SUBJECT: Venue for civil actions

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Seidlits, S. Turner, Alvarado, Black, Bosse, Carter, Danburg, Hilbert, D. Jones, McCall, Ramsay

0 nays

4 absent — Craddick, Hochberg, B. Hunter, Wolens

WITNESSES: (*On House companion, original version of HB 6 by Duncan)*

For — Shannon Ratliff, Texas Civil Justice League; Larry York, Richard J. Trabulsi, Jr. and Richard W. Weekley, Texans for Lawsuit Reform; Philip W. Johnson, Texas Association of Defense Counsel; R.C. Mann, Texas Society of Certified Public Accountants

Against — Mike Gallagher and Bill Whitehurst, Texas Trial Lawyers Association; Richard Levy, Texas AFL-CIO

On — Craig Eiland; Patrick Hazel

SENATE VOTE: On final passage, April 19 — 28-1 (Barrientos)

BACKGROUND: Venue determines the location of the court that will hear a case, as opposed to jurisdiction, which determines which type of court — district or county court, for instance — will hear a case.

Venue choices fall into three categories: general, mandatory and permissive

• General venue is the county where the cause of action, or any part, occurred, or the county where the defendant resides.

• Mandatory venue provisions specify specific counties where particular kinds of suits must be brought. For example, a suit against the head of a

state department must be brought in Travis County (Civil Practice and Remedies Code sec. 15.014).

• Permissive venue adds choices to the general rule for certain cases. For example, if a life, accident, or health insurance contract is at issue, venue may be in the county of the insurance company's home office, the county where the loss occurred, or in the county where the policyholder or beneficiary resides (Civil Practice and Remedies Code sec. 15.032).

A plaintiff is allowed the first choice of venue, filing suit in a county included in the possible categories governing the case. The defendant may try to prove that the plaintiff's choice of venue is not permitted, either because mandatory venue overrides the plaintiff's choice or because the plaintiff's choice was otherwise improper. If mandatory venue is proved, the case is moved to that county. If the defendant proves that the plaintiff's choice was improper, the defendant may choose another venue.

A plaintiff has the opportunity to trump the defendant's choice by showing exactly what the defendant had to show in order to trump the plaintiff's choice. This can continue back and forth until one side chooses a location that the other side cannot prove is improper, which becomes the venue.

All venue decisions must be made at the beginning of the suit. The plaintiff's original choice of venue is made when the suit is filed. To object, the defendant must file a motion to transfer venue before any other pleading or motion is filed (except a special exception — an objection to personal jurisdiction). If any pleading is filed by a defendant before a motion to transfer venue, any objections to venue are waived. If venue is contested, a non-evidentiary hearing is held to decide venue.

After venue has been waived or decided by a court, the only way to move a case to a different court is to allege that under Rules 257-259, Texas Rules of Civil Procedure, an impartial trial cannot be had in the current location. Moving a case under the impartial trial rule is rare because it is difficult, in a civil suit, to prove that an impartial trial could not be had.

Once venue is established for a plaintiff, any other plaintiff may intervene (join) the suit against the defendant without having to independently establish that venue is proper for them in that county.

Once venue is fixed as to any one defendant, either by waiver or at a hearing, that venue is fixed for all other defendants later brought into the suit (Civil Practice and Remedies Code sec. 15.061). The only exception is if the new defendant has a claim for mandatory venue that was not available to the defendant who was originally sued.

The general venue provisions list the residence of the defendant as a permissive venue location. However, in many suits, the defendant is not a natural person but a corporation, partnership or other entity. When the defendant is an entity, Texas law makes venue permissive in any county:

• where the principal office is located;

• where the cause of action, or any part, accrued; or

• where the plaintiff resided when the cause of action accrued, if the defendant has an agency or representative in that county, if not, then in the nearest county where the defendant has an agency or representative. (Civil Practices and Remedies Code sec. 15.036).

For foreign corporations, those incorporated outside the state, venue is permissive in any county:

• where the cause of action accrued;

• where the company has an agency or representative; or

• where the defendant's principal Texas office is located. If the defendant has no agency or representative in Texas, venue is the county where the plaintiff resides. (Civil Practices & Remedies Code sec. 15.037).

