

BILL ANALYSIS

Senate Research Center

H.B. 274
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State Affairs
5/14/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 274 allows for the efficient resolution of certain civil matters in certain Texas courts. The changes to statute will make the civil justice system more accessible, more efficient, and less costly to all Texans while reducing the overall costs of the civil justice system to all taxpayers.

H.B. 274 amends current law relating to the reform of certain remedies and procedures in civil actions and family law matters.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1.01 (Section 22.004, Government Code) and SECTION 2.01 (Section 22.004, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. EARLY DISMISSAL OF ACTIONS

SECTION 1.01. Amends Section 22.004, Government Code, by adding Subsection (g), as follows:

(g) Requires the Supreme Court of Texas (supreme court) to adopt rules to provide for the dismissal of certain causes of action and defenses that the supreme court determines should be disposed of as a matter of law on motion and without evidence. Provides that rules adopted under this subsection do not apply to an action under the Family Code.

SECTION 1.02. Amends Chapter 30, Civil Practice and Remedies Code, by adding Section 30.021, as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. Authorizes the court, in a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, to award costs and reasonable and necessary attorney's fees to the prevailing party that the court determines are equitable and just. Provides that this section does not apply to an action under the Family Code.

ARTICLE 2. EXPEDITED CIVIL ACTIONS

SECTION 2.01. Amends Section 22.004, Government Code, by adding Subsection (h), as follows:

(h) Requires the supreme court to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. Requires that the rules apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. Requires that the rules address the need

for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. Prohibits the supreme court from adopting rules under this subsection that conflict with a provision of Chapter 74 (Medical Liability), Civil Practice and Remedies Code, the Family Code, the Property Code, or the Tax Code.

ARTICLE 3. NO IMPLIED CAUSE OF ACTION

SECTION 3.01. Amends Subchapter C, Chapter 311, Government Code, by adding Section 311.035, as follows:

Sec. 311.035. NO IMPLIED CAUSE OF ACTION. Prohibits a statute from being construed to create a cause of action unless the statute by clear and unambiguous language creates a cause of action. Provides that this section does not apply to an action under the Family Code.

ARTICLE 4. APPEAL OF CONTROLLING QUESTION OF LAW

SECTION 4.01. Amends Section 51.014, Civil Practice and Remedies Code, by amending Subsections (d) and (e) and adding Subsection (f), as follows:

(d) Authorizes a trial court in a civil action, on a party's motion or on its own initiative, by written order, to permit an appeal from an order that is not otherwise appealable if:

- (1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and
- (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Deletes existing text authorizing a district court, county court at law, or county court to issue a written order for interlocutory appeal in a civil action not otherwise appealable under this section if the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion, an immediate appeal from the order may materially advance the ultimate termination of the litigation, and the parties agree to the order.

(e) Provides that an appeal under Subsection (d) does not stay proceedings in the trial court unless the parties agree to a stay, or the trial or appellate court orders a stay of the proceedings pending appeal, rather than unless the parties agree and the trial court, the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.

(f) Authorizes an appellate court to accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). Provides that if the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. Provides that the date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

SECTION 4.02. Amends Section 22.225(d), Government Code, to provide that a petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) (relating to an appeal of an order that certifies or refuses to certify a class in a suit), (6) (relating to an appeal of an order that denies a motion for summary judgment), or (11) (relating to an appeal of an order that denies a motion to dismiss), or (d), Civil Practice and Remedies Code.

ARTICLE 5. RECOVERY OF ATTORNEY'S FEES

SECTION 5.01. Amends Section 38.001, Civil Practice and Remedies Code, as follows:

Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. Authorizes a person to recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for certain things, including an appeal to the court under Section 11.43 (Application for Exemption), Tax Code, or an appeal to the court of a determination of an appraisal review board on a motion filed under Section 11.45, Tax Code, rather than an oral or written contract.

