

By: Flynn

H.B. No. 1069

A BILL TO BE ENTITLED

AN ACT

relating to service of process in this state.

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

SECTION 1. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.013 to read as follows:

Sec. 30.013. PROCESS SERVERS. (a) Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (b), any process in a suit, including citation and other notices, writs, orders, and other papers issued by a court, may be served by any individual who:

(1) is 18 years of age or older; and

(2) is not a party to the suit or interested in the outcome of the suit.

(b) Unless otherwise authorized by written court order, only a sheriff or constable may serve:

(1) a citation in an action of forcible entry and detainer;

(2) a writ that requires the actual taking of possession of a person, property, or thing; or

(3) process requiring that an enforcement action be physically enforced by the person delivering the process.

(c) Except as provided by the process or an order of the court, process may be served by delivery of the process:

(1) in person to:

1 (A) the person to be served;

2 (B) a coresident, who is at least 16 years of age,
3 of the person to be served at the person's place of abode; or

4 (C) an agent authorized by appointment or by law
5 to receive service of process on behalf of the person to be served;
6 or

7 (2) by registered or certified mail, return receipt
8 requested.

9 (d) On motion of a party, supported by an affidavit, the
10 court may authorize service in any manner that the affidavit or
11 other evidence before the court shows is reasonably effective to
12 give notice to the person to be served. The affidavit must state:

13 (1) the location of the usual place of abode or usual
14 place of business of the person to be served, or other place where
15 the person to be served can probably be found; and

16 (2) specific facts showing that despite reasonable
17 diligence, attempted service under Subsection (c)(1)(A) or (2) has
18 not been successful.

19 (e) Except as provided by Subsection (g), the return of
20 service must be endorsed on or attached to the original process
21 issued and must:

22 (1) state the date, time, and manner of service;

23 (2) state the name of the person served;

24 (3) be signed by the party making the service; and

25 (4) if applicable, include the certified or registered
26 mail return receipt, signed by the person to be served.

27 (f) If process is not served, the person attempting service

1 must show on the return of service the diligence used to execute
2 service, the cause of failure to execute service, and where the
3 defendant can be found, if known.

4 (g) Proof of service by an alternate method authorized by
5 the court under Subsection (d) shall be made in the manner ordered
6 by the court.

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

10 SECTION 2. Section A, Article 2.11, Business Corporation
11 Act, is amended to read as follows:

12 A. The president, ~~and~~ all vice presidents and officers of
13 the corporation, the managing agent, and the registered agent of
14 the corporation shall be agents of such corporation upon whom any
15 process, notice, or demand required or permitted by law to be served
16 upon the corporation may be served.

17 SECTION 3. Section 5.255, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 5.255. AGENT FOR SERVICE OF PROCESS, NOTICE, OR DEMAND
20 AS MATTER OF LAW. For the purpose of service of process, notice, or
21 demand:

22 (1) the president and each vice president, officer,
23 managing agent, and registered agent of a domestic or foreign
24 corporation is an agent of that corporation;

25 (2) each general partner of a domestic or foreign
26 limited partnership and each partner and managing agent of a
27 domestic or foreign general partnership is an agent of that

1 partnership;

2 (3) each manager of a manager-managed domestic or
3 foreign limited liability company and each member of a
4 member-managed domestic or foreign limited liability company is an
5 agent of that limited liability company;

6 (4) each person who is a governing person of a domestic
7 or foreign entity, other than an entity listed in Subdivisions
8 (1)-(3), is an agent of that entity; and

9 (5) each member of a committee of a nonprofit
10 corporation authorized to perform the chief executive function of
11 the corporation is an agent of that corporation.

12 SECTION 4. Article 24.04, Code of Criminal Procedure, is
13 amended by amending Subsections (a) and (b) and adding Subsection
14 (a-1) to read as follows:

15 (a) A subpoena may be served by an officer or an individual.
16 An individual serving a subpoena must be at least 18 years of age
17 and may not be a party to the proceeding or interested in the
18 outcome of the proceeding.

19 (a-1) A subpoena is served by:

20 (1) reading the subpoena in the hearing of the
21 witness;

22 (2) delivering a copy of the subpoena to the witness;

23 (3) electronically transmitting a copy of the
24 subpoena, acknowledgment of receipt requested, to the last known
25 electronic address of the witness; or

26 (4) mailing a copy of the subpoena by certified mail,
27 return receipt requested, to the last known address of the witness

1 unless:

2 (A) the applicant for the subpoena requests in
3 writing that the subpoena not be served by certified mail; or

4 (B) the proceeding for which the witness is being
5 subpoenaed is set to begin within seven business days after the date
6 the subpoena would be mailed.

7 (b) The officer or individual having the subpoena shall make
8 due return thereof, showing the time and manner of service, if
9 served under Subsection (a-1)(1) [~~(a)(1)~~] or (2) of this article,
10 the acknowledgment of receipt, if served under Subsection (a-1)(3)
11 [~~(a)(3)~~] of this article, or the return receipt, if served under
12 Subsection (a-1)(4) [~~(a)(4)~~] of this article. If the subpoena is
13 not served, the officer or individual shall show in his return the
14 cause of his failure to serve it. If receipt of an electronically
15 transmitted subpoena is not acknowledged within a reasonable time
16 or a mailed subpoena is returned undelivered, the officer or
17 individual shall use due diligence to locate and serve the witness.
18 If the witness could not be found, the officer or individual shall
19 state the diligence he has used to find him, and what information he
20 has as to the whereabouts of the witness.

21 SECTION 5. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2009.