

SUBJECT: Subpoenaing civil case witnesses from more than 150 miles away

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — R. Lewis, Bonnen, Chisum, Christian, Denny, Flores, Gutierrez, G. Lewis

0 nays

1 absent— Kamel

WITNESSES: None

BACKGROUND : Current law allows parties to subpoena witnesses in civil cases who reside within 150 miles of the county in which a suit is pending. Witnesses must be paid \$10 for each day they attend court. Witnesses who live further away must be deposed in their county of residence or business.

DIGEST: HB 725 would allow for summoning witnesses residing more than 150 miles from the county where a suit was pending so long as they lived or could be found in Texas and has not already given a deposition in the case. These witnesses would have to be reimbursed \$10 for each day in court plus reasonable travel, meal and lodging expenses.

HB 725 would take effect September 1, 1997, and apply to witnesses in civil suits summoned after that date regardless of when the suit was filed.

SUPPORTERS SAY: HB 725 would update Texas civil practices to reflect reality. The current 150-mile limitation to summoning witnesses is outdated; modern transportation makes it much more convenient to travel long distances. A resident of Houston may be the key witness needed to settle a case in El Paso. Justice dictates that the artificial 150-mile limit be abandoned.

Witnesses should not suffer financial hardship when performing their civic responsibilities. HB 725 would provide for covering all reasonable travel, meal, and lodging expenses for a witness who was summoned from more than 150 miles away. HB 725 would preserve the option of deposing a

witness, and most attorneys would probably choose this option if it was cheaper or more convenient for all the parties.

HB 725 would not invite abuse by attorneys. The possibility of abuse exists in all legal proceedings, and complaint processes are available to aggrieved parties.

OPPONENTS
SAY:

HB 725 would not make a distinction between fact and expert witnesses. It would appear to limit payment of fees to expert witnesses to \$10 a day plus travel, lodging and meal reimbursement. Under current practice many expert witnesses charge a fee as compensation for lost time in addition to possible travel and meal expenses.

Furthermore, HB 725 does not allow discretionary payments beyond the three specifically enumerated in the bill. For example, for a primary caregiver for small children who is summoned out of town for a trial, a \$10 per day fee would not begin to pay for child-care expenses that the witness would incur.

OTHER
OPPONENTS
SAY:

Under current law, if a witness is equally accessible to both parties but not in the courtroom, neither party is allowed to draw a negative inference from the absence of the witness. The assumption is that witnesses not in the courtroom are outside the court's subpoena powers because of the 150-mile rule. HB 725 could change this long-standing principle.

Also, unscrupulous trial attorneys could abuse the permissive character of HB 725 by forcing hostile witnesses to testify even if it would be cheaper and more convenient to depose them in their county of residence.

NOTES:

Rep. Eiland plans to offer a floor amendment that would exempt expert witnesses from the bill.