearing, the board could reprimand, assess a reasonable fine against, or suspend or revoke the registration of a firm or its affiliate for:

- ! fraud, corruption, or dishonesty;
- ! failing to stop conduct by an employee that violated the law;
- ! fraud or misrepresentation in obtaining registration;
- ! a final conviction of an officer, director, or employee of the firm for a felony or misdemeanor related directly to the provision of court reporting services;
- ! providing services while its registration was suspended or engaging the services of a shorthand reporter whose certification the firm should have known was suspended; or
- ! a pattern of providing gifts, incentives, rewards, or anything else of value worth more than \$100 per year per person in order to obtain employment or some other benefit.

This provision would not prohibit value-added business services, such as the pricing of products and services or long-term volume discounts.

CSHB 3179 would authorize the Texas Supreme Court to adopt rules regulating the registration and conduct of court reporting and shorthand reporting firms. It also would require a person filing a complaint against a certified shorthand reporter or a shorthand reporting firm to have personal knowledge of the alleged violation.

The total number of members of the Court Reporters Certification Board would increase from 12 to 13. In addition to the one district judge and two attorneys already on the board, the number of public members would increase from three to four. The three board members who are active official court reporters and active certified shorthand reporters, respectively, would be decreased to two. The bill would add one representative of a shorthand reporting firm not owned by a certified shorthand reporter and one representative of a shorthand reporting firm that is owned by a shorthand reporter, with both firms required to have operated at least three years before the representatives appointment to the board. A quorum would increase from five to seven.

The bill also would:

- ! raise the value of gifts or incentives that a shorthand reporter could give per year from \$50 to \$100;
- ! require the board to maintain a record of and issue a registration to each court reporting firm that registered with the board;
- ! require the board to maintain a record of each registration issued, renewed, or revoked;
- ! apply the complaint procedures and appeal procedures already in statute for shorthand reporters to shorthand reporting firms; and
- ! add definitions of court reporting and shorthand reporting firms.

The bill would take effect September 1, 2001.

SUPPORTERS
SAY:

CSHB 3197 would make it clear that the regulations in Government Code, chapter 52 apply to court reporting and shorthand reporting firms as well as to court reporters. Although the law now requires court reporting firms to register and states that all rules applicable to court reporters apply to court reporting firms, a recent opinion by the attorney general (JC-0096, issued August 23, 1999) determined that the brief reference in this statute to firms did not confer authority on the Court Reporters Certification Board to regulate firms, such as by using its injunctive or disciplinary powers to enforce rules against a firm, that the board and firms had believed were conferred by the statute. Moreover, the AG's opinion found that many of the rules for court reporters relate only to natural persons and cannot be applied to court reporting firms.

This bill would place those regulations and rules into statute and would codify accepted and followed practices regarding board regulation of court reporting firms. While most firms already follow these rules, as an increasing number of large interstate court reporting firms move into Texas, the state must have rules in place to regulate these firms.

CSHB 3179 would authorize the Texas Supreme Court to adopt rules regulating the registration and conduct of court reporting and shorthand reporting firms to ensure that a method exists for creating additional rules that may be necessary to administer this chapter or that reflect changing industry standards. The Supreme Court already has this authority with regard

to court and shorthand reporters and should have the same authority over firms. As a neutral arbiter of the law, the court is the best, most impartial body in which to invest this authority.

The bill would ensure that complaints filed with the board were based on personal knowledge rather than hearsay. Pursuing allegations based only on second-hand information is contrary to the principles of American justice, which is why hearsay evidence is not admissible in court. Investigations by the board should be held to these same standards. If the board suspects a violation for which no one has brought forth personal knowledge, the board can investigate the possible violation on its own initiative.

The bill also would raise the amount a person or firm could give in gifts or incentives from \$50 to \$100 per year per person. This change would bring the code into conformity with the National Court Reporters Association's professional code-of-conduct guidelines.

This bill is the result of long hours of intense negotiation and is the best agreement that can be reached by all parties involved. It would not regulate the contracting practices of court reporting firms, such as the pricing of services and long-term contracts. This highly divisive issue would be addressed best through a separate bill.

OPPONENTS
SAY:

CSHB 3179 would regulate court reporting firms without providing adequate representation of these firms on the Court Reporters Certification Board. Only two of the 13 members of the board would represent court reporting firms, and only one of those positions would be reserved for a firm that was not owned by a certified shorthand reporter. Court reporters would have four representatives on the board, plus one of the new positions for a firm owned by a certified shorthand reporter. This composition would not adequately protect the interests of court reporting firms, particularly those not owned by certified shorthand reporters.

CSHB 3179 would authorize the Supreme Court to adopt additional, potentially burdensome, rules regulating the registration and conduct of court reporting and shorthand reporting firms. The rules and regulations that this bill would add to statute are the product of intense negotiation, and people or firms who are unhappy with certain concessions that were made should not

have an opportunity to lobby the members of the Supreme Court to promulgate additional rules. If additional rules are required, it should be the responsibility of the Legislature, after hearing all public input, to enact those regulations.

CSHB 3179 could discourage the filing of legitimate complaints by requiring the complainant to have personal knowledge of the alleged violation. In some cases, a person who knows of a violation may be reluctant to file a complaint with the board because of personal relationships with the people involved, but the person may share this information with other people who could file a complaint. The extensive procedure already in place for investigating these complaints provides adequate due process and protection against frivolous complaints, and people or firms unhappy with the board's decision may appeal.

OTHER
OPPONENTS
SAY:

CSHB 3179 would not go far enough in regulating court reporting firms. Certified court reporters, and by extension the firms they own, are regulated by standards of conduct in Government Code, sec. 52.034 that prohibit them from entering into any contract that would undermine the impartiality of the court reporter or give or appear to give an exclusive advantage to any party. Many in the industry have interpreted this prohibition to extend to long-term contractual agreements, because these agreements may cause a reporter to show favoritism to the parties to the contract. Although firms not owned by court reporters would be bound by the provisions of sec. 52.034 under CSHB 3179, additional language would exempt long-term contracts by firms from the limitations in the section. By allowing firms to continue to enter into these contracts, this bill would give firms an unfair competitive advantage to offer lower-priced volume or long-term discounts. The same regulations should be applied to court reporting firms as are applied to court reporters.

NOTES:

The committee substitute removed a provision in the original bill that would have imposed a \$50 limit per transaction on any gifts or incentives given by a shorthand reporter. The substitute added a provision specifying that a firm could not provide more than \$100 in gifts or incentives per person per year, as well as language stating that the provision would not apply to value-added business services, including long-term volume discounts. The substitute also altered the board composition by reducing from two to one the number of representatives of a shorthand reporting firm and increasing the number of

public members by one. It also would require the Supreme Court to appoint the representatives of shorthand reporting firms to the board at the earliest date possible after the terms of members expire.

The companion bill, SB 1223 by West, passed the Senate by voice vote on April 5 and has been referred to the House Judicial Affairs Committee.

The bill's fiscal note anticipates that it would have a net positive fiscal impact of \$13,589 to general revenue during fiscal 2002-03. The Court Reporters Certification Board would need an additional \$6,000 in fiscal 2002 to modify its database to accommodate additional information required by this bill. The board also would require an additional \$4,868 to pay for travel costs of the additional board member to attend quarterly board meetings and \$3,725 to pay for additional staff time to handle registering and processing complaints for court reporting firms. These costs are assumed to be more than offset by the additional registration and registration renewal fees that the board could impose.