

By: Smith

H.B. No. 2850

Substitute the following for H.B. No. 2850:

By: Dutton

C.S.H.B. No. 2850

A BILL TO BE ENTITLED

1 AN ACT
2 relating to discovery procedures for civil actions brought under
3 the Family Code.

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

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

7 TITLE 6. CIVIL PROCEDURE

8 CHAPTER 301. DISCOVERY PROCEDURES FOR CIVIL ACTIONS

9 SUBCHAPTER A. GENERAL PROVISIONS

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

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14 not be modified or repealed by a rule adopted by the supreme court.

15 SUBCHAPTER B. REQUEST FOR DISCLOSURE

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

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

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

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

4 (2) the name, address, and telephone number of any
5 potential parties;

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

8 (4) the amount and any method of calculating economic
9 damages;

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

13 (6) for any testifying expert:

14 (A) the expert's name, address, and telephone
15 number;

16 (B) the subject matter on which the expert will
17 testify;

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

23 (D) if the expert is retained by, employed by, or
24 otherwise subject to the control of the responding party:

25 (i) all documents, tangible things,
26 reports, models, or data compilations that have been provided to,
27 reviewed by, or prepared by or for the expert in anticipation of the

1 expert's testimony; and

2 (ii) the expert's current resume and
3 biography;

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

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

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

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

12 (B) an authorization permitting the disclosure
13 of the information described by Paragraph (A);

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

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

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

23 Sec. 301.053. RESPONSE. The responding party must serve a
24 written response on the requesting party not later than the 30th day
25 after the date the requesting party serves a request under Section
26 301.051, except that:

27 (1) a defendant served with a request before the

1 defendant's answer is due is not required to respond until the 50th
2 day after the date the request is served; and

3 (2) a response to a request under Section
4 301.052(a)(6) is governed by Subchapter C.

5 Sec. 301.054. PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS.
6 The responding party shall provide copies of documents and other
7 tangible items with the response to a request served under Section
8 301.051 unless:

9 (1) the responsive documents are voluminous;

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

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

15 (4) the responding party provides the requesting party
16 a reasonable opportunity to inspect the documents.

17 Sec. 301.055. WORK PRODUCT OBJECTION PROHIBITED. A party
18 may not assert a work product privilege for or object on the basis
19 of a work product privilege to a request served under Section
20 301.051.

21 Sec. 301.056. CERTAIN RESPONSES NOT ADMISSIBLE. A response
22 to a request under Section 301.052(a)(3) or (4) that has been
23 changed by an amended or supplemental response is not admissible
24 and may not be used for impeachment.

25 SUBCHAPTER C. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

26 Sec. 301.101. PERMISSIBLE DISCOVERY METHODS. A party may
27 request another party to designate and disclose information

1 concerning testifying expert witnesses only through:

2 (1) a disclosure request served under Section 301.051;

3 or

4 (2) a deposition or report permitted by this
5 subchapter.

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

10 (1) the 30th day after the date the request is served;

11 or

12 (2) either, as applicable:

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

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

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

22 (b) If a party seeking affirmative relief does not provide a
23 report of the party's expert's factual observations, tests,
24 supporting data, calculations, photographs, and opinions when the
25 party designates the expert, the party shall make the expert
26 available for a deposition reasonably promptly after the
27 designation. If the deposition cannot be reasonably concluded more

1 than 15 days before the deadline for designating other experts due
2 to the actions of the party who designated the expert, the court
3 shall extend the deadline for other experts testifying on the same
4 subject.

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

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

16 Sec. 301.104. CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED
17 REPORTS. In addition to a disclosure request served under Section
18 301.051, a party may obtain discovery by oral deposition and a
19 report prepared in accordance with Section 301.105 of:

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

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

23 (3) the facts known to the expert, regardless of when
24 the factual information is acquired, that relate to or form the
25 basis of the expert's mental impressions and opinions; and

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

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

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

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

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

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