

- SUBJECT:** Contracting for court reporting services
- COMMITTEE:** Judicial Affairs — favorable, without amendment
- VOTE:** 8 ayes — Thompson, Hartnett, Clark, Garcia, Luna, Shields, Solis, Zbranek
0 nays
1 absent — Crabb
- WITNESSES:** For — Jaye Thompson, Texas Court Reporters Association; Angie Lopez, International Reporters, Inc.; Bill Carroll and 11 other individuals

Against — Joe D. Elliott, Elliott and Brownlow; Mark W. Linebarger, M.R.S. Data Scope; Richard Looney, Looney & Co.; Paul M. Strofus, Esquire Communications; Dan L. Strunkard, Tex-Scribe Litigation Services, Inc.; Kim Tindall, K. Tindall & Associates; Vanessa Wheeler, Priority Information Services; Margaret Carlson, Deborah Carlson Gates and James Gates, Carlson & Gates; Barbara Anzilotti; Art Richardson
- BACKGROUND :** Court reporters are certified by the Texas Supreme Court through the Court Reporters Certification Board. Court reporters must pass a test and attend continuing education in order to maintain their certification.
- DIGEST:** HB 697 would prohibit court reporters from entering into or providing services under a contractual agreement that would:
- undermine their impartiality;
 - prohibit attorneys from choosing court reporters on a case-by-case basis;
 - require them to give the original and copies of a deposition to an attorney before it is certified and delivered to the custodial attorney;
 - require them to perform any service not made available to all parties in the action; or
 - give or appear to give an exclusive or partially exclusive advantage to any party.

The prohibition against such contracts would not apply to a contract with a court, agency, or instrumentality of the United States or any state.

Court reporters' licenses could be revoked for entering into a prohibited contract or for giving any gift, incentive or reward to any attorneys or clients or their agents that amounted to more \$25 for each transaction or \$50 in one year.

HB 697 would take effect September 1, 1997, and apply to actions or contracts entered into after that date. It would also apply to any contract entered into before September 1, 1997, that extended beyond September 1, 1998.

**SUPPORTERS
SAY:**

Court reporters are officers of the court and are held subject to strict rules concerning impartiality to all parties in any litigation. HB 697 would help to promote that neutrality by prohibiting court reporters from entering into contracts that would impair their impartiality.

When court reporters or court reporting firms enter into contracts with particular companies, typically with insurance companies, it can create an imbalance or at least an appearance of impropriety and impair the court reporter's ability to be fair and impartial. Court reporters have significant discretion in preparing transcripts. They record the words of the parties, but court reporters make judgment calls in every sentence on punctuation. The placement of a comma can significantly change the meaning of a sentence, and when reporters have a financial relationship with one party, that relationship can impair their impartiality in making the judgment call of where the punctuation should be placed.

Current rules developed by the Supreme Court require court reporters to divulge any relationship, contractual or otherwise to any party to the litigation. However, such disclosures are often made only when all parties arrive to take a deposition. If an opposing attorney wishes to object to the court reporter because of such an arrangement, the attorney must inconvenience the parties by waiting for a new, impartial court reporter to arrive. In some cases, though, disclosure of a relationship is not made even at the time the deposition is taken.

Current rules also require reporters to give all parties to the litigation the same price when one party receives a volume discount under a contract. However, in practice, some court reporting firms do not give such a discount unless it is specifically requested by the opposing party. That party must know of both the arrangement and the discount in order to take advantage of the price break.

Contracting by large court reporting firms creates a competitive disadvantage to individual court reporters who do not join a firm. Many court reporters have informal relationships with attorneys who contact them or others when cases arise. However, when these attorneys represent clients who have court reporting contracts, the attorneys are prohibited from hiring these experienced court reporters whom they trust to be fair and impartial and must instead depend on whoever is sent by the firm.

Contracting for court reporting services does not lower the cost of litigation. In some instances, court reporting firms who lower their per page rate through a contract use a larger type size than normal to increase the number of pages. By having contracts with all insurance companies, such firms take a large portion of the business away from independent court reporters. When these practices eventually drive these independent reporters out of business, the firm's prices would likely rise because of the lack of competition.

