

BILL ANALYSIS

C.S.H.B. 274
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the civil justice system needs to be more efficient, less expensive, and more accessible. C.S.H.B. 274 proposes certain reforms to make the civil justice system more efficient, less costly, and more accessible by reforming certain procedures in these cases and making available certain new procedures.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTIONS 1.01 and 2.01 of this bill.

ANALYSIS

Early Dismissal of Actions

C.S.H.B. 274 amends the Government Code to require the supreme court to adopt rules to provide for the dismissal of certain causes of action that the supreme court determines should be disposed of as a matter of law on motion and without evidence.

C.S.H.B. 274 amends the Civil Practice and Remedies Code to authorize a court, in a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court Section 22.004(g), Government Code, to award costs and reasonable and necessary attorney's fees to the prevailing party that the court determines are equitable and just.

Expedited Civil Actions

C.S.H.B. 274 amends the Government Code to require the supreme court to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, is more than \$10,000 but does not exceed \$100,000. The bill requires the rules to address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The bill prohibits the supreme court from adopting rules that conflict with the Family Code, the Property Code, the Tax Code or Chapter 74 of the Civil Practice and Remedies Code.

No Implied Cause of Action

C.S.H.B. 274 amends the Government Code to prohibit a statute from being construed to create a cause of action unless the statute by clear and unambiguous language creates a cause of action.

Appeal of Controlling Question of Law

C.S.H.B. 274 amends the Civil Practice and Remedies Code to authorize a trial court in a civil action, on a party's motion or on its own initiative and by written order, to permit an appeal from an order

that is not otherwise appealable if the order involves a controlling question of law as to which there is a substantial ground for disagreement, and an immediate appeal may materially advance the termination of the litigation. The bill removes the requirement that the parties agree for such an order to be subject to immediate appeal. The bill specifies that an appeal does not stay proceedings in the trial court unless either the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal. The bill removes language authorizing a judge of the court of appeals to order a stay.

C.S.H.B. 274 authorizes an appellate court to accept such an appeal if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why such an appeal is warranted. The bill specifies that if the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The bill starts the time applicable to filing the notice of appeal on the date the court of appeals enters the order accepting the appeal.

C.S.H.B. 274 amends the Civil Practice and Remedies Code to require the appealing party to pay costs and attorney's fees if the order appealed from is affirmed, amends the Government Code to allow a petition for review to the supreme court for an appeal of the order, and specifies that the bill's provisions relating to the appeal of controlling questions of law are effective September 1, 2011.

Recovery of Attorney's Fees

C.S.H.B. 274 amends the Civil Practice and Remedies Code to establish that the prevailing party, rather than only the claimant, may recover reasonable attorney's fees from an individual, corporation, or other legal entity if a claim is for breach of an oral or written contract. The bill makes conforming changes and specifies that the bill's provisions relating to the recovery of attorney's fees are effective September 1, 2011.

Allocation of Litigation Costs

C.S.H.B. 274 amends the Civil Practice and Remedies Code to redefine "litigation costs" to include reasonable deposition costs and to redefine "settlement offer." The bill specifies that provisions of law relating to offers of settlement do not apply to an action filed in a small claims court. The bill specifies that an offer to settle or compromise a claim that does not comply with provisions of law relating to making a settlement offer does not entitle any party, rather than only the offering party, to recover litigation costs.

C.S.H.B. 274 authorizes a defendant filing a declaration under provisions of law relating to making a settlement offer and any party with a claim against that defendant to make a settlement offer to settle all claims in the action between the parties. The bill specifies that the parties are not required to file a settlement offer with the court. The bill specifies that the litigation costs that may be recovered by the offering party are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the earliest settlement offer that entitles the party to an award of litigation costs. The bill repeals provisions of law relating to a limitation on recovery of litigation costs and to the awarding of litigation costs as an offset.

C.S.H.B. 274 makes conforming and nonsubstantive changes and specifies that the bill's provisions relating to the allocation of litigation costs are effective September 1, 2011.

C.S.H.B. 274 repeals Sections 42.004(d) and (g), Civil Practice and Remedies Code, effective September 1, 2011.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 274 omits a provision included in the original establishing state policy regarding the early dismissal of civil actions. The substitute differs from the original by requiring the supreme court to adopt rules to provide for the dismissal of certain causes of action that the supreme court determines

should be disposed of as a matter of law on motion and without evidence, whereas the original requires the rules to provide for the fair and early dismissal of non-meritorious cases. The substitute omits provisions included in the original requiring the supreme court to model the rules after specified Federal Rules of Civil Procedure. The substitute omits a provision included in the original relating to a deadline for adopting those rules and setting an expiration date for that provision.

C.S.H.B. 274 contains a provision not included in the original setting out provisions for the award of attorney's fees in relation to certain motions to dismiss.

C.S.H.B. 274 omits provisions included in the original relating to expedited civil actions, including definitions, applicability, and the claimant's option to elect an expedited civil action. The substitute differs from the original by requiring the supreme court to adopt rules to promote the prompt, efficient, and cost-effective resolution of certain civil actions that address the need for lowering discovery costs in those actions and the procedure for ensuring that those actions are expedited, whereas the original requires the adopted rules to implement provisions of the bill that promote the prompt, efficient, and cost-effective resolution of an expedited civil action, including the discovery between parties. The substitute omits a provision included in the original relating to a deadline for adopting those rules and setting an expiration date for that provision. The substitute differs from the original by prohibiting the supreme court from adopting rules that conflict with the Family Code, the Property Code, the Tax Code, or certain provisions of the Civil Practice and Remedies Code, whereas the original establishes that certain provisions of the Civil Practice and Remedies Code prevail over the rules in the event of a conflict.

C.S.H.B. 274 retains a provision included in the original that prohibits a statute from being construed to create a cause of action absent clear and unambiguous language and omits a provision included in the original that duplicates this provision in another general statutory provision.

C.S.H.B. 274 differs from the original by authorizing a trial court in a civil action, on a party's motion or on its own initiative and by written order, to permit an appeal from an order that is not otherwise appealable, whereas the original authorizes a person to seek an appeal from an interlocutory order of certain courts with the appellate court without first obtaining an order from the trial court allowing the appeal. The substitute contains provisions not included in the original clarifying that an appeal from an order that is not otherwise appealable is filed with the court of appeals having appellate jurisdiction over the action and requiring the appealing party to pay costs and attorney's fees if the order is affirmed. The substitute omits a provision included in the original requiring a trial court to state whether the trial court believes an appeal is warranted.

C.S.H.B. 274 omits a provision included in the original that authorizes a prevailing party with respect to a claim, rather than a person, to recover attorney's fees from an individual, corporation, or other legal entity, rather than from an individual or corporation in addition to the amount of a valid claim and costs, if the claim is for certain specified items.

C.S.H.B. 274 contains provisions not included in the original amending provisions of the Civil Practice and Remedies Code relating to the definitions of terms in general provisions relating to settlement. The substitute omits provisions included in the original relating to a defendant's election to apply provisions relating to allocation of litigation costs to a civil action in which a claimant has asserted a claim against the defendant, including provisions relating to definitions, applicability of these provisions, the election, a revocation of an election, dismissal or nonsuit of action, award of litigation costs, liability of attorney, and the applicability of other law.

C.S.H.B. 274 contains provisions not included in the original repealing Sections 42.004(d) and (g), Civil Practice and Remedies Code. The substitute omits a severability provision included in the original. The substitute contains a provision not included in the original making its provisions effective on passage if it receives the necessary vote. The substitute differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.