

BILL ANALYSIS

C.S.H.B. 2788
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, transportation network companies provide \$1 million in liability insurance coverage for drivers, riders, and any third parties injured by a vehicle providing a ride on a company platform. Concerns have been raised regarding the costs associated with frivolous lawsuits against transportation network companies for damages that are within the required \$1 million liability insurance coverage. There have been calls to provide safeguards in state law that would reduce legal costs for both Texas consumers and transportation network companies and ensure that auto accident claims are not clogging up the courts and can be paid out as quickly as possible without affecting a consumer's ability to recover. C.S.H.B. 2788 seeks to address these concerns by requiring certain civil actions and arbitration proceedings naming a transportation network company to include proof that the damages exceed the \$1 million insurance coverage required by state law.

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. 2788 amends the Civil Practice and Remedies Code to establish provisions governing an action or arbitration proceeding in which the following conditions apply:

- a transportation network company is a defendant;
- the claimant seeks recovery of damages for loss of property, bodily injury, or death;
- the claim for which the action or proceeding is brought arises out of the ownership, use, operation, or possession of a personal vehicle while the vehicle's driver or passenger was logged on to a transportation network company's digital network; and
- the theory of recovery for which damages are sought against the transportation network company is based on the following:
 - the ownership, operation, design, manufacture, or maintenance of a digital network accessed by a driver or passenger; or
 - the affiliation or interaction with a driver logged on to a transportation network company's digital network.

C.S.H.B. 2788 requires a claimant, at the time the claimant initially names the transportation network company as a party in an applicable action or arbitration proceeding, to file with the petition or provide to the arbitration tribunal and each other party at the initiation of the arbitration, as applicable, an affidavit by the claimant's counsel attesting that the damages

suffered by the claimant exceed the applicable insurance coverage limit. The bill establishes that a defendant in the action or proceeding is not required to file an answer to the petition or arbitration request until the 30th day after the date the required affidavit is filed.

C.S.H.B. 2788's contemporaneous filing requirement does not apply to any action or proceeding in which the limitations period expires within 10 days of the date of filing of the petition or initiation of arbitration and, because of the time constraints, a claimant has alleged that the required affidavit could not be prepared. The bill requires the claimant to supplement the pleadings with the affidavit not later than the 30th day after the date the petition is filed or the arbitration is initiated. The bill authorizes the trial court or arbitration tribunal, on a motion by a party, after hearing and for good cause, to extend the deadline for supplementing the pleadings as the court or tribunal determines justice requires. The bill's provisions relating to the required affidavit may not be construed to extend any applicable period of limitation or repose.

C.S.H.B. 2788 requires a court or arbitration tribunal to dismiss with prejudice a complaint against a transportation network company with respect to which the claimant failed to file the required affidavit. An order granting or denying such a motion for dismissal is, as applicable, immediately appealable as an interlocutory order or grounds to file an application to a court, under provisions governing general arbitration court proceedings, for the court to review the order.

C.S.H.B. 2788 grants a transportation network company immunity from vicarious liability for damages in an applicable action or arbitration proceeding if the company did not commit a crime under state or federal law and has fulfilled all of the company's obligations with respect to the transportation network company driver as required by applicable Occupations Code provisions.

C.S.H.B. 2788 amends the Occupations Code to add a reference to the bill's Civil Practice and Remedies Code provisions in the governing statutes for transportation network companies.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2788 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 revises the affidavit requirements as follows:

- omits a requirement present in the original for the claimant to file an affidavit by the claimant's counsel that sets forth certain supporting information for each theory of recovery for which damages are sought; and
- changes the nature of the required affidavit attesting that the damages suffered by the claimant exceed the applicable insurance coverage limit from an affidavit by a third-party expert to an affidavit by the claimant's counsel.

The substitute includes an Occupations Code provision absent from the original that adds a reference to the bill's Civil Practice and Remedies Code provisions in the governing statutes for transportation network companies.