

**SUBJECT:** Amending venue rules for civil actions under the Jones Act

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 5 ayes — B. Cook, P. King, Madden, Miller, Woolley

1 nay — Raymond

3 absent — Strama, Martinez Fischer, Talton

**WITNESSES:** For — Waymon Boyd, Kingfisher Marine Service; Raymond Butler, Gulf Intracoastal Canal Association; Eddie Cordova, and Jorge Cordova, King Fisher Marine Services; Robert Cornelison, Texas Ports Association and several ports; Javier Diaz, Rick Elizondo, Paul Lamourie, and Glenn Thomas, Great Lakes Dredge & Dock; Michael Ernst, Tom Langan, and Mark Sickles, Weeks Marine; Bettie Goodloe, Goodloe Marine, Inc.; Bill Hanson and Dan Pipitone, Maritime Jobs for Texas; Mike Hull, Hugh Rice Kelly, Dick Trabulsi, and Dick Weekley, Texans for Lawsuit Reform; Ashley Johnson and Mike McMahon, Mike Hooks, Inc.; Linda LaQuay, TW LaQuay Dredging, Inc.; Matt Woodruff, Texas Waterway Operators Association; Martin Barrash; (*Registered, but did not testify:* Jennifer Brown, Port of Houston Authority; Barbara Douglas, Lumberman’s Association of Texas; Shelton Green, Texas Association of Business; Steve Hazlewood, Dow Chemical; Steve Holzheuser, Victoria Navigation District, Port of Victoria; Robert Howden, Texas Association of Manufacturers; Scott Joslove, Texas Hotel and Lodging Association; Lance Lively, National Federation of Independent Business; Julie W. Moore, Occidental Petroleum Corporation; Scott Norman, Texas Association of Builders; Steve Perry, Chevron, USA; Hector Rivero, Texas Chemical Council and Association of Chemical Industry of Texas; Cary Roberts, Texas Civil Justice League; Ben Sebree, Texas Oil & Gas Association; George B. Allen)

Against — Michael Cunningham, Texas State Building and Construction Trades Council, AFL-CIO; Jay Harvey, Texas Trial Lawyers Association; Rick Levy, Texas AFL-CIO; Robert M. Barron; Mark T. Murray; Jeremy Newell; Mack D. Revis; Jose Enrique Vela; (*Registered, but did not testify:* David Arterburn, United Transportation Union; Pamela J. Bolton, Texas Watch; C.M. English Jr., United Transportation Union)

**BACKGROUND:** The Jones Act, 46 USC, sec. 688, contains a cause of action for injury or death of a seaman in the course of employment.

The general venue statute in Civil Practice and Remedies Code, sec. 15.002 sets the venue, unless otherwise specified in law, for suits brought in Texas as follows:

- in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- in the county of defendant's residence at the time the cause of action accrued, if the defendant is an individual; or
- in the county of the defendant's principal office in this state, if the defendant is an organization.

If none of those options apply, suit would be brought in the county in which the plaintiff resided at the time of the accrual of the cause of action.

Prior to 1995, the general venue statute governed seamen under the Jones Act and railroad workers under the Federal Employers Liability Act (FELA). In 1995, the 74th Legislature enacted SB 32 by Montford, which revised Civil Practice and Remedies code, ch. 15 and exempted Jones Act and FELA suits from the general venue rules. Sec. 15.018 provides that all suits under the FELA or the Jones Act must be brought:

- in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- in the county where the defendant's principal office in Texas is located; or
- in the county where the plaintiff resided at the time the cause of action accrued.

**DIGEST:** CSHB 1602 would add Civil Practice and Remedies Code, sec. 15.0181 to govern venue in a Jones Act suit. It would remove the reference to the Jones Act in sec. 15.018, which currently governs venue in a Jones Act or FELA suit. Sec. 15.0181 would establish general venue for Jones Act suits:

- in the county where the defendant's principal office in Texas was located; or
- in the county where the plaintiff resided at the time the cause of action accrued.

However, if all or a substantial part of the events or omissions giving rise to the claim occurred ashore in Texas or on its inland waters of Texas, the venue would be:

- in the county in which all or a substantial part of the events giving rise to the claim occurred; or
- in the county where the defendant's principal office in Texas is located.

