



Respectfully submitted,

ERIC T. SCHNEIDERMAN  
Attorney General of New York

By his attorneys:

/s/ Pete Marketos

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\**pro hac vice application pending*  
# *pro hac vice application forthcoming*

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Dated: February 1, 2017

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on February 1, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

/s/ Pete Marketos  
Pete Marketos

**DECLARATION OF TYLER J. BEXLEY**

I, Tyler J. Bexley, declare as follows:

1. My name is Tyler J. Bexley. I am admitted to practice in this Court and am an associate at Reese Gordon Marketos, LLP., which is counsel-of-record for Eric T. Schneiderman, Attorney General of New York, in his official capacity, in this case. I am over 18 years of age and am fully competent in all respects to make this declaration. Based on my personal knowledge, my review of relevant documents, and my discussions with colleagues, I have knowledge of the facts stated herein, and each of them is true and correct.

2. I submit this supplemental declaration in further support of the Attorney General of New York's Motion to Dismiss Plaintiff's First Amended Complaint.

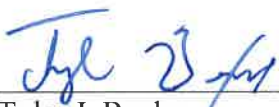
3. Attached to this declaration as Exhibit 48 is a true and correct copy of the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code §§ 17.041–17.045.

4. Attached to this declaration as Exhibit 49 is a true and correct copy of section 3 of article 2031b of the Texas Civil Statutes, Tex. Rev. Civ. Stat. art. 2031b, § 3 (West 1974). This provision was in force immediately before the enactment of the Texas Civil Practice and Remedies Code in 1985.

5. Attached to this declaration as Exhibit 50 is a true and correct copy of section 4 of article 2031b of the Texas Civil Statutes, Tex. Rev. Civ. Stat. art. 2031b, § 4 (West Supp. 1981). This provision was in force immediately before the enactment of the Texas Civil Practice and Remedies Code in 1985.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2017.

  
Tyler J. Bexley

# Exhibit 48

Vernon's Texas Statutes and Codes Annotated

Civil Practice and Remedies Code (Refs & Annos)

Title 2. Trial, Judgment, and Appeal

Subtitle B. Trial Matters

Chapter 17. Parties; Citation; Long-Arm Jurisdiction (Refs & Annos)

Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.041

§ 17.041. Definition

Currentness

In this subchapter, “nonresident” includes:

- (1) an individual who is not a resident of this state; and
- (2) a foreign corporation, joint-stock company, association, or partnership.

#### Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

#### Notes of Decisions (74)

V. T. C. A., Civil Practice & Remedies Code § 17.041, TX CIV PRAC & REM § 17.041

Current through the end of the 2015 Regular Session of the 84th Legislature

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Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.042

§ 17.042. Acts Constituting Business in This State

Currentness

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

- (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
- (2) commits a tort in whole or in part in this state; or
- (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

**Credits**

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Notes of Decisions (1661)

V. T. C. A., Civil Practice & Remedies Code § 17.042, TX CIV PRAC & REM § 17.042

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Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.043

§ 17.043. Service on Person in Charge of Business

**Currentness**

In an action arising from a nonresident's business in this state, process may be served on the person in charge, at the time of service, of any business in which the nonresident is engaged in this state if the nonresident is not required by statute to designate or maintain a resident agent for service of process.

**Credits**

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

**Notes of Decisions (15)**

V. T. C. A., Civil Practice & Remedies Code § 17.043, TX CIV PRAC & REM § 17.043

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Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.044

§ 17.044. Substituted Service on Secretary of State

Currentness

(a) The secretary of state is an agent for service of process or complaint on a nonresident who:

(1) is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process;

(2) has one or more resident agents for service of process, but two unsuccessful attempts have been made on different business days to serve each agent; or

(3) is not required to designate an agent for service in this state, but becomes a nonresident after a cause of action arises in this state but before the cause is matured by suit in a court of competent jurisdiction.

(b) The secretary of state is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party.

(c) After the death of a nonresident for whom the secretary of state is an agent for service of process under this section, the secretary of state is an agent for service of process on a nonresident administrator, executor, or personal representative of the nonresident. If an administrator, executor, or personal representative for the estate of the deceased nonresident is not appointed, the secretary of state is an agent for service of process on an heir, as determined by the law of the foreign jurisdiction, of the deceased nonresident.

(d) If a nonresident for whom the secretary of state is an agent for service of process under this section is judged incompetent by a court of competent jurisdiction, the secretary of state is an agent for service of process on a guardian or personal representative of the nonresident.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 158, § 1, eff. May 25, 1987.