Although the question of what constitutes an agency or representative is key to determining where venue lies, Texas courts have only sketchily defined what constitutes agency or representative. The best definition is

that it must be more than an ordinary employee, *(Ruiz v. Conoco, Inc.*, 868 S.W.2d 752 (Tex. 1993)).

A court's venue determination may be revisited only through the regular appeals process after a final judgment is entered in the case. If an appeals court finds that the venue decision was improper, the case must be reversed even if there was no harm caused by that mistake.

DIGEST:

SB 32 would amend Chapter 15 of the Civil Practices and Remedies Code, the venue chapter, as well as a number of other statutes, to establish a new general venue rule defining proper venue as the county:

• where all or a *substantial* part of the events or omissions giving rise to the claim occurred;

• if the defendant is a natural person, where the defendant resided at the time the action accrued;

• if the defendant is a corporation or other entity, where the principal office, defined as the place where the decision makers for the organization conduct the daily affairs of the organization, is located; and

• only if the first three choices are not possible, where the plaintiff resided when the action accrued.

SB 32 would require each plaintiff who intervenes in a suit in progress to establish whether venue is proper for that plaintiff before the plaintiff can intervene. If an intervening plaintiff failed to establish independent venue, that plaintiff could still join the suit if the plaintiff showed:

• joinder or intervention was proper under the Texas Rules of Civil Procedure;

• maintaining venue would not unfairly prejudice another party in the suit;

• there was an essential need to have the intervening plaintiff's claim tried in the pending suit; *and*

• the county was a fair and convenient location for the intervening plaintiff and the defendant.

If a plaintiff who wished to intervene was denied the right to do so, the plaintiff could file an interlocutory (prior to final judgment) appeal with the court of appeals. Such an appeal would have to be made within 20 days of the denial of intervention. The court of appeals would be required to review the record *de novo* (without reference to the lower court decision) and make a decision within 120 days after the appeal was perfected.

SB 32 would retain the current rule that if venue is proper against one defendant it is proper as to all other defendants for claims arising out of the same transaction or occurrence. However, the bill would not allow one defendant to waive venue objections of other defendants. Essentially, any defendants brought into a case after venue was decided could still object to venue, but if their objections were overruled, they would still be brought into the case.

SB 32 would allow a party to seek a mandamus remedy (order from a higher court to a lower court) to enforce a mandatory venue provision.

SB 32 would establish new mandatory venues for:

• Landlord-tenant disputes — the county where the property is located;

• Federal Employee Liability Act (FELA) and federal Jones Act cases — general venue rule; and

• Damage to property — where the property is located.

SB 32 would override any contrary venue provisions of the Probate Code, the Deceptive Trade Practices Act and the Texas Rules of Civil Procedure.

SB 32 would amend the Insurance Code to provide that venue in uninsured or underinsured motorist actions against an insurer would be the county where the policyholder or beneficiary resided at the time of the accident or the county in which the accident involving the uninsured or underinsured motorist occurred.

SB 32 would apply to all cases commenced on or after the effective date of the act, September 1, 1995, but the sections applying to FELA and Jones Act cases would not take effect until January 1, 1996.

SUPPORTERS SAY:

SB 32 would make complicated venue rules more certain and eliminate the many loopholes and legal strategies that promote forum shopping — allowing someone to choose the most favorable county despite its tenuous connection to the case.

The current Texas venue scheme is considered one of the most complex in the nation. It developed in part because of the large size of the state and the desire to allow litigants to have a trial in an easily reached courthouse. Now that travel is less burdensome, venue has mainly strategic importance, because certain locations are considered more likely to produce juries favorable to one side or another. Other factors such as the reputation a prominent business might have in the community, and any financial ties to the community, may also influence venue choices.

The general venue rule created by SB 32 would provide the flexibility of three possible choices, but those three choices would be determinable before a suit was actually brought. Under the current venue scheme, it is almost impossible for a defendant to know where a lawsuit might be brought. First, the venue for a suit may be unpredictable because of the language "all or part of a cause of action." This has been interpreted liberally, allowing for almost any county in which the plaintiff had any connection to be part of the cause of action. For example, a plaintiff injured in Webb County could have traveled to Cameron County to visit a friend before going to the hospital and then later aggravated the injury at a beach in Nueces County. Any of the counties that the plaintiff visited or traveled through during the time that the cause of action was accruing could arguably be proper venue.

