

By: Smith, Cook

H.B. No. 2850

A BILL TO BE ENTITLED

AN ACT

relating to discovery procedures for civil actions brought under the Family Code.

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

SECTION 1. The Family Code is amended by adding Title 6 to read as follows:

TITLE 6. CIVIL PROCEDURE

CHAPTER 301. DISCOVERY PROCEDURES FOR CIVIL ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. APPLICABILITY OF CHAPTER. This chapter applies only to a civil action brought under this code.

Sec. 301.002. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE. Notwithstanding Section 22.004, Government Code, this chapter may not be modified or repealed by a rule adopted by the supreme court.

Sec. 301.003. DRAFT EXPERT REPORTS AND DISCLOSURES PROTECTED. A draft expert report or draft disclosure required under this chapter is protected from discovery, regardless of the form in which the draft is recorded.

SUBCHAPTER B. REQUEST FOR DISCLOSURE

Sec. 301.051. REQUEST. Not later than the 30th day before the last day of any applicable discovery period, a party may obtain disclosure from another party of the information or material described by Section 301.052 by serving the other party the following request:

1 "Under Subchapter B, Chapter 301, Family Code, you are
2 requested to disclose, not later than the 30th day after the date of
3 service of this request, the information or material described by
4 Section (state applicable provision of Section 301.052)."

5 Sec. 301.052. CONTENT. (a) A party may request disclosure
6 under Section 301.051 of any or all of the following:

7 (1) the correct names of the parties to the action;

8 (2) the name, address, and telephone number of any
9 potential parties;

10 (3) the legal theories and, in general, the factual
11 bases of the responding party's claims or defenses;

12 (4) the amount and any method of calculating economic
13 damages;

14 (5) the name, address, and telephone number of any
15 person having knowledge of relevant facts and a brief statement of
16 each identified person's connection with the action;

17 (6) for any testifying expert:

18 (A) the expert's name, address, and telephone
19 number;

20 (B) the subject matter on which the expert will
21 testify;

22 (C) the general substance of the expert's mental
23 impressions and opinions and a brief summary of the basis for those
24 impressions and opinions, or if the expert is not retained by,
25 employed by, or otherwise subject to the control of the responding
26 party, documents reflecting that information; and

27 (D) if the expert is retained by, employed by, or

1 otherwise subject to the control of the responding party:

2 (i) all documents, tangible things,
3 reports, models, or data compilations that have been provided to,
4 reviewed by, or prepared by or for the expert in anticipation of the
5 expert's testimony; and

6 (ii) the expert's current resume and
7 biography;

8 (7) any discoverable settlement agreement described
9 by Rule 192.3(g), Texas Rules of Civil Procedure;

10 (8) any discoverable witness settlement described by
11 Rule 192.3(h), Texas Rules of Civil Procedure;

12 (9) in an action alleging physical or mental injury
13 and damages from the occurrence that is the subject of the action:

14 (A) all medical records and bills that are
15 reasonably related to the injuries or damages asserted; or

16 (B) an authorization permitting the disclosure
17 of the information described by Paragraph (A);

18 (10) in an action alleging physical or mental injury
19 and damages from the occurrence that is the subject of the action,
20 all medical records and bills obtained by the responding party
21 through an authorization provided by the requesting party; and

22 (11) the name, address, and telephone number of any
23 person who may be designated as a responsible third party.

24 (b) For purposes of Subsection (a)(3), the responding party
25 is not required to compile all evidence that may be offered at
26 trial.

27 Sec. 301.053. RESPONSE. The responding party must serve a

1 written response on the requesting party not later than the 30th day
2 after the date the requesting party serves a request under Section
3 301.051, except that:

4 (1) a defendant served with a request before the
5 defendant's answer is due is not required to respond until the 50th
6 day after the date the request is served; and

7 (2) a response to a request under Section
8 301.052(a)(6) is governed by Subchapter C.

9 Sec. 301.054. PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS.

10 The responding party shall provide copies of documents and other
11 tangible items with the response to a request served under Section
12 301.051 unless:

13 (1) the responsive documents are voluminous;

14 (2) the responding party states a reasonable time and
15 place for the production of the documents;

16 (3) the responding party produces the documents at the
17 time and place stated under Subdivision (2) unless otherwise agreed
18 by the parties or ordered by the court; and

19 (4) the responding party provides the requesting party
20 a reasonable opportunity to inspect the documents.

21 Sec. 301.055. WORK PRODUCT OBJECTION PROHIBITED. A party
22 may not assert a work product privilege for or object on the basis
23 of a work product privilege to a request served under Section
24 301.051.