Editors' Notes

**REVISOR'S NOTE**

**2014 Main Volume**

For this section of the revised law and for subsequent sections where appropriate, the revised law replaces the fictional appointment of the secretary of state with the simpler statement that the secretary of state “is an agent for service of process.” The fiction is unnecessary and cumbersome; the revised law states the substantive effect of the fiction.

[Notes of Decisions \(145\)](#)

V. T. C. A., Civil Practice & Remedies Code § 17.044, TX CIV PRAC & REM § 17.044

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V.T.C.A., Civil Practice & Remedies Code § 17.045

§ 17.045. Notice to Nonresident

Effective: September 1, 2001

Currentness

(a) If the secretary of state is served with duplicate copies of process for a nonresident, the documents shall contain a statement of the name and address of the nonresident's home or home office and the secretary of state shall immediately mail a copy of the process to the nonresident at the address provided.

(b) If the secretary of state is served with process under [Section 17.044\(a\)\(3\)](#), he shall immediately mail a copy of the process to the nonresident (if an individual), to the person in charge of the nonresident's business, or to a corporate officer (if the nonresident is a corporation).

(c) If the person in charge of a nonresident's business is served with process under [Section 17.043](#), a copy of the process and notice of the service must be immediately mailed to the nonresident or the nonresident's principal place of business.

(d) The process or notice must be sent by registered mail or by certified mail, return receipt requested.

(e) If the secretary of state is served with duplicate copies of process as an agent for a person who is a nonresident administrator, executor, heir, guardian, or personal representative of a nonresident, the secretary shall require a statement of the person's name and address and shall immediately mail a copy of the process to the person.

**Credits**

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by [Acts 1987, 70th Leg., ch. 158, § 2, eff. May 25, 1987](#); [Acts 2001, 77th Leg., ch. 275, § 1, eff. Sept. 1, 2001](#).

[Notes of Decisions \(69\)](#)

V. T. C. A., Civil Practice & Remedies Code § 17.045, TX CIV PRAC & REM § 17.045

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(b) If the secretary of state is served with process under [Section 17.044\(a\)\(3\)](#), he shall immediately mail a copy of the process to the nonresident (if an individual), to the person in charge of the nonresident's business, or to a corporate officer (if the nonresident is a corporation).

(c) If the person in charge of a nonresident's business is served with process under [Section 17.043](#), a copy of the process and notice of the service must be immediately mailed to the nonresident or the nonresident's principal place of business.

(d) The process or notice must be sent by registered mail or by certified mail, return receipt requested.

(e) If the secretary of state is served with duplicate copies of process as an agent for a person who is a nonresident administrator, executor, heir, guardian, or personal representative of a nonresident, the secretary shall require a statement of the person's name and address and shall immediately mail a copy of the process to the person.

**Credits**

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by [Acts 1987, 70th Leg., ch. 158, § 2, eff. May 25, 1987](#); [Acts 2001, 77th Leg., ch. 275, § 1, eff. Sept. 1, 2001](#).

[Notes of Decisions \(69\)](#)

V. T. C. A., Civil Practice & Remedies Code § 17.045, TX CIV PRAC & REM § 17.045

Current through the end of the 2015 Regular Session of the 84th Legislature

# Exhibit 49

# West's Texas Statutes and Codes

Volume 3

**SUPERSEDED**

REVISED CIVIL STATUTES  
Articles 1 to 2460

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3 West's Tex. Stats. & Codes



neither the President, Vice President, Secretary, Assistant Secretary, Cashier, Assistant Cashier, or Treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company, corporation, or association in the State.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 327, ch. 127.]

#### Art. 2030. Receiver of Railroad Company

In suits against receivers of railroad companies, service may be had either upon the receiver, the general or division superintendent, or any agent of the receiver who resides in the county in which suit is brought. If there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the State.

[Acts 1925, S.B. 84.]

#### Acts 2031, 2031-1, 2031a. Repealed by Acts 1973, 63rd Leg., p. 125, ch. 63, § 2, eff. April 26, 1973

See, now, Article 2031b and Business Corporation Act, Article 8.10, § D.

