

BILL ANALYSIS

Senate Research Center

H.B. 2730
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certain statutory provisions relating to expedited dismissal procedures for lawsuits involving the exercise of free speech, the right of association, and the right to petition lend themselves to unexpected applications because they are overly broad or unclear. H.B. 2730 seeks to remedy this issue by clarifying the scope and applicability of those provisions.

H.B. 2730 amends current law relating to civil actions involving the exercise of certain constitutional rights.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 27.001(2), (6), and (7), Civil Practice and Remedies Code, as follows:

(2) Redefines "exercise of the right of association" to mean to join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern.

(6) Redefines "legal action" to mean a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief. Provides that the term does not include:

(A) a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief;

(B) alternative dispute resolution proceedings; or

(C) post-judgment enforcement actions.

(7) Redefines "matter of public concern" to mean a statement or activity regarding:

(A) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;

(B) a matter of political, social, or other interest to the community; or

(C) a subject of concern to the public.

SECTION 2. Amends Section 27.003, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Authorizes a party, if a legal action is based on or is in response to the party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b), to file a motion to dismiss the legal action, rather than authorizing a party, if a legal action is based on, relates to, or is in response to the party's exercise of the right of free speech, right to petition, or right of association, to file a motion to dismiss the legal action. Provides that a party under this section (Motion to Dismiss) does not include a government entity, agency, or an official or employee acting in an official capacity.

(b) Authorizes the parties, upon mutual agreement, to extend the time to file a motion under this section or the court to extend the time to file a motion under this section on a showing of good cause, rather than authorizing the court to extend the time to file a motion under this section on a showing of good cause.

(d) Requires the moving party to provide written notice of the date and time of the hearing under Section 27.004 (Hearing) not later than 21 days before the date of the hearing unless otherwise provided by agreement of the parties or an order of the court.

(e) Requires a party responding to the motion to dismiss to file the response, if any, not later than seven days before the date of the hearing on the motion to dismiss unless otherwise provided by an agreement of the parties or an order of the court.

SECTION 3. Amends Sections 27.005(a), (b), and (d), Civil Practice and Remedies Code, as follows:

(a) Makes nonsubstantive changes to this subsection.

(b) Makes a nonsubstantive change. Requires a court, except as provided by Subsection (c), on the motion of a party under Section 27.003, to dismiss a legal action against the moving party if the moving party demonstrates that the legal action is based on or is in response to certain rights or the act of a party described by Section 27.010(b).

(d) Requires the court, notwithstanding the provisions of Subsection (c), to dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law, rather than requiring the court, notwithstanding the provisions of Subsection (c), to dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

SECTION 4. Amends the heading to Section 27.006, Civil Practice and Remedies Code, to read as follows:

Sec. 27.006. PROOF.

SECTION 5. Amends Section 27.006(a), Civil Practice and Remedies Code, as follows:

(a) Requires the court, in determining whether a legal action is subject to or should be dismissed under this chapter (Actions Involving the Exercise of Certain Constitutional Rights), to consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based, rather than requiring the court, in determining whether a legal action should be dismissed under this chapter, to consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

SECTION 6. Amends Section 27.007(a), Civil Practice and Remedies Code, as follows:

(a) Requires the court, if the court awards sanctions under Section 27.009(b) (relating to the court awarding court costs and reasonable attorney's fees to the responding party under certain circumstances), rather than at the request of a party making a motion under Section 27.003, to issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

SECTION 7. Amends Chapter 27, Civil Practice and Remedies Code, by adding Section 27.0075, as follows:

Sec. 27.0075. EFFECT OF RULING. Provides that neither the court's ruling on the motion nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and prohibits a burden of proof or degree of proof otherwise applicable from being affected by the ruling.

SECTION 8. Amends Section 27.009, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Makes nonsubstantive changes. Provides that, except as provided by Subsection (c), if the court orders dismissal of a legal action under this chapter, the court:

(1) is required to award to the moving party court costs and reasonable attorney's fees incurred in defending against the legal action, rather than requiring the court to award to the moving party court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) is authorized, rather than required, to award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(c) Authorizes the court, if the court orders dismissal of a compulsory counterclaim under this chapter, to award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court finds that the counterclaim is frivolous or solely intended for delay.

SECTION 9. Amends Section 27.010, Civil Practice and Remedies Code, as follows:

Sec. 27.010. EXEMPTIONS. (a) Makes nonsubstantive changes to this subsection. Redesignates existing Subsections (b)-(d) as Subsections (a)(2)-(a)(4) and makes nonsubstantive changes. Provides that this chapter does not apply to:

(5) a legal action arising from an officer-director, employee-employer, or independent contractor relationship that:

(A) seeks recovery for misappropriation of trade secrets or corporate opportunities; or

(B) seeks to enforce a non-disparagement agreement or a covenant not to compete;

(6) a legal action filed under Title 1 (The Marriage Relationship), 2 (Child in Relation to the Family), 4 (Protective Orders and Family Violence), or 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship), Family Code, or an application for a protective order under Chapter 7A (Protective Order For Victims of Sexual Assault or Abuse, Stalking, or Trafficking), Code of Criminal Procedure;

(7) a legal action brought under Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, other than an action governed by Section 17.49(a) (relating to this chapter not applying to owners and employees of certain publications) of that chapter;

(8) a legal action in which a moving party raises a defense pursuant to Section 160.010 (Immunity From Civil Liability), Occupations Code, Section 161.033 (Immunity For Committee Members), Health and Safety Code, or the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

(9) an eviction suit brought under Chapter 24 (Forcible Entry and Detainer), Property Code;

(10) a disciplinary action or disciplinary proceeding brought under Chapter 81 (State Bar), Government Code, or the Texas Rules of Disciplinary Procedure;

(11) a legal action brought under Chapter 554 (Protection For Reporting Violations of Law), Government Code; or

(12) a legal action based on a common law fraud claim.

(b) Provides that, notwithstanding Subsections (a)(2), (7), and (12), this chapter applies to:

(1) a legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution; and

(2) a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.

(c) Provides that this chapter applies to a legal action against a victim or alleged victim of family violence or dating violence as defined in Chapter 71 (Definitions), Family Code, or an offense under Chapter 20 (Kidnapping, Unlawful Restraint, and Smuggling of Persons), 20A (Trafficking of Persons), 21 (Sexual Offenses), or 22 (Assaultive Offenses), Penal Code, based on or in response to a public or private communication.

SECTION 10. Severability clause.

SECTION 11. Makes application of Chapter 27, Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 12. Effective date: September 1, 2019.