SECTION 5.02. Amends Chapter 38, Civil Practice and Remedies Code, by adding Section 38.0015, as follows:

Sec. 38.0015. ORAL AND WRITTEN CONTRACTS. Authorizes the prevailing party, unless otherwise provided in a written contract, to recover reasonable attorney's fees from an individual, corporation, or other legal entity if the claim is for breach of an oral or written contract.

SECTION 5.03. Amends Section 38.002, Civil Practice and Remedies Code, as follows:

Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. Provides that to recover attorney's fees under this chapter:

- (1) the person seeking to recover attorney's fees, rather than the claimant, is required to be represented by an attorney;
- (2) the claimant is required to present the claim to the opposing party or to a duly authorized agent of the opposing party; and
- (3) payment for the just amount owed, if any, is prohibited from having been tendered before the expiration of the 30th day after the claim is presented.

ARTICLE 6. ALLOCATION OF LITIGATION COSTS

SECTION 6.01. Amends Sections 42.001(5) and (6), Civil Practice and Remedies Code, to redefine "litigation costs" and "settlement offer."

SECTION 6.02. Amends Sections 42.002(b), (d), and (e), Civil Practice and Remedies Code, as follows:

(b) Provides that this chapter does not apply to certain actions, including an action filed in a justice of the peace court or a small claims court.

(d) Provides that this chapter does not limit or affect the ability of any person to:

- (1) make an offer to settle or compromise a claim that does not comply with Section 42.003 (Making Settlement Offer), rather than this chapter; or
- (2) offer to settle or compromise a claim in an action to which this chapter does not apply.

(e) Provides that an offer to settle or compromise that does not comply with Section 42.003, rather than that is not made under this chapter, or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle any party, rather than the offering party, to recover litigation costs under this chapter.

SECTION 6.03. Amends Section 42.003, Civil Practice and Remedies Code, as follows:

Sec. 42.003. MAKING SETTLEMENT OFFER. (a) Authorizes a defendant filing a declaration and any party with a claim against that defendant, after the defendant files the

declaration under Section 42.002(c), to make a settlement offer to settle all claims in the action between the parties.

(b) Creates this subsection from existing text. Makes no further changes to this subsection.

(c) Provides that the parties are not required to file a settlement offer with the court.

SECTION 6.04. Amends Section 42.004(c), Civil Practice and Remedies Code, to provide that the litigation costs that are authorized to be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the earliest settlement offer that entitles the party to an award of litigation costs under this section.

SECTION 6.05. Repealers: Sections 42.004(d) (relating to certain litigation costs that may be awarded) and (g) (relating to litigation costs awarded to a defendant), Civil Practice and Remedies Code.

ARTICLE 7. DESIGNATION OF RESPONSIBLE THIRD PARTIES

SECTION 7.01. Repealer: Section 33.004(e) (relating to limitations from seeking to join certain persons designated as a responsible third party), Civil Practice and Remedies Code.

ARTICLE 8. FAMILY LAW MATTERS

SECTION 8.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 148, as follows:

CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. Defines, in this chapter, "foreign law."

Sec. 148.002. DECISION BASED ON FOREIGN LAW. Prohibits a ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code from being based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) Provides that a contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) Provides that a contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION 8.02. (a) Makes application of Section 148.002, Civil Practice and Remedies Code, as added by this Act, to a ruling or decision that becomes final on or after the effective date of this Act, prospective.

(b) Makes application of Section 148.003, Civil Practice and Remedies Code, as added by this Act, to a contract entered into on or after the effective date of this Act, prospective.

SECTION 8.03. Effective date, this Act: September 1, 2011.

ARTICLE 9. CONTESTED TAX APPRAISAL COSTS

SECTION 9.01. Entitles a taxpayer who prevails in an action contesting a tax appraisal to an award of costs and attorney's fees. Provides that if the appraisal district or taxing authority prevails the appraisal district or taxing authority is not entitled to costs and attorney's fees.

ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. Makes application of this Act to a civil action, prospective.

SECTION 10.02. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2011.

(b) Effective date, Articles 4, 5, 6, and 7 of this Act: September 1, 2011.