#### Art. 2031b. Service of Process Upon Foreign Corporations and Nonresidents

Failure to Appoint Agent; Designation of Secretary of State as Lawful Attorney

Sec. 1. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person required by any Statute of this State to designate or maintain a resident agent, or any such corporation, association, joint stock company, partnership, or non-resident natural person subject to Section 3 of this Act, has not appointed or maintained a designated agent, upon whom service of process can be made, or has one or more resident agents and two (2) unsuccessful attempts have been made on different business days to serve process upon each of its designated agents, such corporation, association, joint stock company, partnership, or non-resident natural person shall be conclusively presumed to have designated the Secretary of State of Texas as their true and lawful attorney upon whom service of process or complaint may be made.

Engaging in Business in State; Service upon Person in Charge of Business

Sec. 2. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy

of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants principal place of business by registered mail, return receipt requested.

Act of Engaging in Business in State as Equivalent to Appointment of Secretary of State as Agent

Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

Doing Business in State; Definition

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State.

Delivery of Process to Secretary of State; Forwarding Copy

Sec. 5. Whenever process against a foreign corporation, joint stock company, association, partnership, or non-resident natural person is made by delivering to the Secretary of State duplicate copies of such process, the Secretary of State shall require a statement of the name and address of the home or home office of the non-resident. Upon receipt of such process, the Secretary of State shall forthwith forward to the defendant a copy of the process by registered mail, return receipt requested.

Nonresidency after Accrual of Cause of Action; Service upon Secretary of State

Sec. 6. When any corporation, association, joint stock company, partnership or natural person becomes a non-resident of Texas, as that term is commonly used, after a cause of action shall arise in this State, but prior to the time the cause of action is matured by suit in a court of competent jurisdiction in this State, when such corporation, association, joint stock company, partnership or natural person is not required to appoint a service agent in this



State, such corporation, association, joint stock company, partnership or natural person may be served with citation by serving a copy of the process upon the Secretary of State of Texas, who shall be conclusively presumed to be the true and lawful attorney to receive service of process; provided that the Secretary of State shall forward a copy of such service to the person in charge of such business or an officer of such company, or to such natural person by certified or registered mail, return receipt requested.

**Cumulative Effect of Act**

Sec. 7. Nothing herein contained shall be construed as repealing any statute in force in this State in reference to service of process, but this Act shall be cumulative of all existing statutes.

[Acts 1959, 56th Leg., p. 85, ch. 43.]

**Art. 2032. Foreign Railway Corporations**

Service may also be had on foreign railway corporations by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one is a foreign railway corporation, and the other a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporation's tracks across the State line of Texas and on the track of the domestic corporation within this State or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passengers or property over any line of railway, or part thereof, of such foreign railway corporation or company. Conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in selling tickets or making contracts for the transportation of property, are hereby designated as agents of such foreign corporation or companies upon whom service of citation may be had.

[Acts 1925, S.B. 84.]

**Art. 2033. Against Partners**

Citation served upon one member of a partnership or firm shall be sufficient to authorize a judgment against the firm and the partner actually served.

[Acts 1925, S.B. 84.]

*Saved from repeal, see art. 6132b, § 46.*

**Art. 2033a. Service on Local Representative of Nonresident Individual or Partnership Supplying Public Utility Service**

In suits against individuals and partnerships engaging in supplying gas, water, electricity or other public utility service to villages, towns, or cities in Texas, where such individuals or members of such partnerships reside out of the State of Texas, citation may be served upon the local agent, representative, superintendent or

person in charge of the business of such individuals or partnerships.

[Acts 1931, 42nd Leg., p. 209, ch. 122, § 1.]

**Art. 2033b. Service of Process on Agent or Clerk in Office in County Other than Residence of Principal**

When an individual, partnership or unincorporated association (either being referred to herein as principal, whether one or more) has, for the transaction or doing of any business in Texas, an office, place of business, or agency in any county other than that in which the principal resides, service of citation or other civil process to bind any such principal, may be made on any agent or clerk employed in such office, place of business or agency, in all suits or actions growing out of or connected with such business and brought in the county in which such office, place of business or agency is located; and the provisions hereof shall apply as well to non-residents of the state as to non-residents of such county; and shall also apply to cases where a principal, though claiming or alleged to be a resident of the county wherein is located such office, place of business or agency, has not been found in such county for service on him of process in such suit, in which case, if the officer making return of the process unexecuted shall certify in such return that after diligent search and inquiry a principal cannot be found and served, then process in such suit to any succeeding term of court may be served on such clerk or agent as is herein provided for in case of non-residents of such county; but provided that nothing herein shall prevent or interfere with the application of the articles of the statutes relating to venue of suits.

