

SUBJECT: Requiring notice of certain Americans with Disabilities Act claims

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Rinaldi, Schofield

1 nay — Neave

WITNESSES: For —Matt Burgin and Sharif Prasla, Texas Food and Fuel Association; Nelson Roach, TTLA; Mark Homer; Mishell Kneeland; (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Kinnan Golemon, Austin White Lime Company; Tiffany Young, Citizens Against Lawsuit Abuse, Texans Against Lawsuit Abuse; Melodie Durst, Credit Union Coalition of Texas; Daniel Womack, Dow Chemical; Meredyth Fowler, Independent Bankers Association of Texas; Dana Chiodo, International Council of Shopping Centers (ICSC); Bill Oswald, Koch Companies; Annie Spilman, National Federation of Independent Business/Texas; Mike Meroney, Safelite Autoglass and Huntsman Corporation; Lee Parsley, Texans for Lawsuit Reform; David Mintz, Texas Apartment Association; Ned Munoz, Texas Association of Builders; Cathy Dewitt, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Robert Flores, Texas Association of Mexican American Chambers of Commerce; Lisa Kaufman and Carol Sims, Texas Civil Justice League; Paul Hardin and Shaukat Mahesania, Texas Food and Fuel Association; Jennifer Banda, Texas Hospital Association; Olivia Chriss, Texas Restaurant Association; Jim Sheer, Texas Retailers Association; Mike Hamilton)

Against — Dennis Borel, Coalition of Texans with Disabilities; Lia Davis, Disability Rights Texas; Kyle Piccola, the Arc of Texas; Mary MacKinnon; (*Registered, but did not testify*: James Harrington; Rebecca Johnston)

On — David Talbot, Office of the Attorney General

BACKGROUND: Human Resources Code, sec. 121.004 makes it a misdemeanor offense punishable by a fine of up to \$300 and 30 hours of community service for a person to violate the provisions listed in sec. 121.003, which prohibits discrimination against persons with disabilities. In addition to this penalty, any person violating one of these provisions has deprived a person with a disability of his or her civil liberties, and the deprived person may maintain a cause of action for damages, with a conclusive presumption of at least \$300 in damages.

DIGEST: CSHB 1463 would amend Human Resources Code, sec. 121.004 to require a notification process prior to a claim being filed for alleged failure to comply with applicable design, construction, technical, or similar standards, including website accessibility guidelines, required by law and designed to accommodate persons with disabilities.

At least 60 days before filing a claim for this type of violation, a person would have to provide a written notice to the alleged violator, the respondent. The written notice would have to state the name of the claimant and, in reasonable detail:

- each condition on the respondent's premises or website allegedly noncompliant with an applicable design, construction, technical, or similar standard on which the claim would be based; and
- each design, construction, technical, or similar standard allegedly violated.

The notice could not demand damages, request a settlement, or offer to make a settlement without a determination of whether the condition was excused by law or could be remedied.

A respondent could then correct the alleged violation or make a determination that the alleged violation had not occurred and that correction was not necessary. If the respondent corrected the violation, he or she would have to send notice to the claimant describing each correction and how that correction addressed the alleged violation. Respondents who determined no correction was necessary would have to

send an explanation of the conclusion to the claimant.

If claimants decided to file an action based on this type of violation, they would have to establish that the respondent had not corrected one or more of the alleged violations stated in the written notice. The respondent could then file a plea in abatement, and the court would have to abate the action for up to 60 days after a hearing on the plea if the court found that:

- the respondent initiated action to correct the alleged violation in the 60 days after receiving written notice from the claimant;
- the respondent could not complete the correction within that time; and
- the corrections would be completed by the end of the period of abatement.

If, during the period of abatement, the respondent provided notice of the correction or completed the corrections, the claimant could file a motion to dismiss the action without prejudice, or the respondent could file a motion for summary judgment.

This bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 1463 would reduce the negative impact on various entities in Texas that can be targeted for alleged minor violations of state law prohibiting discrimination against persons with disabilities. Lawsuits are threatened or filed in an attempt to force the entity to settle claims outside of court to avoid expending time and resources to defend itself. The bill would encourage those who were in violation of applicable design and construction standards to become compliant without the need for litigation.

**OPPONENTS
SAY:**

CSHB 1463 would harm the Americans with Disabilities Act (ADA) claims filing process by adding more obstacles for people with disabilities before they could proceed with a legitimate claim against a person for a violation of law that deprived them of their civil rights. The added process would require a lawyer's level of knowledge to file a claim. Further,

remedies already are in place for situations involving bad faith ADA claims.

NOTES: A companion bill, SB 827 by Seliger, was referred to the Senate Committee on State Affairs on February 27.