

BILL ANALYSIS

Senate Research Center

S.B. 532
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Economic Development
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As Filed

DIGEST

Currently, a party is not penalized for threatening expensive litigation in a lawsuit, although an abuse of litigation can be extremely costly to both parties. An innocent civil defendant may be required to pay a high litigation expense to fight a claim without merit or may be forced to pay a large settlement to avoid that litigation expense. At the same time, a civil plaintiff who makes a reasonable settlement offer that is rejected must choose between litigation of a lengthy discovery process and trial against meritless defenses or acceptance of a low settlement to resolve promptly the plaintiff's claims. S.B. 532 would protect victims of abusive litigation tactics by allowing a party to recover litigation expenses, including reasonable attorney's fees, if a party rejects a fair settlement offer and then wins less, or loses more, at trial.

PURPOSE

As proposed, S.B. 532 authorizes recovery of litigation costs in certain civil actions.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2C, Civil Practice and Remedies Code, by adding Chapter 42, as follows:

CHAPTER 42. LITIGATION COSTS FOLLOWING AN OFFER TO SETTLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. **DEFINITIONS.** Defines "claim," "claimant," "defendant," "litigation costs," and "offer to settle."

Sec. 42.002. **APPLICABILITY AND EFFECT.** Sets forth the action to which this chapter does not apply. Provides that this chapter does not limit or affect the ability of any person to make an offer to settle or compromise a claim that does not comply with this chapter. Provides that a party's offer to settle or compromise that does not comply with Section 42.021 does not entitle the party to recover litigation costs under this section.

Sec. 42.003. **ELECTION BY GOVERNMENTAL UNITS; WAIVER.** Provides that this chapter does not apply to actions directly involving any unit of the state government, or any state political subdivision unless the governmental unit expressly elects to seek recovery of litigation costs under this chapter and elects to waive immunity from liability for litigation costs awarded under this chapter. Requires the governmental unit to file the waiver with the court within 45 days of the filing of the governmental unit's original petition or original answer. Provides that an election and waiver is effective only in the action in which it is filed, even if the action is subsequently joined or consolidated with another action.

Sec. 42.004. **MODIFICATION OF TIME LIMITS.** Authorizes a court following pretrial conference to modify the time limits specified in this chapter pursuant to Rule 166, Texas Rules of Civil Procedure.

Sec. 42.005. **SERVICE.** Provides that service under this chapter to another party is adequate if service is performed in a manner described in Rule 21a, Texas Rules of Civil Procedure.

SUBCHAPTER B. OFFER TO SETTLE; AWARDING LITIGATION COSTS

Sec. 42.021. OFFER TO SETTLE. Authorizes a party to serve on opposing party with an offer to settle all claims in an action between that party and the opposing party. Sets forth criteria for the offer to settle. Prohibits a party from making an offer to settle under this section until the 45th day after the date the defendant filed the first responsive pleading to the claim. Prohibits a party from making an offer to settle after the 10th day before the date set for trial, except that a party may make an offer to settle that is a counteroffer on or before the seventh day before the date set for the trial. Provides that the parties are not required to file an offer to settle.

Sec. 42.022. ACCEPTANCE OF OFFER. Authorizes a party to accept an offer to settle on or before 5:00 p.m. on the 14th day after the date the party received the offer to settle or before the deadline specified in the offer, whichever is later. Sets forth criteria for an acceptance to an offer.

Sec. 42.023. WITHDRAWING AN OFFER. Authorizes a party to withdraw an offer to settle by a writing served on the party to whom the offer was made before the party accepts the offer. Prohibits a party from accepting an offer to settle after it is withdrawn. Prohibits a party from withdrawing an offer to settle after it has been accepted. Provides that an offer to settle does not entitle the party to recover litigation costs.

Sec. 42.024. REJECTION OF OFFER. Sets forth conditions under which an offer to settle a claim is rejected.

Sec. 42.025. AWARD OF LITIGATION COSTS. Authorizes a party to recover litigation costs in an offer to settle claims between the parties under certain conditions. Requires litigation costs awarded under this section to include only those costs incurred by the party who made the offer to settle under certain conditions. Requires each element of litigation awarded under this chapter to be both reasonable and necessary to the prosecution or defense of the action. Authorizes the court to review and reduce an award of litigation costs.

Sec. 42.026. AMOUNT OF ATTORNEY'S FEES. Prohibits a party from recovering attorney's fees as litigation costs under this chapter unless the party was represented by an attorney. Requires the court to limit attorney's fees for a claimant against a defendant to one-third of the amount of damages recovered by the claimant from the defendant on the claims that were the subject of the offer to settle, and to limit to one-third the amount of damages sought by the claimant against the defendant at the time the claimant rejected the offer to settle.

Sec. 42.027. LIMITATION ON LITIGATION COSTS. Prohibits the amount of litigation costs awarded against the claimant in an action for personal injury or death from exceeding the amount of the damages recovered by the claimant in the action.

Sec. 42.028. EVIDENCE NOT ADMISSIBLE. Establishes that evidence relating to an offer to settle is not admissible, except in an action to enforce the settlement or obtain litigation costs. Prohibits the provisions of this chapter from being made known to a jury through any means, including voir dire, introduction into evidence, instruction, or argument, except in an action or proceeding described in Subsection (a).

SECTION 2. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 3. Emergency clause.