

BILL ANALYSIS

C.S.H.B. 1692
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent court cases involving an unintended use of forum non conveniens have highlighted problematic loopholes created by broad statutory definitions of certain terms. C.S.H.B. 1692 seeks to address these loopholes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1692 amends the Civil Practice and Remedies Code to require the determination of whether a claim may be stayed or dismissed under the doctrine of forum non conveniens to be made with respect to each plaintiff on an individual basis, without regard to whether the claim of any other plaintiff may be stayed or dismissed under that doctrine and without regard to a plaintiff's country of citizenship or national origin. The bill removes statutory provisions prohibiting a court from staying or dismissing an action involving both plaintiffs who are legal residents of Texas and plaintiffs who are not legal residents of Texas under the doctrine of forum non conveniens if the plaintiffs who are legal residents of Texas are properly joined in the action and the action arose out of a single occurrence and requiring a court to dismiss a claim under the doctrine of forum non conveniens if the court finds that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in Texas and the party's claim would be more properly heard in a forum outside Texas. The bill instead requires a court in an action involving both plaintiffs who are legal residents of Texas and plaintiffs who are not to consider specified factors that the court otherwise would be required to consider in staying or dismissing an action that did not involve plaintiffs who are legal residents of Texas and plaintiffs who are not and, on consideration of those factors, to determine whether to stay or dismiss the claim of any plaintiff who is not a legal resident of Texas.

C.S.H.B. 1692 removes a definition of "legal resident" from statutory provisions governing the doctrine of forum non conveniens and, for purposes of the bill's provisions, redefines "plaintiff" to exclude, among other parties, a representative, an administrator, a guardian, or a next friend and to remove a provision that, in a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, included in the definition both that other person and the party seeking such recovery.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1692 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 71.051(e) and (h), Civil Practice and Remedies Code, are amended to read as follows:

(e) ~~[The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state.]~~

In determining whether a case should be dismissed under this subchapter, the plaintiff's choice of a forum in this state shall be given substantial deference, provided that the plaintiff is a legal resident of the state and the underlying litigation has a significant connection to this state.

~~[If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state~~

~~are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.]~~

(h) In this section, "plaintiff" [:

~~(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin.~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 71.051(e) and (h), Civil Practice and Remedies Code, are amended to read as follows:

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state.

The determination of whether a claim may be stayed or dismissed under Subsection (b) shall be made with respect to each plaintiff on an individual basis, without regard to whether the claim of any other plaintiff may be stayed or dismissed under Subsection (b) and without regard to a plaintiff's country of citizenship or national origin.

If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court shall consider the factors provided by Subsection (b) and determine whether to [may not] stay or dismiss the claim of any plaintiff who is not a [action under Subsection (b) if the plaintiffs who are] legal resident [residents] of this state

~~[are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state].~~

(h) For purposes of Subsection (e), "plaintiff" [In this section:

~~[(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin.~~

~~The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section.~~

~~(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death.~~

~~In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery.~~

~~The term does not include:~~

~~(A) a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section;~~

~~(B) an intervenor, beneficiary, next friend, or other derivative party to the plaintiff's claim; or~~

~~(C) a decedent's estate, if the decedent was not a legal resident of this state at the time of death.~~

SECTION 2. This Act applies only to a **suit** commenced on or after the effective date of this Act. A **suit** commenced before the effective date of this Act is governed by the law applicable to the **suit** immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

~~The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section.~~

~~[(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death.~~

~~[In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery.]~~

~~The term does not include:~~

~~(1) a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury; or~~

~~(2) a representative, administrator, guardian, or next friend [; or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section].~~

SECTION 2. The change in law made by this Act applies only to an **action** commenced on or after the effective date of this Act. An **action** commenced before the effective date of this Act is governed by the law applicable to the **action** immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.