

BILL ANALYSIS

Senate Research Center

S.B. 232
By: Johnson
Jurisprudence
5/25/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under Section 74.351 of the Texas Civil Practice and Remedies Code, all claimants filing a health care liability claim (HCLC) against a healthcare provider are required to serve a report from a qualified medical expert to the defendant or the defendant's attorney which explains how the provider contributed to the plaintiff's injuries by failing to satisfy the standard of care applicable to that provider. This statute was enacted in 2003 to help ensure that frivolous malpractice claims are dismissed early in the litigation process while not eliminating meritorious claims. Statute also requires that trial courts dismiss with prejudice any HCLC for which the claimant has failed to timely serve an expert report, currently defined as "not later than the 120th day after the date each defendant's original answer is filed." Unfortunately, the current statutory definition of "health care liability claim" is imprecise and has been interpreted in different ways by different courts, often leaving claimants confused as to whether they are required to serve an expert report. In cases like these, litigation costs may be increased for both claimants and defendants because expert reports are prepared unnecessarily, and sometimes, potentially meritorious claims are dismissed because claimants fail to serve an expert report, not realizing that their claim is an HCLC.

S.B. 232 creates a mechanism for trial courts to preliminarily determine whether a plaintiff's claim is an HCLC subject to the expert reporting requirements of Section 74.351 and specifies a time after determination for the claimant to serve an expert report when statutorily required. This bill would reduce the costs of litigation resulting from the preparation of unnecessary expert reports for both plaintiffs and defendants and enhance justice by reducing the number of nonfrivolous claims dismissed for failure to provide an expert report.

Key Provisions:

Upon motion of a claimant, S.B. 232 allows a trial court to issue a preliminary determination regarding whether a claim is an HCLC for the purposes of Texas Civil Practice and Remedies Code Section 74.351.

Modifies the deadline a claimant has to serve an expert report to the defendant or the defendant's attorney to not later than the later of:

- 120 days after the date each defendant's original answer is filed;
- 60 days after the date the court issues the preliminary determination; or
- a date agreed to in writing by the affected parties.

Provides that a preliminary determination is not subject to interlocutory appeal.

Supporters include the Texas Trial Lawyers Association. There is no known opposition.

(Original Author's/Sponsor's Statement of Intent)

S.B. 232 amends current law relating to service of expert reports for health care liability claims.

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 Section 51.014(a), Civil Practice and Remedies Code, to authorize a person to appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that makes a preliminary determination on a claim under Section 74.353. Makes nonsubstantive changes.

SECTION 2. Amends Sections 74.351(a) and (c), Civil Practice and Remedies Code, as follows:

(a) Requires a claimant, in a health care liability claim, to, not later than the 120th day after the date each defendant's original answer is filed or a later date required under Section 74.353, rather than not later than the 120th day after the date each defendant's original answer is filed, serve on that party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted.

(c) Makes a conforming change to this subsection.

SECTION 3. Amends Subchapter H, Chapter 74, Civil Practice and Remedies Code, by adding Section 74.353, as follows:

Sec. 74.353. PRELIMINARY DETERMINATION FOR EXPERT REPORT REQUIREMENT. (a) Authorizes a court, on motion of a claimant filed not later than 30 days after the date each defendant's original answer is filed, to issue a preliminary determination regarding whether a claim made by the claimant is a health care liability claim for the purposes of Section 74.351 (Expert Report).

(b) Requires a claimant, if a court determines under Subsection (a) or (c) that a claim is a health care liability claim for purposes of Section 74.351, to serve an expert report as required by Section 74.351 not later than the later of 120 days after the date each defendant's original answer is filed, 60 days after the date the court issues the preliminary determination under Subsection (a) or (c), or a date agreed to in writing by the affected parties.

(c) Requires a court, if the court does not issue a preliminary determination under Subsection (a) before the 91st day after the date that a claimant files a motion under that subsection, to issue a preliminary determination that the claim is a health care liability claim for the purposes of Section 74.351.

(d) Provides that a preliminary determination under this section is subject to interlocutory appeal by either the claimant or defendant.

(e) Requires the claimant, if on interlocutory appeal an appellate court reverses a trial court's preliminary determination that a claim is not a health care liability claim, to serve an expert report as required by Section 74.351 not later than 120 days after the date that the appellate court issues an opinion reversing the preliminary determination.

(f) Provides that a preliminary determination under this section applies only to the issue of whether a claimant is required to serve an expert report under Section 74.351.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2021.