



2019 COURT REPORTER REFORM LEGISLATION

The "2019 Court Reporter Reform Legislation" addresses a number of key problems. Most importantly, the bill could go a long way toward addressing an acute shortage of Court Reporters. In addition, the bill addresses a number of ethics and compliance issues that are impairing the market and reducing the optimal use of the reporters Texas does have. Finally, the bill clarifies some provisions in the Business and Commerce Code and the Government Code that should be inapplicable or are causing confusion.

SECTION 1. Amends the Business and Commerce Code to clarify that the Uniform Electronic Transactions Act (UETA) does not apply to the work performed by Certified Court Reporters or documents governed by the rules of the Texas Supreme Court, including the system created by the court for e-filing.

Reason: Parts of the UETA can be read to conflict with the statutes and rules governing court reporting and e-filing. It is important for the Court's rules to take precedent.

SECTION 2. Requires an Official Court Reporter to be served with a notice of appeal at the same time required for notice of appeal to be provided to the parties in the case and directs the Texas Supreme Court to adopt rules to implement this section.

Reason: Official Court Reporter have limited time frames based on the time the notice of appeal is given within which to prepare the record for use in appeals. When the notice of appeal getting to the Reporter is delayed, the Reporter's ability to prepare the record can be dramatically shortened.

SECTION 3. Requires full itemization of all rates and charges for all parties or, if the party is represented by an attorney, to the attorney.

Reason: Partly as a result of the shortage of court reporters, the lack of precise, detailed information regarding pricing is distorting the market, such that consumers of court reporting services cannot compare between providers. And some Court Reporting Firms may be obscuring escalating costs by using a single global charge to bill the customer, while reducing the amount paid to Reporters and increasing their own margins.

SECTION 4. Requires the Judicial Branch Certification Commission (the "Commission") to develop a list of states with certification standards that are substantially equivalent to the Texas standards and requires the Commission to certify in Texas an applicant certified in another state that is on

the list. Provides that the applicant must pass Part B (the written exam but not the skills test) of the Texas test and demonstrate work as a Court Reporter in *at least three of the past five years*.

Provides that a Court Reporter from a state with which the Texas Supreme Court has entered into a reciprocity agreement must pass Part B of the Texas exam (the written exam but not the skills test) and demonstrate work as a Court Reporter in *at least three of the past five years*. Provides that a Court Reporter from a reciprocity state must hold a certification at least equivalent to the Registered Professional Reporter designation.

Authorizes the Commission to place conditions on the service of a Court Reporter from a substantial equivalent state or reciprocity state as needed to protect the public.

Reason: Texas has a shortage of court reporters. These provisions are needed to help address that shortage. Current law allows certification in this state of Reporters from other states with substantially equivalent standards but the Commission has not systematically implemented the provision. Reciprocity agreements can be entered into between states but the Commission has not sought to do so. Alternative certification has been granted rarely and only on an ad hoc basis with no clear standards. The Commission has not set explicit standards for either form of alternative entry but standards are needed to protect the public and make clear what is required for market entry.

SECTION 5. Requires the Commission to adopt rules requiring Court Reporters to complete continuing education.

Reason: Current law allows but does not require continuing education but that is important to maintain current knowledge of professional standards.

SECTION 6. Provides definitions applicable to other substantive additions in the bill.

SECTION 7. Conforms the chapter applicable to certification of Court reporters to other provisions of the bill that authorize two new types of certification, apprentice and provisional.

SECTION 8. Authorizes the Commission to provide for certification as apprentice Court Reporters and provisional Court Reporters. Requires an apprentice's performance to be supervised by a fully Certified Court Reporter. Limits the performance of a provision Court Reporter to any conditions and any time period established by the Commission. Full certification of an apprentice is required to include passage of Parts A of the Texas exam (skills tests). Full certification of a provisional Court Reporter is authorized after completion of the terms of the conditional approval.

Reason: Texas has a shortage of court reporters. These provisions are needed to help address that shortage. Current law does not authorize the Commission to develop an apprentice form of certification. Students studying court reporting run up large student loan debts with no way to generate income prior to full certification. Allowing apprentice

programs would add to the workforce and reduce barriers to entry while maintaining high standards based on supervision by fully certified Reporters.

