

BILL ANALYSIS

C.S.H.B. 3984
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, claimants filing a health care liability claim against a health care provider are required to serve a report from a qualified medical expert to the defendant or the defendant's attorney which explains how the provider contributed to the plaintiff's injuries by failing to satisfy the standard of care applicable to that provider. This requirement helps to ensure that frivolous malpractice claims are dismissed early in the litigation process while meritorious claims are preserved. Concerns have been raised, however, that state law governing these expert reports is imprecise and has been interpreted in different ways by different courts, often leaving claimants confused as to whether they are required to serve an expert report. In cases like these, litigation costs increase for both claimants and defendants, as expert reports are prepared unnecessarily. Sometimes, potentially meritorious claims are even dismissed because claimants fail to serve an expert report not realizing that their claim is a health care liability claim. C.S.H.B. 3984 seeks to remedy this situation by authorizing a court to issue a preliminary determination regarding whether a claim made by a claimant is a health care liability claim for purposes of serving the expert report.

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. 3984 amends the Civil Practice and Remedies Code to authorize a court, on motion of a claimant filed not later than 30 days after the date each defendant's original answer is filed, to issue a preliminary determination regarding whether a claim made by the claimant is a health care liability claim that would require the claimant to serve on the defendant or the defendant's attorney one or more expert reports. If the court determines that the claim is such a health care liability claim, the claimant must serve the expert report as required not later than the later of the following dates:

- 120 days after the date each defendant's original answer is filed;
- 60 days after the date the court issues a preliminary determination under the bill's provisions; or
- a date agreed to in writing by the affected parties.

The bill requires the court to issue a preliminary determination that the claim is a health care liability claim that requires an expert report, if the court does not issue the required preliminary determination before the 91st day after the date that a claimant files the motion. The bill subjects the preliminary determination to interlocutory appeal by either the claimant or defendant. The

bill requires the claimant, if an appellate court reverses on interlocutory appeal a trial court's preliminary determination that a claim is not a health care liability claim, to serve an expert report not later than 120 days after the date that the appellate court issues an opinion reversing the preliminary determination. The court's preliminary determination applies only to the issue of whether a claimant is required to serve an expert report.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3984 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 includes a provision not in the original subjecting the preliminary determination under the bill's provisions to interlocutory appeal by either the claimant or defendant.

The substitute includes the following provisions not in the original:

- a requirement for the court, if the court does not timely issue a preliminary determination, to issue a preliminary determination that the claim is a health care liability claim that requires an expert report; and
- a requirement for the claimant, if an appellate court reverses on interlocutory appeal a trial court's preliminary determination that a claim is not a health care liability claim, to serve the expert report by a specified deadline.