If all or a substantial part of the events or omissions giving rise to the claim occurred ashore in a Gulf Coast state other than Texas or on the inland waters of another Gulf Coast state, the venue would be:

- in the county where the defendant's principal office in this state is located; or
- if the defendant does not have a principal office in Texas, in the county where the plaintiff resided at the time the cause of action accrued.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply to an action commenced on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1602 would benefit the maritime industry in Texas, particularly dredgers, by creating new venue rules for Jones Act suits more consistent with other civil actions. Current law, which allows suits to be brought in the plaintiff's county of residence, is an aberration that differs sharply from the laws of other states. The creation of the combined FELA and Jones Act venue rules statute by the Legislature in 1995 was supposed to be temporary, and CSHB 1602 finally would set appropriate venue rules for Jones Act suits.

The bill would provide a particular benefit to the dredging industry, which has been inundated in recent years by a dramatic increase in lawsuits. The special venue rules in sec. 15.018 have allowed plaintiffs to forum-shop and find sympathetic juries in parts of Texas, particularly in four counties in the Rio Grande Valley — Cameron, Hidalgo, Starr, and Zapata. Although only a small percentage of maritime workers live in these counties, in a single year, 98 of the 170 personal injury lawsuits brought against dredgers in the entire nation were filed there. One company

experienced 13 lawsuits in six years of business, causing its insurance costs to increase by 288 percent. Companies who hire and work all over the world are seeing their operations crippled by lawsuits in Texas, particularly from residents who live in the Valley. Texas' venue exception for Jones Act seamen has made the state a high-risk area for employers and directly discourages companies from hiring Texas employees. Restricting the ability for plaintiffs to file in their counties of residence would allow generations of families to continue to work for the maritime industry in South Texas.

CSHB 1602 represents a compromise for all parties involved. The general rule provided in CSHB 1602 would allow Jones Act seaman more venue options, including the plaintiff's residence, because of their location and the difficult circumstances under which they work. The exceptions would provide maritime interests relief by specifying that a suit involving an injury in Texas or its inland waters would be heard in the county where the events occurred or where the defendant kept a principal office. In addition, the plaintiff's residence would be the last available venue option in the case of an injury that occurred ashore or in the inland waters of another Gulf Coast state. Because 80 percent of dredging operations performed by Texas companies occur in Gulf states or their waters, this bill would provide needed protection for this embattled industry.

**OPPONENTS  
SAY:**

CSHB 1602's venue rules for injured seaman in Texas would be unfair. In most cases, plaintiffs injured ashore or on the inland waters any Gulf Coast state, including Texas, would have to file in a county other than their residence. This harsh requirement would represent a significant departure from current law.

The Jones Act affects about 25,000 Texas employees, and the occupational hazards facing these seamen are much more severe than those experienced by average land-based workers. As a result, the plaintiff's residence should be allowed as a choice of venue no matter where the seaman got injured.

The spike in lawsuits and awards is due to the maritime industry's safety problems and shoddy business practices, not special venue rules. When a seaman injured on the job sues his employer under the Jones Act, the employer is supposed to pay "maintenance and cure," which rarely occurs. In addition, companies often fire injured seamen before they ever receive maintenance and cure payments. The argument that the maritime industry

is being crippled by the lawsuits is directly refuted by evidence of dredging companies' record profits over the last several years.

One critical reason for retaining the special venue exception for injured seamen is that most of the injuries suffered by Jones Act seamen prohibit travel to other parts of the state for trials or health care. The four counties that have seen the so-called lawsuit spike are the counties where the dredging companies do most of their hiring. The plaintiffs are not "forum-shopping" — they simply are filing in the counties where they live. It is insulting to suggest that judges and juries in this part of the state somehow are not trustworthy.

NOTES:

HB 1602 as introduced would have established venue suits under the Jones Act in the county where all or a substantial part of the claim occurred or in the county where the defendant's principal office was located, with venue in the county of the plaintiff's residence allowed only if the other venue options did not apply. The committee substitute added a definition of "inland waters" and exceptions to the general venue rule for suits in which most of the incident occurred ashore or on the inland waters of Texas or other Gulf Coast states.

HB 1602 originally was reported favorably, as substituted, by the House Civil Practices Committee by 6 ayes, 3 nays (Martinez Fischer, Raymond, Talton) on April 12. HB 1602 was placed on the Major State Calendar for April 18, but was postponed and recommitted to the Civil Practices Committee.

The companion bill, SB 1538 by Fraser, has been referred to the Senate State Affairs Committee.

HB 2192 by Eiland, a related bill, which would establish Jones Act venue where the accident occurred, where the defendant's place of business was located, where the plaintiff resided at the time of the accident, or in one of 15 coastal counties in Texas, was heard and left pending in the House Civil Practices Committee on March 21.