SUBJECT: Applying *forum non conveniens* to aircraft manufacturers

COMMITTEE: Civil Practices — favorable without amendment

VOTE: 8 ayes — T. Hunter, Hilbert, Alvarado, Culberson, Hartnett, Moffat, Sadler, Zbranek

0 nays

1 absent — Tillery

SENATE VOTE: On final passage, February 28 — voice vote

WITNESSES: For — James E. Walsh, III and Charlie Schnabel, Fairchild Aircraft, Inc.; Mike Slack, Texas Trial Lawyers Association

Against — None

BACKGROUND: The doctrine of *forum non conveniens* allows civil courts to dismiss a lawsuit brought by a citizen of another state or county when the convenience of the parties and the ends of justice would be better served if the action were brought and tried in another court.

SB 2 by Montford, et al., enacted by the 73rd Legislature, reinstated the doctrine of *forum non conveniens* in Texas after that doctrine was held inapplicable by the Texas Supreme Court in a 1990 case, *Dow Chemical v. Alfaro*, 786 S.W.2d 674 (Tex. 1990). Under SB 2 a court is not allowed to dismiss or stay an action:

• if a claimant in the action is a properly joined resident of Texas;

• if the party opposing dismissal makes a prima facie showing that the act or omission that was the proximate cause occurred in Texas;

• if the action was brought under the federal Employers' Liability Act, Safety Appliance Act, or Boiler Inspection Act;

• if the action is based on harm caused by asbestos; or

• if an action alleged personal injury or death that was caused by means of air transportation designed, manufactured, sold, maintained, inspected or repaired in Texas.

DIGEST:

SB 400 would limit the exception for air transportation suits under *forum non conveniens* to personal injury or death actions in which the harm was caused by means of air transportation *operated* in Texas. Actions in which the air transportation was designed, manufactured, sold, maintained, inspected or repaired in Texas could be dismissed if there were a more convenient forum.

This bill would take effect on September 1, 1995, and apply to any cause of action filed after that effective date.

SUPPORTERS SAY:

The *forum non conveniens* statute was drafted in order to remedy a problem caused by the abolishment of that doctrine by the Texas Supreme Court. That process involved a number of compromises to be made by both sides of the issue in order to get a bill that would receive broad bipartisan support. One of those compromises, however, directly affects a Texas companies that design, manufacture or support aircraft. Because of the particular exception placed into the *forum non conveniens* statute, these companies are at a distinct disadvantage in competing against other aircraft companies. One of the goals of the enactment of the *forum non conveniens* statute was to promote Texas business, not have such businesses disadvantaged because of an anomaly in Texas law.

The doctrine of *forum non conveniens* stems from the belief that certain actions lack any substantial connection to a forum chosen by the plaintiff in which to litigate a suit. A more convenient forum would be where the injury took place, where all the witnesses were located and where justice would be better served. Suits based on injuries that resulted from air transportation were considered different because such injuries happen in random locations without much regard to where the parties involved would find it most convenient to litigate. The question a court must answer before dismissing a suit under *forum non conveniens* is whether another forum has a more direct connection to the injury. For air transportation, the most direct connection is the location where the aircraft was operated.

Aircraft manufacturers, designers and aircraft support companies lack the direct connection to the aircraft that the operator has. If an aircraft is operated in Texas, then obviously Texas is the most convenient forum for a possible case. If a company manufactures a plane then sells it to another company that operates it for several years on its own, the company that manufactured the plane, even if it is sued, should not hold the basis for trying the case in an inconvenient forum.

This legislation would not require a court to dismiss an action brought in Texas for an air injury; it would merely allow a court to determine if there was a more convenient forum that should have the case.

Another of the goals of the *forum non conveniens* statute was to reduce the burden placed on Texas courts caused by suits that had no direct relationship to Texas. This legislation would help to further that goal.

OPPONENTS SAY:

In almost every case in which air transportation causes a personal injury or death, the manufacturer, designer or company that repaired or maintained the aircraft will have a direct connection to the case. In fact, in many cases, that company is held to be more responsible than the operator. Texas courts should not deny out-of-state or foreign plaintiffs access to Texas courts when a Texas company injures them.

The exception for aircraft in the *forum non conveniens* statute was crafted because of the long history of cases in which aircraft manufactured by a particular company injured someone in a foreign country. The injuries were caused by design or manufacturing defects, but the companies wished to have those cases litigated in the foreign country in the belief that the laws there would favor the companies. It was held repeatedly by a number of courts that these companies should not be allowed to escape responsibility for their misdeeds simply because their products were used in another county.

NOTES:

SB 1253 by Wentworth, introduced during the 73rd Legislature, was almost identical to SB 400; it was left pending in the Senate Economic Development Committee.