

SUBJECT: Establishing statutory procedures for filing a bill of review.

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 8 ayes — Gray, Alvarado, Bosse, Dutton, Goodman, Nixon, Roman,
Zbranek

0 nays

1 absent — Hilbert

WITNESSES: For — Sandy Prindle, Justice of the Peace, Tarrant County; George Allen,
Texas Apartment Association

Against — None

BACKGROUND : The equitable bill of review is a procedural device that dates back to English
common law. Bills of review have long been used in Texas as a means of
examining prior judgments by a court. The Texas Supreme Court
recognized the use of bills of review in *Garrett v. Gaines* 6 Tex. 435
(1851).

To file a bill of review, applicants must show that a judgment has been
entered against them, that through no fault of their own the judgment was
not defended, and that they have a meritorious defense against that
judgment. If the bill of review is granted, the prior judgment is set aside on
principles of equity and fairness, and the case is decided on its merits.

A bill of review is used not to examine erroneous judgments or appeal cases
but only when procedural errors denied a person the opportunity to defend
the original claim. While the appeal of a judgment generally must be filed
within 60 days of that judgment, an application for a bill of review can be
filed any time within the general statute of limitations period of four years.
The general limitations period is used because the bill of review is
considered essentially a new suit, not an appeal of an earlier judgment.

DIGEST: HB 506 would specify that an application for a bill of review could be filed to set aside a prior judgment against the applicant within four years of the judgment date or within 30 days of the applicant's knowledge of the judgment.

HB 506 would require that applicants filing a bill of review claim that they were not at fault in not having contested a prior judgment in a timely manner, that they did not receive proper notice, or that they did not have an opportunity to discover the notice made through publication. The application for a bill of review would have to state, through verified affidavit, the grounds justifying the bill of review and allege a meritorious claim or defense against the original suit.

Under HB 506, all parties affected by the judgment would be allowed to intervene in the action at any time. It would also allow any party to request a pretrial hearing and authorize judges to call a pretrial hearing on their own initiative.

HB 506 would apply to all applications for bills of review filed on or after September 1, 1997.

SUPPORTERS SAY: HB 506 would codify the procedure for applying for a bill of review in civil cases. The use of a bill of review has long been accepted practice in Texas. However, any party or attorney who wishes to use a bill of review or any judge who wishes to rule on an application must wade through dozens of cases interpreting the procedure. Because no one case sets out a clear standard, different courts can apply the case law on bills of review in varied manners. Divergent applications are not necessarily incorrect, but merely reflect the fact that case law is interpretive in nature and based on the details of the case before the court. Statutory law, on the other hand, sets out clear rules that can be applied in all courts and adapted to the particular facts. HB 506 simply takes what is currently a morass of legal interpretation and sets it down in clear, easy to understand language.

A bill of review, as interpreted by case law and set out in HB 506, is an unusual procedure that is used only when equity and fairness demand that a prior judgment be set aside. The procedure can only be used in very specific circumstances when applicants for the bill can show they were previously

denied the ability to defend their rights. The meritorious defense requirement prevents a case from being reopened when there is no reason to suspect that the outcome might be different.

The one exception to the meritorious defense rule in Texas was expressed in a U.S. Supreme Court case, *Peralta v. Heights Medical Center, Inc.*, 108 S.Ct. 896 (1988), which held that an applicant need not show a meritorious defense when the applicant's due process rights were violated because of not being notified about the prior proceeding. Rep. Dutton, the bill's author, plans to offer a floor amendment to ensure that the ruling of the *Peralta* case is reflected in HB 506.

Codifying the bill of review procedure would allow judges, especially those in justice of the peace courts who sometimes lack formal legal training and have limited research resources, to grasp quickly the basics of a complicated legal procedure. HB 506 should be a model for other legislation that helps to promote judicial economy. Reducing a complex set of case law to either a statute or a rule helps Texas judges to more easily apply the law and ensures that its application will be more uniform throughout the state.

OPPONENTS
SAY:

HB 506 is unnecessary as it merely restates law that is already applied in Texas. Specifying in statute the procedure for a bill of review may also limit a judge's discretion in these cases. The bill of review was never designed to be a carefully delineated procedure. According to legal historians, it was developed so that a judge could go outside the bounds of standard procedure to prevent manifest injustice. Establishing a strict statutory procedure may limit some of the flexibility the current case law allows.

If an amendment is not adopted that brings this bill in line with the *Peralta* case, the procedure established in HB 506 could be subject to constitutional challenge.

NOTES:

Rep. Dutton intends to offer a floor amendment that would modify the requirements of an application for a bill of review to conform to the *Peralta* decision.