

BILL ANALYSIS

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S.B. 1305
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In June of 2005, the Supreme Court of Texas (supreme court) adopted a docket order requiring the certification of all private process servers in Texas. The certification is administered by the Office of Court Administration and requires criminal background checks and training of process servers. Currently, the supreme court has certified over 2,500 individuals to serve process in Texas.

As proposed, S.B. 1305 authorizes the clerk of the supreme court to collect fees from certified process servers. The bill requires the process server to complete a return of service stating when and on whom process was served, and to be signed by the process server, under penalty of perjury. The bill also authorizes process to be served through private mail boxes and in gated communities in certain situations and makes changes to the service process on limited liability companies, limited partnerships, foreign limited liability partnerships, real estate investment trusts, foreign corporations and corporations. In addition, the bill authorizes members of the process review board to be reimbursed for travel expenses incurred in attending board meetings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 17, Civil Practice and Remedies Code, by adding Sections 17.028, 17.029, and 17.030, as follows:

Sec. 17.028. RETURN OF SERVICE. Requires a person who serves process to complete a return of service that is endorsed on or attached to the original process issued, state when process was served, state on whom process was served, and be signed under penalty of perjury by the person making the service.

Sec. 17.029. SUBSTITUTE SERVICE ON PRIVATE MAIL BOX. Authorizes a service of process to be made on the private mail box of a person named in the citation under certain conditions.

Sec. 17.030. SERVICE AT GATED COMMUNITY. (a) Defines "civil process," "gated community," and "process server."

(b) Requires a process server engaged in the discharge of official duties to be admitted to a gated community for the purpose of delivering civil process.

(c) Provides that it is an affirmative defense to a cause of action for trespass that at the time the cause of action arose the process server was engaged in the discharge of official duties.

(d) Provides that a property manager or security guard who in good faith grants access to a gated community as provided by Subsection (b) is not liable for any damages that may arise as a result of the act.

SECTION 2. Amends Section 17.065(b), Civil Practice and Remedies Code, as follows:

(b) Requires the return of service under this section to be signed under penalty of perjury by the party making the service. Deletes existing text requiring the return of service under this section be sworn to before a person authorized by law to make an affidavit under his hand and seal.

SECTION 3. Amends Subchapter A, Chapter 51, Government Code, by adding Section 51.008, as follows:

Sec. 51.008. COLLECTION OF FEES; PROCESS SERVER REVIEW ACCOUNT.
(a) Authorizes the clerk of the supreme court to collect reasonable fees fixed by the order or rule of the supreme court from a person certified by the supreme court to serve process. Requires fees under this section to be deposited in the judicial fund for the process server review account (account).

(b) Authorizes funds in the account to be used only for the support of programs approved by the supreme court for the certification of process servers.

SECTION 4. Amends Subchapter B, Chapter 72, Government Code, by adding Section 72.013, as follows:

Sec. 72.013. PROCESS SERVER REVIEW BOARD. Entitles a person appointed to the process server review board (board) to reimbursement for travel expenses incurred in attending process server review board meetings. Authorizes reimbursement to be made from the account.

SECTION 5. Amends Section 5.201, Business Organization Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the registered office located at a street address where process may be personally served on the entity's registered agent or the entity's agent or clerk.

(d) Authorizes a filing entity or foreign filing entity to be served with process by serving an agent or clerk at the registered office of the filing entity or foreign filing entity.

SECTION 6. Amends Section A, Article 2.07, Texas Non-Profit Corporation Act (Article 1396-2.07, V.T.C.S.), to authorize a corporation to be served with process by serving an agent or clerk at the registered office of the corporation.

SECTION 7. Amends Section A, Article 8.09, Texas Non-Profit Corporation Act (Article 1396-8.09, V.T.C.S.), to authorize a foreign corporation to be served with process by serving an agent or clerk at the registered office of the foreign corporation.

SECTION 8. Amends Section A, Article 2.08, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to authorize a limited liability company or foreign limited liability company to be served with process by serving an agent or clerk at the registered office of the limited liability company or foreign limited liability company.

SECTION 9. Amends Section 1.08(a), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to authorize a limited partnership to be served with process by serving an agent or clerk at the registered office of the limited partnership.

SECTION 10. Amends Section 10.05(j), Texas Revised Partnership Act (Article 6132b-10.05, V.T.C.S.), to authorize a foreign limited liability partnership to be served with process by serving an agent or clerk at the registered office of the foreign limited liability partnership.

SECTION 11. Amends Section 5.20(A), Texas Real Estate Investment Trust Act (Article 6138A, V.T.C.S.), to authorize a real estate investment trust to be served with process by serving an agent or clerk at the registered office of the real estate investment trust.

SECTION 12. Amends Section A, Article 2.11, Texas Business Corporation Act, to make a conforming change.

SECTION 13. Amends Section A, Article 8.10, Texas Business Corporation Act, to make a conforming change.

SECTION 14. Amends Sections 36.06(a) and (b), Penal Code, as follows:

(a) Adds a process server to the list of persons not to be harmed or threatened because of status or in retaliation for or on account of the service provided by the person or to delay the service provided by such person. Makes a conforming change.

(b) Defines "civil process" and "process server." Makes conforming changes.

SECTION 15. Makes the changes in law made in Sections 36.06(a) and (b), Penal Code, prospective.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: September 1, 2007.