

By: Smith

H.B. No. 2850

A BILL TO BE ENTITLED

AN ACT

relating to discovery procedures for certain 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 CERTAIN CIVIL ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. 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Notwithstanding Section 22.004, Government Code, this chapter may not be modified or repealed by a rule adopted by the supreme court.

SUBCHAPTER B. INFORMATION PROVIDED BEFORE DISCOVERY REQUEST

Sec. 301.051. INFORMATION FOR CERTAIN MARRIAGE AND SUPPORT ACTIONS. (a) A court may not require a party to a suit for dissolution of a marriage, as defined by Section 1.003, to provide to another party, before receiving a discovery request, the following:

(1) deed and lien information on any real property owned or lease information on any real property leased;

(2) statements for any pension plan, retirement plan, profit-sharing plan, employee benefit plan, or individual retirement plan;

(3) statements or policies for any current life,

1 casualty, liability, or health insurance policy; and

2 (4) statements pertaining to any account at a
3 financial institution, including a bank, savings and loan
4 institution, credit union, or brokerage firm.

5 (b) A court may not require a party to a suit under this code
6 in which child or spousal support is at issue to provide to another
7 party, before receiving a discovery request, the following:

8 (1) information regarding any policy, statements, or
9 summary description of benefits for any medical or health benefit
10 coverage that is or would be available for the child or spouse;

11 (2) the party's income tax returns or other tax forms
12 or schedules; or

13 (3) the party's payroll stub.

14 (c) A court may not require a party to a suit described by
15 Subsection (a) or (b) to provide information described by Section
16 301.104 to another party before receiving a discovery request.

17 Sec. 301.052. INITIAL DISCLOSURE REQUIRED FOR CERTAIN
18 ACTIONS. (a) This section applies only to a civil action brought
19 under this code:

20 (1) by or against the Title IV-D agency as defined by
21 Section 101.033 in a Title IV-D case as defined by Section 101.034;

22 (2) for a protective order under Title 4; and

23 (3) for child protection under Subtitle E, Title 5.

24 (b) A court may not exempt a party to an action to which this
25 section applies from an initial disclosure under Rule 194, Texas
26 Rules of Civil Procedure.

27 SUBCHAPTER C. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

1 Sec. 301.101. APPLICABILITY OF SUBCHAPTER. This subchapter
2 applies only to a civil action brought under this code:

- 3 (1) for divorce;
- 4 (2) for annulment;
- 5 (3) to declare a marriage void; or
- 6 (4) for child or spousal support.

7 Sec. 301.102. PERMISSIBLE DISCOVERY METHODS. A party may
8 request another party to designate and disclose information
9 concerning testifying expert witnesses only through:

- 10 (1) a disclosure request under Section 301.105; or
- 11 (2) a deposition or report permitted by this
12 subchapter.

13 Sec. 301.103. DEADLINE FOR RESPONSE. Unless otherwise
14 ordered by the court, a responding party shall provide the
15 information requested under Section 301.105 not later than the
16 later of:

- 17 (1) the 30th day after the date the request is served;
- 18 or
- 19 (2) either, as applicable:

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

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

25 Sec. 301.104. CONTENT OF DISCLOSURE REQUEST, DEPOSITION, OR
26 REPORT. A responding party shall provide the following information
27 for a testifying expert that is requested under this subchapter:

1 (1) the expert's name, address, and telephone number;
2 (2) the subject matter on which the expert will
3 testify;

4 (3) either:
5 (A) the general substance of the expert's mental
6 impressions and opinions and a brief summary of the basis for the
7 impressions and opinions; or

8 (B) if the expert is not retained by, employed
9 by, or otherwise subject to the control of the responding party,
10 documents reflecting the information described by Paragraph (A);
11 and

12 (4) if the expert is retained by, employed by, or
13 otherwise subject to the control of the responding party, all
14 documents, tangible things, reports, models, or data compilations
15 that have been provided to, reviewed by, or prepared by or for the
16 expert in anticipation of the expert's testimony.

17 Sec. 301.105. DISCLOSURE REQUEST. (a) A party may obtain
18 disclosure of the information described by Section 301.051 or
19 301.104 from another party by providing the party the following
20 request:

21 "Under Section 301.105, Texas Family Code, you are requested
22 to disclose, not later than the 30th day after the date this request
23 is served, the information or material described by Section
24 (301.051 or 301.104, as applicable), Texas Family Code."

25 (b) A responding party shall provide a copy of documents and
26 other tangible things with a response to a request provided under
27 this section unless:

1 (1) the responsive documents are voluminous;

2 (2) the response states a reasonable time and place
3 for the production of the documents;

4 (3) the responding party produces the documents at the
5 time and place stated in the response; and

6 (4) the requesting party has a reasonable opportunity
7 to inspect the documents unless otherwise agreed to by the parties
8 or ordered by the court.

9 (c) A party may not assert a work product privilege to a
10 request provided under this section.

11 Sec. 301.106. DEPOSITION AVAILABILITY. (a) A party
12 seeking affirmative relief shall make an expert retained by,
13 employed by, or otherwise under the control of the party available
14 for a deposition in accordance with this section.

15 (b) If a party seeking affirmative relief does not provide a
16 report of the party's expert's factual observations, tests,
17 supporting data, calculations, photographs, and opinions when the
18 party designates the expert, the party shall make the expert
19 available for a deposition reasonably promptly after the
20 designation. If the deposition cannot be reasonably concluded more
21 than 15 days before the deadline for designating other experts due
22 to the actions of the party who designated the expert, the court
23 shall extend the deadline for other experts testifying on the same
24 subject.

25 (c) If a party seeking affirmative relief provides a report
26 of the party's expert's factual observations, tests, supporting
27 data, calculations, photographs, and opinions when the party

1 designates the expert, the party is not required to make the expert
2 available for a deposition until reasonably promptly after all
3 other experts have been designated.

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

9 Sec. 301.107. CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED
10 REPORTS. A party may obtain discovery by oral deposition and a
11 report prepared in accordance with Section 301.108 of:

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

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

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

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

20 Sec. 301.108. COURT-ORDERED REPORTS. If the discoverable
21 factual observations, tests, supporting data, calculations,
22 photographs, or opinions of an expert are not recorded and reduced
23 to tangible form, the court may order that information be reduced to
24 tangible form and produced in addition to the deposition.

25 Sec. 301.109. AMENDMENT AND SUPPLEMENTATION OF DISCOVERY.
26 A party's duty to amend and supplement written discovery regarding
27 a testifying expert is governed by Rule 193.5, Texas Rules of Civil

1 Procedure. If a party retains, employs, or otherwise controls an
2 expert witness, the party must supplement the expert's deposition
3 testimony or written report only with regard to the expert's mental
4 impressions or opinions and the basis for those impressions or
5 opinions.

6 Sec. 301.110. COST OF EXPERT WITNESSES. When a party takes
7 the oral deposition of an expert witness retained by an opposing
8 party, the party retaining the expert shall pay all reasonable fees
9 charged by the expert for time spent in preparing for, giving,
10 reviewing, and correcting the deposition.

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

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