

1-1 By: Smith, Cook (Senate Sponsor - Hughes) H.B. No. 2850
 1-2 (In the Senate - Received from the House May 5, 2023;
 1-3 May 9, 2023, read first time and referred to Committee on
 1-4 Jurisprudence; May 18, 2023, rereferred to Committee on State
 1-5 Affairs; May 21, 2023, reported favorably by the following vote:
 1-6 Yeas 9, Nays 0; May 21, 2023, sent to printer.)
 1-7

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20			X	

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to discovery procedures for civil actions brought under
 1-24 the Family Code.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. The Family Code is amended by adding Title 6 to
 1-27 read as follows:

1-28 TITLE 6. CIVIL PROCEDURE

1-29 CHAPTER 301. DISCOVERY PROCEDURES FOR CIVIL ACTIONS

1-30 SUBCHAPTER A. GENERAL PROVISIONS

1-31 Sec. 301.001. APPLICABILITY OF CHAPTER. This chapter
 1-32 applies only to a civil action brought under this code.

1-33 Sec. 301.002. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE.
 1-34 Notwithstanding Section 22.004, Government Code, this chapter may
 1-35 not be modified or repealed by a rule adopted by the supreme court.

1-36 Sec. 301.003. DRAFT EXPERT REPORTS AND DISCLOSURES
 1-37 PROTECTED. A draft expert report or draft disclosure required
 1-38 under this chapter is protected from discovery, regardless of the
 1-39 form in which the draft is recorded.

1-40 SUBCHAPTER B. REQUEST FOR DISCLOSURE

1-41 Sec. 301.051. REQUEST. Not later than the 30th day before
 1-42 the last day of any applicable discovery period, a party may obtain
 1-43 disclosure from another party of the information or material
 1-44 described by Section 301.052 by serving the other party the
 1-45 following request:

1-46 "Under Subchapter B, Chapter 301, Family Code, you are
 1-47 requested to disclose, not later than the 30th day after the date of
 1-48 service of this request, the information or material described by
 1-49 Section (state applicable provision of Section 301.052)."

1-50 Sec. 301.052. CONTENT. (a) A party may request disclosure
 1-51 under Section 301.051 of any or all of the following:

1-52 (1) the correct names of the parties to the action;
 1-53 (2) the name, address, and telephone number of any

1-54 potential parties;
 1-55 (3) the legal theories and, in general, the factual
 1-56 bases of the responding party's claims or defenses;

1-57 (4) the amount and any method of calculating economic
 1-58 damages;

1-59 (5) the name, address, and telephone number of any
 1-60 person having knowledge of relevant facts and a brief statement of
 1-61 each identified person's connection with the action;

2-1 (6) for any testifying expert:
2-2 (A) the expert's name, address, and telephone
2-3 number;
2-4 (B) the subject matter on which the expert will
2-5 testify;
2-6 (C) the general substance of the expert's mental
2-7 impressions and opinions and a brief summary of the basis for those
2-8 impressions and opinions, or if the expert is not retained by,
2-9 employed by, or otherwise subject to the control of the responding
2-10 party, documents reflecting that information; and
2-11 (D) if the expert is retained by, employed by, or
2-12 otherwise subject to the control of the responding party:
2-13 (i) all documents, tangible things,
2-14 reports, models, or data compilations that have been provided to,
2-15 reviewed by, or prepared by or for the expert in anticipation of the
2-16 expert's testimony; and
2-17 (ii) the expert's current resume and
2-18 biography;
2-19 (7) any discoverable settlement agreement described
2-20 by Rule 192.3(g), Texas Rules of Civil Procedure;
2-21 (8) any discoverable witness settlement described by
2-22 Rule 192.3(h), Texas Rules of Civil Procedure;
2-23 (9) in an action alleging physical or mental injury
2-24 and damages from the occurrence that is the subject of the action:
2-25 (A) all medical records and bills that are
2-26 reasonably related to the injuries or damages asserted; or
2-27 (B) an authorization permitting the disclosure
2-28 of the information described by Paragraph (A);
2-29 (10) in an action alleging physical or mental injury
2-30 and damages from the occurrence that is the subject of the action,
2-31 all medical records and bills obtained by the responding party
2-32 through an authorization provided by the requesting party; and
2-33 (11) the name, address, and telephone number of any
2-34 person who may be designated as a responsible third party.
2-35 (b) For purposes of Subsection (a)(3), the responding party
2-36 is not required to compile all evidence that may be offered at
2-37 trial.
2-38 Sec. 301.053. RESPONSE. The responding party must serve a
2-39 written response on the requesting party not later than the 30th day
2-40 after the date the requesting party serves a request under Section
2-41 301.051, except that:
2-42 (1) a defendant served with a request before the
2-43 defendant's answer is due is not required to respond until the 50th
2-44 day after the date the request is served; and
2-45 (2) a response to a request under Section
2-46 301.052(a)(6) is governed by Subchapter C.
2-47 Sec. 301.054. PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS.
2-48 The responding party shall provide copies of documents and other
2-49 tangible items with the response to a request served under Section
2-50 301.051 unless:
2-51 (1) the responsive documents are voluminous;
2-52 (2) the responding party states a reasonable time and
2-53 place for the production of the documents;
2-54 (3) the responding party produces the documents at the
2-55 time and place stated under Subdivision (2) unless otherwise agreed
2-56 by the parties or ordered by the court; and
2-57 (4) the responding party provides the requesting party
2-58 a reasonable opportunity to inspect the documents.
2-59 Sec. 301.055. WORK PRODUCT OBJECTION PROHIBITED. A party
2-60 may not assert a work product privilege for or object on the basis
2-61 of a work product privilege to a request served under Section
2-62 301.051.
2-63 Sec. 301.056. CERTAIN RESPONSES NOT ADMISSIBLE. A response
2-64 to a request under Section 301.052(a)(3) or (4) that has been
2-65 changed by an amended or supplemental response is not admissible
2-66 and may not be used for impeachment.
2-67 SUBCHAPTER C. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES
2-68 Sec. 301.101. PERMISSIBLE DISCOVERY METHODS. A party may
2-69 request another party to designate and disclose information