25 Sec. 301.056. CERTAIN RESPONSES NOT ADMISSIBLE. A response
26 to a request under Section 301.052(a)(3) or (4) that has been
27 changed by an amended or supplemental response is not admissible

1 and may not be used for impeachment.

2 SUBCHAPTER C. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

3 Sec. 301.101. PERMISSIBLE DISCOVERY METHODS. A party may
4 request another party to designate and disclose information
5 concerning testifying expert witnesses only through:

6 (1) a disclosure request served under Section 301.051;
7 or

8 (2) a deposition or report permitted by this
9 subchapter.

10 Sec. 301.102. DEADLINE FOR RESPONSE. Unless otherwise
11 ordered by the court, a responding party shall provide the
12 information requested under Section 301.052(a)(6) not later than
13 the later of:

14 (1) the 30th day after the date the request is served;
15 or

16 (2) either, as applicable:

17 (A) with respect to an expert testifying for a
18 party seeking affirmative relief, the 90th day before the end of the
19 discovery period; or

20 (B) with respect to an expert not described by
21 Paragraph (A), the 60th day before the end of the discovery period.

22 Sec. 301.103. DEPOSITION AVAILABILITY. (a) A party
23 seeking affirmative relief shall make an expert retained by,
24 employed by, or otherwise under the control of the party available
25 for a deposition in accordance with this section.

26 (b) If a party seeking affirmative relief does not provide a
27 report of the party's expert's factual observations, tests,

1 supporting data, calculations, photographs, and opinions when the
2 party designates the expert, the party shall make the expert
3 available for a deposition reasonably promptly after the
4 designation. If the deposition cannot be reasonably concluded more
5 than 15 days before the deadline for designating other experts due
6 to the actions of the party who designated the expert, the court
7 shall extend the deadline for other experts testifying on the same
8 subject.

9 (c) If a party seeking affirmative relief provides a report
10 of the party's expert's factual observations, tests, supporting
11 data, calculations, photographs, and opinions when the party
12 designates the expert, the party is not required to make the expert
13 available for a deposition until reasonably promptly after all
14 other experts have been designated.

15 (d) A party not seeking affirmative relief shall make an
16 expert retained by, employed by, or otherwise under the control of
17 the party available for a deposition reasonably promptly after the
18 party designates the expert and the experts testifying on the same
19 subject for the party seeking affirmative relief have been deposed.

20 Sec. 301.104. CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED
21 REPORTS. In addition to a disclosure request served under Section
22 301.051, a party may obtain discovery by oral deposition and a
23 report prepared in accordance with Section 301.105 of:

24 (1) the subject matter on which a testifying expert is
25 expected to testify;

26 (2) the expert's mental impressions and opinions;

27 (3) the facts known to the expert, regardless of when

1 the factual information is acquired, that relate to or form the
2 basis of the expert's mental impressions and opinions; and

3 (4) other discoverable items, including documents not
4 produced in response to a disclosure request.

5 Sec. 301.105. COURT-ORDERED REPORTS. If the discoverable
6 factual observations, tests, supporting data, calculations,
7 photographs, or opinions of an expert are not recorded and reduced
8 to tangible form, the court may order that information be reduced to
9 tangible form and produced in addition to the deposition.

10 Sec. 301.106. AMENDMENT AND SUPPLEMENTATION OF DISCOVERY.
11 A party's duty to amend and supplement written discovery regarding
12 a testifying expert is governed by Rule 193.5, Texas Rules of Civil
13 Procedure. If a party retains, employs, or otherwise controls an
14 expert witness, the party must amend or supplement the expert's
15 deposition testimony or written report only with regard to the
16 expert's mental impressions or opinions and the basis for those
17 impressions or opinions.

18 Sec. 301.107. COST OF EXPERT WITNESSES. When a party takes
19 the oral deposition of an expert witness retained by an opposing
20 party, the party retaining the expert shall pay all reasonable fees
21 charged by the expert for time spent in preparing for, giving,
22 reviewing, and correcting the deposition.

23 Sec. 301.108. EXPERT COMMUNICATIONS PROTECTED.
24 Communications between a party's attorney and a testifying expert
25 witness in an action subject to this chapter are protected from
26 discovery regardless of the form of the communications, except to
27 the extent that the communications:

1 (1) relate to compensation for the expert's study or
2 testimony;

3 (2) identify facts or data that the party's attorney
4 provided and that the expert considered in forming the opinions the
5 expert will express; or

6 (3) identify assumptions that the party's attorney
7 provided and that the expert relied on in forming the opinions the
8 expert will express.

9 SECTION 2. Chapter 301, Family Code, as added by this Act,
10 applies only to an action filed on or after the effective date of
11 this Act.

12 SECTION 3. This Act takes effect September 1, 2023.