

1-1 By: Duncan S.B. No. 294
1-2 (In the Senate - Filed January 27, 2005; February 7, 2005,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 9, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 9, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 294 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to procedures relating to the doctrine of forum non
1-11 conveniens in a civil cause of action.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (b) and (f), Section 71.051, Civil
1-14 Practice and Remedies Code, are amended to read as follows:

1-15 (b) If a court of this state, on written motion of a party,
1-16 finds that in the interest of justice and for the convenience of the
1-17 parties a claim or action to which this section applies would be
1-18 more properly heard in a forum outside this state, the court shall
1-19 decline to exercise jurisdiction under the doctrine of forum non
1-20 conveniens and shall stay or dismiss the claim or action. In
1-21 determining whether to grant a motion to stay or dismiss an action
1-22 under the doctrine of forum non conveniens, the court shall ~~may~~
1-23 consider whether:

1-24 (1) an alternate forum exists in which the claim or
1-25 action may be tried;

1-26 (2) the alternate forum provides an adequate remedy;

1-27 (3) maintenance of the claim or action in the courts of
1-28 this state would work a substantial injustice to the moving party;

1-29 (4) the alternate forum, as a result of the submission
1-30 of the parties or otherwise, can exercise jurisdiction over all the
1-31 defendants properly joined to the plaintiff's claim;

1-32 (5) the balance of the private interests of the
1-33 parties and the public interest of the state predominate in favor of
1-34 the claim or action being brought in an alternate forum, which shall
1-35 include consideration of the extent to which an injury or death
1-36 resulted from acts or omissions that occurred in this state; and

1-37 (6) the stay or dismissal would not result in
1-38 unreasonable duplication or proliferation of litigation.

1-39 (f) A court that grants a motion to stay or dismiss an action
1-40 under the doctrine of forum non conveniens shall set forth specific
1-41 findings of fact and conclusions of law ~~[may not stay or dismiss a~~
1-42 ~~claim or action pursuant to Subsection (b) if a party opposing the~~
1-43 ~~motion under Subsection (b) alleges and makes a prima facie showing~~
1-44 ~~that an act or omission that was a proximate or producing cause of~~
1-45 ~~the injury or death occurred in this state. The prima facie showing~~
1-46 ~~need not be made by a preponderance of the evidence and shall be~~
1-47 ~~deemed to be satisfied if the party produces credible evidence in~~
1-48 ~~support of the pleading, which evidence need not be in admissible~~
1-49 ~~form and may include affidavits, deposition testimony, discovery~~
1-50 ~~responses, or other verified evidence].~~

1-51 SECTION 2. This Act applies only to an action filed on or
1-52 after the effective date of this Act. An action filed before the
1-53 effective date of this Act, including an action filed before that
1-54 date in which a party is joined or designated after that date, is
1-55 governed by the law in effect immediately before the change in law
1-56 made by this Act, and that law is continued in effect for that
1-57 purpose.

1-58 SECTION 3. This Act takes effect September 1, 2005.

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