3-1 concerning testifying expert witnesses only through:
3-2 (1) a disclosure request served under Section 301.051;
3-3 or
3-4 (2) a deposition or report permitted by this
3-5 subchapter.
3-6 Sec. 301.102. DEADLINE FOR RESPONSE. Unless otherwise
3-7 ordered by the court, a responding party shall provide the
3-8 information requested under Section 301.052(a)(6) not later than
3-9 the later of:
3-10 (1) the 30th day after the date the request is served;
3-11 or
3-12 (2) either, as applicable:
3-13 (A) with respect to an expert testifying for a
3-14 party seeking affirmative relief, the 90th day before the end of the
3-15 discovery period; or
3-16 (B) with respect to an expert not described by
3-17 Paragraph (A), the 60th day before the end of the discovery period.
3-18 Sec. 301.103. DEPOSITION AVAILABILITY. (a) A party
3-19 seeking affirmative relief shall make an expert retained by,
3-20 employed by, or otherwise under the control of the party available
3-21 for a deposition in accordance with this section.
3-22 (b) If a party seeking affirmative relief does not provide a
3-23 report of the party's expert's factual observations, tests,
3-24 supporting data, calculations, photographs, and opinions when the
3-25 party designates the expert, the party shall make the expert
3-26 available for a deposition reasonably promptly after the
3-27 designation. If the deposition cannot be reasonably concluded more
3-28 than 15 days before the deadline for designating other experts due
3-29 to the actions of the party who designated the expert, the court
3-30 shall extend the deadline for other experts testifying on the same
3-31 subject.
3-32 (c) If a party seeking affirmative relief provides a report
3-33 of the party's expert's factual observations, tests, supporting
3-34 data, calculations, photographs, and opinions when the party
3-35 designates the expert, the party is not required to make the expert
3-36 available for a deposition until reasonably promptly after all
3-37 other experts have been designated.
3-38 (d) A party not seeking affirmative relief shall make an
3-39 expert retained by, employed by, or otherwise under the control of
3-40 the party available for a deposition reasonably promptly after the
3-41 party designates the expert and the experts testifying on the same
3-42 subject for the party seeking affirmative relief have been deposed.
3-43 Sec. 301.104. CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED
3-44 REPORTS. In addition to a disclosure request served under Section
3-45 301.051, a party may obtain discovery by oral deposition and a
3-46 report prepared in accordance with Section 301.105 of:
3-47 (1) the subject matter on which a testifying expert is
3-48 expected to testify;
3-49 (2) the expert's mental impressions and opinions;
3-50 (3) the facts known to the expert, regardless of when
3-51 the factual information is acquired, that relate to or form the
3-52 basis of the expert's mental impressions and opinions; and
3-53 (4) other discoverable items, including documents not
3-54 produced in response to a disclosure request.
3-55 Sec. 301.105. COURT-ORDERED REPORTS. If the discoverable
3-56 factual observations, tests, supporting data, calculations,
3-57 photographs, or opinions of an expert are not recorded and reduced
3-58 to tangible form, the court may order that information be reduced to
3-59 tangible form and produced in addition to the deposition.
3-60 Sec. 301.106. AMENDMENT AND SUPPLEMENTATION OF DISCOVERY.
3-61 A party's duty to amend and supplement written discovery regarding
3-62 a testifying expert is governed by Rule 193.5, Texas Rules of Civil
3-63 Procedure. If a party retains, employs, or otherwise controls an
3-64 expert witness, the party must amend or supplement the expert's
3-65 deposition testimony or written report only with regard to the
3-66 expert's mental impressions or opinions and the basis for those
3-67 impressions or opinions.
3-68 Sec. 301.107. COST OF EXPERT WITNESSES. When a party takes
3-69 the oral deposition of an expert witness retained by an opposing

4-1 party, the party retaining the expert shall pay all reasonable fees
4-2 charged by the expert for time spent in preparing for, giving,
4-3 reviewing, and correcting the deposition.

4-4 Sec. 301.108. EXPERT COMMUNICATIONS PROTECTED.

4-5 Communications between a party's attorney and a testifying expert
4-6 witness in an action subject to this chapter are protected from
4-7 discovery regardless of the form of the communications, except to
4-8 the extent that the communications:

4-9 (1) relate to compensation for the expert's study or
4-10 testimony;

4-11 (2) identify facts or data that the party's attorney
4-12 provided and that the expert considered in forming the opinions the
4-13 expert will express; or

4-14 (3) identify assumptions that the party's attorney
4-15 provided and that the expert relied on in forming the opinions the
4-16 expert will express.

4-17 SECTION 2. Chapter 301, Family Code, as added by this Act,
4-18 applies only to an action filed on or after the effective date of
4-19 this Act.

4-20 SECTION 3. This Act takes effect September 1, 2023.

4-21 * * * * *