SECTION 9. Conforms part of the chapter for certification of Court Reporters to changes in the bill addressing apprentice court reporting certification.

SECTION 10. Conforms part of the chapter for certification of Court Reporters to changes in the bill addressing apprentice and provisional court reporting certification by requiring the Commission to certify to the Texas Supreme Court those who meet the qualifications for those certifications.

SECTION 11. Conforms part of the chapter for certification of Court Reporters to changes in the bill addressing provisions court reporting certification by authorizing a provisional reporter to use the term "Certified Shorthand Reporter" or "CSR".

SECTION 12. Provides that a Court Reporter who owns more than 50% interest in a Court Reporting Firm and maintains actual control of the firm is not required to pay both the fee applicable to the Reporter's certification and the firm's registration.

Reason: Currently, Reporters who own Court Reporting Firms must pay two fees even though the service provided under both umbrellas are the same.

SECTION 13. Cleans up without substantive effect a provision of current law that is redundant. One provision states that a Court Reporter may be disciplined for any act that violates the law applicable to the profession while the other states the Reporter may be disciplined for "other sufficient cause."

Reason: Court Reporters should be held accountable for violating clear laws and rules that regulate their work. "Other sufficient cause" is a vague standard and allows the regulator to act in an arbitrary way. The types of violations that would remain in the law are sufficient to cover all appropriate considerations involving the profession.

SECTION 14. Cleans up without substantive effect a provision of current law that is redundant. One provision states that a Court Reporting Firm may be disciplined for any act that violates the law applicable to the profession while the other states the Firm may be disciplined for "other sufficient cause."

Provides that repeated failure without good cause to provide court reporting services once there is a commitment to provide those services may subject a Court Reporting Firm to disciplinary action after notice and a hearing. Requires the Commission to adopt rules to define and enforce this provision.

Reason: Court Reporting Firms should be held accountable for violating clear laws and rules that regulate their work. "Other sufficient cause" is a vague standard and allows the

regulator to act in an arbitrary way. The types of violations that would remain in the law are sufficient to cover all appropriate considerations involving the profession.

Court reporting is a regulated function of the Judicial Branch. While this bill opens the market to more qualified people, Court Reporters and Court Reporting Firms are not mere free-market actors: They're critically important to our system of justice. A practice has mushroomed whereby a Firm will commit to provide a Reporter for a scheduled deposition at a given rate followed by last minute cancellations. The Firm either did not actually have a Reporter to do the work when the commitment was made or, after making the commitment, other work was offered at a higher rate at the same time. The Firm offers bounties that increase daily (sometimes hourly) until the price of the new job attracts a reporter to cover it who, too often, has canceled other work to get the higher pay. Consequently, courts, attorneys, witnesses and clients are inconvenienced, unnecessary costs of litigation are incurred and cases are delayed.

SECTION 15. Provides that a person who provides Court Reporting Firm services in violation of the registration requirements commits a Class A misdemeanor.

Reason: Protects the public by providing that Firms that operate without registering with the Commission are to be held to the same standards as Court Reporters. Recent experience indicates that more and more firms are not complying with the law.

SECTION 16. Clarifies that a Court Reporter may not enter into a contract for court reporting services that undermines the Reporter's impartiality or gives or appears to give an advantage to any party.

Reason: Clarifies current law, which, as written allows a Court Reporter providing services to a court, agency or instrumentality of this state or the United States to have their impartiality undermined by certain contractual arrangements or give a party before one of those entities an improper advantage.

SECTION 17. Requires the Commission to develop by June 1, 2020, a list of states with certification standards substantially equivalent to Texas and periodically update the list.

Requires the Commission to communicate by January 1, 2020, with the appropriate officials of other states to inquire whether each state desires to enter into a reciprocity agreement with this state and report to the Texas Supreme Court by April 1, 2020, the results of its efforts.

Reason: The Commission has long had the authority to use these tools provided by the Legislature but has not done so in any systematic manner, which can help address the shortage of Court Reporters. Consequently, it is appropriate for the Legislature to direct the Commission to do so.

SECTION 18. This Act takes effect September 1, 2019.