BILL ANALYSIS

Senate Research Center   C.S.S.B. 1305
80R14494 CAE-D   By: Wentworth
                                                                      Jurisprudence
                                                                          4/19/2007
                                     Committee Report (Substituted)

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.

C.S.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 in gated communities and makes changes to the service process on a domestic or foreign entity that is a registered agent and is also required to appoint a registered agent. In addition, the bill authorizes members of the process review board to be reimbursed for travel expenses incurred in attending board meetings.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Supreme Court is modified in SECTION 1 (Section 17.028, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

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

> Sec. 17.028. RETURN OF SERVICE. (a) 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.

>> (b) Prohibits the supreme court, notwithstanding Section 22.004, Government Code, from amending or adopting rules in conflict with this section.

> Sec. 17.029. SERVICE AT GATED COMMUNITY. (a) Defines "civil process," "gated community," and "process server."

>> (b) Provides that a property owner, manager, or security guard who in the exercise of reasonable care grants access to a gated community to a process server, constable, or sheriff for delivery of process is not liable for any damages that may arise as a result of that 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. (a) Authorizes the process server review board (board) to set fees for the certification of a person as a process server. Requires the supreme court to approve a fee adopted by the board under this section.

(b) Authorizes the office of court administration to collect the fees adopted by the board. Requires fees collected under this section to be deposited in the general revenue fund.

(c) Authorizes fees collected and deposited under this section to be used only for the support of programs of the supreme court, the board, or the office of court administration for certification programs of the judiciary. Requires the supreme court to approve the purpose of any expenditure under this section.

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 to reimbursement for travel expenses incurred in attending process server review board meetings. Authorizes reimbursement to be made from the process server review account in the judicial fund.

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

(d) Authorizes process to be served, if the registered agent is a domestic entity or foreign entity that is also required to appoint a registered agent, by serving an agent or clerk at the registered office of the registered agent.

SECTION 6. 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 7. Makes the changes in law made by this Act to Sections 36.06(a) and (b), Penal Code, prospective.

SECTION 8. Provides that this Act applies to all process served on or after the effective date of this Act, without regard to whether the process was issued before, on, or after that date.

SECTION 9. Effective date: September 1, 2007.