

BILL ANALYSIS

C.S.H.B. 2730
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that certain statutory provisions relating to expedited dismissal procedures for lawsuits involving the exercise of free speech, the right of association, and the right to petition may lend themselves to unexpected applications because they are overly broad or unclear. C.S.H.B. 2730 seeks to remedy this issue by clarifying the scope and applicability of those provisions.

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. 2730 amends the Civil Practice and Remedies Code to revise the definitions of certain terms for purposes of civil actions involving the exercise of certain rights by making the following changes:

- revising the definition of "exercise of the right of association" by removing language relating to "a communication between individuals" with regard to joining together to collectively express, promote, pursue, or defend common interests and by adding language relating to a governmental proceeding or a matter of public concern;
- revising the definition of "legal action" by adding "declaratory relief" as a type of relief that may be sought by request of an applicable action;
- further revising the definition of "legal action" by specifying that the term does not include a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief; alternative dispute resolution proceedings; or post-judgment enforcement actions; and
- revising the definition of "matter of public concern" to mean a statement or activity regarding a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity; a matter of political, social, or other interest to the community; or a subject of concern to the public. The revised definition removes existing language regarding "health or safety," "environmental, economic, or community well-being," "the government," "a public official or public figure," and "a good, product, or service in the marketplace."

C.S.H.B. 2730 revises provisions relating to a motion to dismiss a legal action on grounds that

the action is based on or is in response to a party's exercise of certain rights by making the following changes:

- removing existing language about an activity that relates to those rights and including among the actions that are dismissible under those provisions an action that arises from any act of a party in furtherance of the party's communication or conduct specifically protected by the bill;
- excluding from the parties eligible to file such a motion a government entity, agency, or an official or employee acting in an official capacity;
- authorizing the parties, upon mutual agreement, to extend the time to file the motion;
- requiring the moving party to provide written notice of the date and time of the hearing on the motion not later than 21 days before the date of the hearing, unless otherwise provided by agreement of the parties or an order of the court; and
- requiring a responding party to file the response, if any, not later than seven days before the date of the hearing on the motion unless otherwise provided by such an agreement or by court order.

C.S.H.B. 2730 specifies that the deadline by which a court must rule on a motion to dismiss in an applicable action is not later than the 30th day following the date the hearing on the motion concludes. The bill removes language specifying that the requisite evidentiary standard is by a preponderance of the evidence. The bill removes as a condition on which the court is required to dismiss the action that the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim and requires the court instead to dismiss the action if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law. The bill includes evidence a court could consider under certain rules of the Texas Rules of Civil Procedure among the considerations on the basis of which the court is required to determine whether a legal action is subject to dismissal under the applicable statutory provisions.

C.S.H.B. 2730 removes a requirement for the court to issue certain findings at the request of the moving party and requires the court instead to issue such findings if the court awards sanctions to the responding party on finding that the motion to dismiss is frivolous or solely intended to delay. The bill makes the court's ruling on the motion and the fact that it made such a ruling inadmissible in evidence at any later stage of the case and prohibits a burden of proof or degree of proof otherwise applicable from being affected by that ruling.

C.S.H.B. 2730 changes the requirement for a court that orders dismissal of an applicable legal action to award sanctions against the party who brought the action to an authorization to so award. The bill removes other expenses as justice and equity may require from the defense costs that the court ordering the dismissal is required to award. The bill authorizes the court, if the court orders dismissal of a compulsory counterclaim and finds that the counterclaim is frivolous or solely intended for delay, to award to the moving party reasonable attorney's fees incurred in defending against the counterclaim.

C.S.H.B. 2730 exempts the following from provisions governing civil actions involving the exercise of certain constitutional rights:

- a legal action arising from an officer-director, employee-employer, or independent contractor relationship that seeks recovery for misappropriation of trade secrets or corporate opportunities or that seeks to enforce a non-disparagement agreement or a covenant not to compete;
- a legal action filed under certain Family Code provisions or an application for a protective order for victims of sexual assault or abuse, stalking, or trafficking;
- a legal action brought under statutory provisions relating to deceptive trade practices,

subject to a certain exception relating to the liability or immunity of the third-party publishers or disseminators of an advertisement;

- a legal action in which a moving party raises a defense relating to immunity from liability in certain situations involving medical peer reviews or medical investigations or under the federal Health Care Quality Improvement Act of 1986;
- an eviction suit brought under statutory provisions relating to forcible entry and detainer;
- a disciplinary action brought under the State Bar Act or the Texas Rules of Disciplinary Procedure;
- a legal action brought under statutory provisions relating to protection for reporting violations of law; and
- a legal action based on a common law fraud claim.

C.S.H.B. 2730 makes provisions governing civil actions involving the exercise of certain constitutional rights specifically applicable to the following:

- a legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, advertisement, or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution;
- a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses; and
- a legal action based on or in response to a public or private communication against a victim or alleged victim of specified offenses, including family or dating violence, kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, and certain sexual and assaultive offenses.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2730 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a definition of "exercise of the constitutional right to petition, speak freely, or associate freely" but includes revised definitions of "exercise of the right of association" and "matter of public concern." The substitute and the introduced version both change the definition of "legal action," but in different ways. The substitute does not include the repeal of certain other definitions.

The substitute does not include a specification regarding the purpose of the bill.

The substitute includes the following revisions regarding a motion to dismiss certain legal actions:

- expands the applicable legal actions by including actions arising from an act in

furtherance of certain specified communication or conduct;

- excludes certain governmental or official parties from filing the motion;
- provides for an extension by mutual agreement of the parties of the time to file the motion;
- changes the required notice period for the hearing on the motion and specifies that notice is provided by the moving party; and
- provides a deadline for filing a response to the motion.

The substitute does not include a provision requiring a certain waiting period between the filing of a motion to dismiss and the setting of a hearing on the motion.

The substitute, with regard to the court's ruling on a motion to dismiss:

- clarifies the date by which the court must rule;
- removes language specifying the evidentiary standard;
- does not include a provision prohibiting the court from ruling on the motion if the responding party files a nonsuit by a specified time; and
- includes a provision changing the condition on which the court is required to dismiss the action.

The substitute includes provisions relating to evidence the court is required to consider for purposes of ruling on a motion to dismiss, relating to conditions requiring court findings on the purpose or motivation of a legal action, and relating to the effects at later stages of a case of a court's ruling on such a motion.

The substitute makes the following revisions with regard to damages and costs:

- includes a certain revision to the required award of costs and fees;
- includes a change from a requirement to an authorization regarding an award of sanctions;
- does not include a provision prohibiting an award if the responding party nonsuited the challenged action within a prescribed time; and
- includes a provision authorizing an award of attorney's fees incurred in defending against certain counterclaims.

The substitute revises and expands the legal actions exempted from provisions governing certain actions involving the exercise of certain constitutional rights. The substitute explicitly includes certain legal actions arising from an act of a public or private person related to specified communications and conduct among the actions governed by those provisions.

The substitute includes a provision establishing the severability of the bill's provisions.