A second way the current system is unpredictable is that it allows suits against a corporation or other entity to be brought in the county where the plaintiff resided when part of the action accrued in which the defendant had an agency or representative, or the county *nearest* to the plaintiff's county in which the defendant had an agency or representative. Essentially this

rule allows a plaintiff to find any county where the defendant might have some connection, no matter whether the defendant's connection to a county had any connection to the suit, and sue the defendant in that county. For example, in one case, almost 1,500 plaintiffs are suing Seminole Pipeline Co. for the explosion of a salt dome in Brenham. All 1,500 plaintiffs are residents of either Washington or Austin counties, but because the defendant has a division in Eagle Pass, the plaintiffs were allowed to bring suit there.

SB 32 would also change the way that multiple plaintiffs could establish venue. It would require each plaintiff to establish proper venue for a suit individually. This change was brought about due to cases like the one currently in Maverick county involving a suit by 2,000 plaintiffs against Prudential Securities, Polaris Investment Management Co, and others. In this suit, only one of the 2,000 plaintiffs is from Maverick county, but current rules allow the lawsuit to be filed and tried there.

Multiple defendants have also posed problems under the current venue scheme. Currently, it is possible for a plaintiff to sue one defendant for whom venue in the county desired by the plaintiff is proper. Once venue is established, the plaintiff can then join other defendants into the suit who are unable to object to venue unless they have a claim of mandatory venue that was unavailable to the first defendant. SB 32 would simply allow each defendant brought into a suit to challenge venue no matter what the other defendants have done regarding venue. This simple, commonsense change would drastically alter the ability of plaintiffs to drag big corporations (commonly known as deep pocket defendants) into counties to which they have absolutely no connection.

SB 32 would amend various sections of Chapter 15 of the Civil Practice and Remedies Code as well as portions of the Insurance, Property and Business and Commerce Codes in order to promote consistency in venue determinations. The venue for almost all actions is set up according to a general rule rather than defining separate rules for each cause of action.

The 1987 tort reform revisions to venue were concerned primarily with shortening the venue review process and to this end eliminated all interlocutory (prior to final judgment) appeals on venue issues. The only

chance that a litigant has to challenge a venue decision is on appeal after final judgment. While this revision has had the positive effect of stopping numerous interlocutory appeals, it also took away any ability by litigants to enforce a mandatory venue provision. SB 32 would return that right to a defendant.

OPPONENTS SAY:

By strictly limiting venue choices, SB 32 could prevent consolidation of cases and cause more suits to be tried in several separate counties simultaneously.

The provisions of SB 32 dealing with multiple plaintiffs would make it virtually impossible to consolidate cases. For example, in a case in which a number of defendants throughout the state were defrauded by an out-of-state company with no office in Texas, each of the cases could only be brought in the counties where each of the plaintiffs reside. Because no plaintiff can reside in more than one county, there might be as many as 254 different suits depending on how widespread the problem was.

The current venue scheme allows for a liberal joinder of plaintiffs in order to promote judicial efficiency. One proposal in the original version of SB 32 was to appoint a Judicial Panel on Multi-County Litigation that could consolidate such cases, yet that sensible proposal was dropped from the version of SB 32 passed by the Senate.

OTHER OPPONENTS SAY:

SB 32 would define the principal office of a corporation or other entity as the place in which the decision makers for the organization are located. This definition would be no better than the definition of agency or representative under the current system. Essentially, anyone involved in the organization who has the power to make a decision on an issue affecting the organization could be considered a decision maker.

One way to correct this problem would be to require a court to set one county in the state as the place where the decision makers of an organization are located. This would allow the organization to have only one residence, just as a defendant who is a natural person has only one county of residence. A second possible solution would be to redefine the principal office as the location where the *principal* decision makers are

located. In this way, only the main hub or hubs of authority for an organization could be considered its principal office.

The provision of SB 32 relating to multiple defendants still presents some problems. SB 32 would not entirely solve the problem of the "sham" defendant sued originally only to establish venue in order to bring others into the suit at the desired location. One way to remedy this problem would be to allow multiple defendant claims to be brought only in the county where the cause of action or a substantial part of the cause of action occurred.

NOTES:

CSHB 6 by Duncan, which was reported favorably from the House State Affairs Committee, differ SB 32 in that it would require a court to determine a single county as constituting the principal office of an entity.