

By: Johnson
(Davis)

S.B. No. 232

A BILL TO BE ENTITLED

AN ACT

relating to service of expert reports for health care liability claims.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.014(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or

1 print media, arising under the free speech or free press clause of
2 the First Amendment to the United States Constitution, or Article
3 I, Section 8, of the Texas Constitution, or Chapter 73;

4 (7) grants or denies the special appearance of a
5 defendant under Rule 120a, Texas Rules of Civil Procedure, except
6 in a suit brought under the Family Code;

7 (8) grants or denies a plea to the jurisdiction by a
8 governmental unit as that term is defined in Section 101.001;

9 (9) denies all or part of the relief sought by a motion
10 under Section 74.351(b), except that an appeal may not be taken from
11 an order granting an extension under Section 74.351;

12 (10) grants relief sought by a motion under Section
13 74.351(1);

14 (11) denies a motion to dismiss filed under Section
15 90.007;

16 (12) denies a motion to dismiss filed under Section
17 27.003;

18 (13) denies a motion for summary judgment filed by an
19 electric utility regarding liability in a suit subject to Section
20 75.0022; ~~or~~

21 (14) denies a motion filed by a municipality with a
22 population of 500,000 or more in an action filed under Section
23 54.012(6) or 214.0012, Local Government Code; or

24 (15) makes a preliminary determination on a claim
25 under Section 74.353.

26 SECTION 2. Sections 74.351(a) and (c), Civil Practice and
27 Remedies Code, are amended to read as follows:

1 (a) In a health care liability claim, a claimant shall, not
2 later than the 120th day after the date each defendant's original
3 answer is filed or a later date required under Section 74.353, serve
4 on that party or the party's attorney one or more expert reports,
5 with a curriculum vitae of each expert listed in the report for each
6 physician or health care provider against whom a liability claim is
7 asserted. The date for serving the report may be extended by
8 written agreement of the affected parties. Each defendant
9 physician or health care provider whose conduct is implicated in a
10 report must file and serve any objection to the sufficiency of the
11 report not later than the later of the 21st day after the date the
12 report is served or the 21st day after the date the defendant's
13 answer is filed, failing which all objections are waived.

14 (c) If an expert report has not been served within the
15 period specified by Subsection (a) because elements of the report
16 are found deficient, the court may grant one 30-day extension to the
17 claimant in order to cure the deficiency. If the claimant does not
18 receive notice of the court's ruling granting the extension until
19 after the applicable [~~120-day~~] deadline has passed, then the 30-day
20 extension shall run from the date the plaintiff first received the
21 notice.

22 SECTION 3. Subchapter H, Chapter 74, Civil Practice and
23 Remedies Code, is amended by adding Section 74.353 to read as
24 follows:

25 Sec. 74.353. PRELIMINARY DETERMINATION FOR EXPERT REPORT
26 REQUIREMENT. (a) On motion of a claimant filed not later than 30
27 days after the date each defendant's original answer is filed, a

1 court may issue a preliminary determination regarding whether a
2 claim made by the claimant is a health care liability claim for the
3 purposes of Section 74.351.

4 (b) If a court determines under Subsection (a) or (c) that a
5 claim is a health care liability claim for purposes of Section
6 74.351, the claimant shall serve an expert report as required by
7 Section 74.351 not later than the later of:

8 (1) 120 days after the date each defendant's original
9 answer is filed;

10 (2) 60 days after the date the court issues the
11 preliminary determination under Subsection (a) or (c); or

12 (3) a date agreed to in writing by the affected
13 parties.

14 (c) If a court does not issue a preliminary determination
15 under Subsection (a) before the 91st day after the date that a
16 claimant files a motion under that subsection, the court shall
17 issue a preliminary determination that the claim is a health care
18 liability claim for the purposes of Section 74.351.

19 (d) A preliminary determination under this section is
20 subject to interlocutory appeal by either the claimant or
21 defendant.

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

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

4 SECTION 4. The change in law made by this Act applies only
5 to an action commenced on or after the effective date of this Act.
6 An action commenced before the effective date of this Act is
7 governed by the law as it existed immediately before the effective
8 date of this Act, and that law is continued in effect for that
9 purpose.

10 SECTION 5. This Act takes effect September 1, 2021.