

By: Wentworth

S.B. No. 1305

A BILL TO BE ENTITLED

AN ACT

relating to service of process; creating a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Sec. 17.028. RETURN OF SERVICE. (a) A person who serves process shall complete a return of service that is endorsed on or attached to the original process issued and must:

(1) state when process was served;

(2) state on whom process was served; and

(3) be signed under penalty of perjury by the person making the service.

(b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.

Sec. 17.029. SERVICE AT GATED COMMUNITY. (a) In this section:

(1) "Civil process" means all process issued or sanctioned by a civil court, except that the term does not include service of any writ that requires the actual taking of possession of a person, property, or thing or an enforcement action required of or directed to a peace officer related to the taking of possession of a person, property, or thing.

1           (2) "Gated community" means a residential subdivision  
2 or housing development that contains two or more dwellings not  
3 under common ownership and that has a vehicular or pedestrian gate.

4           (3) "Process server" means a person certified by the  
5 supreme court who serves civil process.

6           (b) A property owner, manager, or security guard who in the  
7 exercise of reasonable care grants access to a gated community to a  
8 process server, constable, or sheriff for delivery of process is  
9 not liable for any damages that may arise as a result of that act.

10           SECTION 2. Subsection (b), Section 17.065, Civil Practice  
11 and Remedies Code, is amended to read as follows:

12           (b) The return of service under this section shall be  
13 endorsed on or attached to the original process issued and must:

14                 (1) state when it was served;

15                 (2) state on whom it was served; and

16                 (3) be signed under penalty of perjury [~~and sworn to~~]  
17 by the party making the service [~~before a person authorized by law~~  
18 ~~to make an affidavit under his hand and seal~~].

19           SECTION 3. Subchapter A, Chapter 51, Government Code, is  
20 amended by adding Section 51.008 to read as follows:

21           Sec. 51.008. COLLECTION OF FEES. (a) The process server  
22 review board may set fees for the certification of a person as a  
23 process server. The supreme court must approve a fee adopted by the  
24 process server review board under this section.

25           (b) The Office of Court Administration of the Texas Judicial  
26 System may collect the fees adopted by the process server review  
27 board. Fees collected under this section shall be deposited in the

1 general revenue fund.

2 (c) Fees collected and deposited under this section may be  
3 used only for the support of programs of the supreme court, the  
4 process server review board, or the Office of Court Administration  
5 of the Texas Judicial System for certification programs of the  
6 judiciary. The supreme court must approve the purpose of any  
7 expenditure under this section.

8 SECTION 4. Subchapter B, Chapter 72, Government Code, is  
9 amended by adding Section 72.013 to read as follows:

10 Sec. 72.013. PROCESS SERVER REVIEW BOARD. A person  
11 appointed to the process server review board is entitled to  
12 reimbursement for travel expenses incurred in attending process  
13 server review board meetings. Reimbursement may be made from the  
14 process server review account in the judicial fund.

15 SECTION 5. Section 5.201, Business Organizations Code, is  
16 amended by adding Subsection (d) to read as follows:

17 (d) If the registered agent is a domestic entity or foreign  
18 entity that is also required to appoint a registered agent, process  
19 may be served by serving an agent or clerk at the registered office  
20 of the registered agent.

21 SECTION 6. Subsections (a) and (b), Section 36.06, Penal  
22 Code, are amended to read as follows:

23 (a) A person commits an offense if he intentionally or  
24 knowingly harms or threatens to harm another by an unlawful act:

25 (1) in retaliation for or on account of the service or  
26 status of another as a:

27 (A) public servant, process server, witness,

1 prospective witness, or informant; or

2 (B) person who has reported or who the actor  
3 knows intends to report the occurrence of a crime; or

4 (2) to prevent or delay the service of another as a:

5 (A) public servant, process server, witness,  
6 prospective witness, or informant; or

7 (B) person who has reported or who the actor  
8 knows intends to report the occurrence of a crime.

9 (b) In this section:

10 (1) "Civil process" means all process issued or  
11 sanctioned by a civil court, except that the term does not include  
12 service of any writ that requires the actual taking of possession of  
13 a person, property, or thing or an enforcement action required of or  
14 directed to a peace officer related to the taking of possession of a  
15 person, property, or thing.

16 (2) "Honorably retired peace officer" means a peace  
17 officer who:

18 (A) did not retire in lieu of any disciplinary  
19 action;

20 (B) was eligible to retire from a law enforcement  
21 agency or was ineligible to retire only as a result of an injury  
22 received in the course of the officer's employment with the agency;  
23 and

24 (C) is entitled to receive a pension or annuity  
25 for service as a law enforcement officer or is not entitled to  
26 receive a pension or annuity only because the law enforcement  
27 agency that employed the officer does not offer a pension or annuity

1 to its employees.

2           (3) [~~(2)~~] "Informant" means a person who has  
3 communicated information to the government in connection with any  
4 governmental function.

5           (4) "Process server" means a person who serves civil  
6 process.

7           (5) [~~(3)~~] "Public servant" includes an honorably  
8 retired peace officer.

9           SECTION 7. (a) The change in law made by Section 6 of this  
10 Act applies only to an offense committed on or after the effective  
11 date of this Act. For purposes of this section, an offense is  
12 committed before the effective date of this Act if any element of  
13 the offense occurs before the effective date.

14           (b) An offense committed before the effective date of this  
15 Act is governed by the law in effect when the offense was committed,  
16 and the former law is continued in effect for that purpose.

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

20           SECTION 9. This Act takes effect September 1, 2007.