Some court reporting firms that have contracts with certain law firms or companies also charge administrative fees on top of reduced per page fees. The administrative fees go to the firm and not the reporter, so reporters actually end up making less when they work for a court reporting firm. Independent reporters charge a standard per page rate, but they do not have to pay any administrative fees to their employers; they must simply cover their own costs.

The restrictions on contracting for services proposed by HB 697 are intended to apply only to court reporting services; they would not affect contracts for other services that may be provided by a firm.

Gift-giving already is prohibited by the Texas Court Standards and Rules for Certification of Certified Shorthand Reporters, but a statutory ban is needed

to ensure that those limits remain constant unless modified by the Legislature.

OPPONENTS
SAY:

HB 697 would reduce the ability of court reporters and court reporting firms to make business decisions and enter into contracts, even those that obviously have no effect on the impartiality of a court reporter. Current rules established by the Supreme Court already ensure impartiality in contracts between court reporting firms and attorneys or companies. The success of these regulations is evidenced by the fact that no court reporter's license has been revoked for showing favor to one party over another. The restrictions imposed by HB 697, however, would go too far and impair reporters or reporting firms from doing business.

Most court reporters and court reporting firms that contract with parties or attorneys do so using a volume discount contract. The court reporter, or more often the reporting firm, will enter into a national, state or local contract with an insurance company, large corporation or law firm. The terms of the deal are usually such that the reporting firm gives the customer a volume discount in return for sending it a certain amount of business. Even though such contracts do not require that attorneys use a reporter under contract, the incentive created by the volume discount could be enough to violate HB 697's prohibition against limiting an attorney's right to choose a court reporter on a case-by-case basis.

Under current rules, if one party to litigation is given a price break or volume discount, the same rate must apply to all other parties in the suit. Failure to charge all parties to a suit the same rate is considered unprofessional conduct and can result in the revocation of the reporter's license. The result of such a parity rule is that whenever volume contracts are entered into, the cost of litigation for everyone goes down because those price breaks are applied to all parties.

Court reporters were allowed to enter into contracts for services in 1988. At that time, a number of reporters and reporting firm refused to enter into such contracts. Firms that elected to pursue this business option are receiving a substantial amount of contract business, to the consternation of those who chose to do otherwise. HB 697 is a case of sour grapes from short-sighted individuals who now are intent on getting rid of all contracts.

The situation presented to the Legislature by this bill is analogous to Wal-Mart's dominance over smaller stores. Wal-Mart, like the large court reporting firms, has found a new way of doing business that reduces costs through volume pricing. The small stores, and the independent court reporters, arouse sympathy because they are slowly being forced to adapt to a new way of doing business. The large firm, however, should not be shut down out of sympathy for the small firms. The large firm's pricing benefits the consumer; in litigation, all people who carry insurance are the consumers. As the cost of litigation goes up, so does the cost of insurance, and all Texans pay that cost.

High-volume litigants contract with court reporting firms for reasons other than discounted prices. Many litigants can be covering hundreds of cases simultaneously. Receiving and paying bills from hundreds of individual court reporters is administratively daunting. By using a contracting firm, the high-volume litigant can receive one monthly bill for all services provided by that firm.

Prohibiting court reporters from entering into contracts is too broad. Many court reporters or reporting firms do other things than just shorthand reporting, including process service and photocopying. Because HB 697 would not limit the contracting prohibition to court reporting services, it could impair other, related aspects of a reporter's business.

Specifically listing gift-giving as unprofessional conduct in statute is unnecessary. Court rules governing shorthand reporters include the same language as HB 697 as well as 12 other items that constitute unprofessional conduct.

**OTHER
OPPONENTS
SAY:**

The regulation of court reporters has been left to the Supreme Court by statute. If any changes should be made to the requirements of court reporting contracts, those changes should be developed by the court, not the Legislature. The court in 1995 did look at provisions similar to those proposed in this bill, but did not adopt them.

NOTES:

The companion bill, SB 647 by Brown, is currently pending in the Senate Jurisprudence Committee.

A related bill, HB 696 by Dutton, would make all rules and statues applicable to court reporters applicable to court reporting firms. HB 696 was placed on the House Local and Consent Calendar, but postponed until May 2. The Senate companion to HB 696, SB 646 by Brown, passed the Senate on April 24, and was reported favorably, without amendment, by the House Judicial Affairs Committee on April 28.