[Acts 1935, 44th Leg., 2nd C.S., p. 1759, ch. 463, § 1.]

**Art. 2033c. Effect of Service**

Such service of process, made in the manner herein provided, shall have the same effect as if made personally on the principal and shall especially have effect to subject all non-exempt property in Texas of the principal so served to the jurisdiction and judgment of the court in such suit; but provided that no default judgment shall be rendered on service so obtained until after twenty days after the date of such service, and provided further that the method of service afforded by this Act shall be cumulative.

[Acts 1935, 44th Leg., 2nd C.S., p. 1759, ch. 463, § 2.]

**Arts. 2034 to 2039. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 2039a. Citation of Nonresident Motor Vehicle Operators by Serving Chairman of State Highway Commission; Forwarding Notice to Defendant**

Acceptance of Benefits of Highways Deemed Equivalent to Appointment of Agent; Service

Sec. 1. The acceptance by a nonresident of this State or by a person who was a resident of this State at the time of the accrual of a cause

SUPREME COURT OF TEXAS  
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# Exhibit 50

# West's Texas Statutes and Codes

**SUPERSEDED**

1981 Supplement  
to  
Compact Edition

Volume 2

Codes and Indexes

Revised Civil Statutes

Topical Index

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Sec. 2. In suits against a school district the citation may be served on the president of the school board or the superintendent.

[Amended by Acts 1977, 65th Leg., p. 1277, ch. 499, § 1, eff. June 15, 1977.]

**Art. 2031b. Service of Process Upon Foreign Corporations and Nonresidents**

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

[See Compact Edition, Volume 3 for text of 5 to 7]

[Amended by Acts 1979, 66th Leg., p. 522, ch. 245, § 1, eff. Aug. 27, 1979.]

**Art. 2039a. Citation of Nonresident Motor Vehicle Operators by Serving Chairman of State Highway Commission; Forwarding Notice to Defendant**

[See Compact Edition, Volume 3 for text of 1 to 3]

**Certificate of Chairman of Highway Commission**

Sec. 4. The Chairman of the State Highway and Public Transportation Commission shall, upon request of a party and upon the payment of a fee of Ten Dollars (\$10), certify to the court out of which said process is issued or in which any suit or action may be pending against such nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, the occurrence or performance of any of the duties, acts, omissions, transactions or happenings contemplated or required by this Act, including the wording of any registered letter received, and his certificate, as well as the wording of said registered letter receipt, shall be accepted as prima facie evidence and proof of the statements contained therein.

[See Compact Edition, Volume 3 for text of 5 and 6]

[Amended by Acts 1981, 67th Leg., p. 1839, ch. 427, § 1, eff. Aug. 31, 1981.]

**Art. 2039b. Citation of Nonresidents for Tax Purposes**

**Acceptance of Benefits Relating to Taxation Deemed Equivalent to Appointment of Agent**

Sec. 1. In addition to any procedures for citation provided under Rule 117a, Texas Rules of Civil Procedure, the acceptance by a nonresident of this state, or by a person who was a resident of this state at the time of the accrual of a cause of action but who subsequently removes therefrom, of the rights, privileges, and benefits extended by law to such person(s) of owning, having, or claiming an interest in property, real or personal, subject to taxation by the State of Texas and its legal subdivisions, or any of them, shall be deemed equivalent to appointment by such nonresident of the executive director of the State Property Tax Board or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against such nonresident(s) growing out of taxation by the state and its legal subdivisions, or any of them, of property in which such nonresident(s) owned, had, or claimed a taxable interest on the first day of any tax year(s) for which taxes on such property have not been paid. Such service of process, as herein provided, shall have the same effect as if made personally on the defendant within the State of Texas.

**Manner and Method of Service**

Sec. 2. Service of process under this Act shall be in the same manner and method as that prescribed in Chapter 125, Acts of the 41st Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the 56th Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the chairman of the state highway commission; provided, however, in the service of such process certified mail shall be used rather than registered mail.

**"Nonresidents" Defined**

Sec. 3. "Nonresidents" as used in this Act includes corporations, partnerships and all other legal entities or representatives owning, having, or claiming a taxable interest in such property at the time(s) specified in Section 1 hereof.

**Severability Clause**

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 1900, ch. 607, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 629, ch. 250, § 1, eff. May 28, 1981.]