

BILL ANALYSIS

C.S.H.B. 2031
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are many forms of alternative dispute resolution available to parties in a conflict to resolve issues in dispute though means other than litigation. Interested parties propose that another form of alternative dispute resolution would be a voluntary mechanism allowing a defendant or potential defendant to establish a plan for paying claims, following an event causing death or injury arising from a defective product that caused death or injury, to allow a victim to quickly receive compensation for injuries. C.S.H.B. 2031 seeks to provide such an alternative to litigation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2031 amends the Civil Practice and Remedies Code to authorize a potentially liable person, acting individually or with another potentially liable person, to establish a voluntary compensation plan at any time to compensate a claimant for damages for injury, death, or property damage that may have been caused by the plan creator. The bill provides that a voluntary compensation plan is established when the plan creator has both published and posted notice and sets out requirements for the publishing, posting, form, and contents of the notice.

C.S.H.B. 2031 authorizes a plan creator to develop a plan with or without the participation of a person who serves or may serve as the plan administrator. The bill requires a plan administrator to be an independent third party appointed by a multidistrict litigation panel. The bill requires the panel to appoint the plan administrator as soon as reasonably practicable after a request for an appointment is made by a plan creator or after the need for appointing a plan administrator arises.

C.S.H.B. 2031 sets out requirements for the contents of a voluntary compensation plan. The bill requires that a potential claimant be able to obtain from the plan administrator, or ascertain by using a program or other method made available by the plan administrator, a reasonably accurate statement of the amount of compensation the potential claimant could receive from the compensation plan. The bill authorizes a voluntary compensation plan to be amended at any time.

C.S.H.B. 2031 specifies that establishing, attempting to establish, or planning in regard to establishing a voluntary compensation plan under the bill's provisions is not an admission of liability by any person. The bill makes evidence that a person established, attempted to establish, planned in regard to establishing, or sought information or compensation from a voluntary compensation plan inadmissible in any civil, criminal, or administrative proceeding in which the tribunal will determine liability for the acts or omissions that gave rise to the establishment or potential establishment of the voluntary compensation plan. The bill makes a

notice of the establishment of a voluntary compensation plan published and posted as required by the bill's provisions inadmissible in any civil, criminal, or administrative proceeding in which the tribunal will determine liability for the acts or omissions that gave rise to the establishment of the voluntary compensation plan.

C.S.H.B. 2031 makes any statement by the plan creator or plan administrator, whether oral or written, regarding the plan or the plan creator establishing, attempting to establish, or planning to establish a voluntary compensation plan inadmissible in any civil, criminal, or administrative proceeding in which the tribunal will determine liability for the acts or omissions that gave rise to the establishment or potential establishment of the voluntary compensation plan.

C.S.H.B. 2031 establishes that a plan creator's consideration of or planning for establishing a voluntary compensation plan is privileged from discovery or disclosure in a civil, criminal, or administrative proceeding in which the tribunal will determine liability for the acts or omissions that gave rise to the establishment or potential establishment of the voluntary compensation plan. The bill specifies that establishing, attempting to establish, or planning in regard to establishing a voluntary compensation plan does not create a legal duty owed by the plan administrator or plan creator to anyone and does not give rise to a cause of action against a plan administrator or plan creator for breach of a duty of good faith and fair dealing, breach of the Deceptive Trade Practices-Consumer Protection Act, or other similar statute, or breach of any other common law or statutory duty.

C.S.H.B. 2031 specifies that establishing a voluntary compensation plan does not create an obligation for the plan administrator or plan creator to negotiate the terms or conditions of payment from the plan or for the settlement of litigation or threatened litigation. The bill provides that the public policy of Texas to encourage the quick, fair, and inexpensive resolution of potential civil actions establishes that the bill's provisions relating to the legal effect of establishing a voluntary compensation plan are to be interpreted and applied liberally to encourage the use of voluntary compensation plans by protecting potentially liable persons from having their liability based in any respect on establishing, attempting to establish, or planning in regard to establishing a voluntary compensation plan.

C.S.H.B. 2031 prohibits a plan creator or plan administrator from contacting a claimant or potential claimant who the plan creator knows or reasonably should know is represented by an attorney and from initiating contact with a claimant or potential claimant for the purpose of encouraging or attempting to induce the claimant or potential claimant to accept compensation under the plan. The bill authorizes the Supreme Court of Texas to adopt rules to implement or govern proceedings under the bill's provisions.

C.S.H.B. 2031 defines "claim," "claimant," "legitimate claim," "plan administrator," "plan creator," "potentially liable person," and "voluntary compensation plan."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2031 differs from the original by defining "claim" to mean a request to obtain compensation from a voluntary compensation plan, whereas the original defines "claim" to mean a claim for personal injury, death, or property damage caused by an event or product covered by the bill's provisions; by defining "potentially liable person" to mean a person against whom a civil action for damages for injury, death, or property damage might be filed by a claimant, whereas the original defines "potentially liable person" to mean a person who may be responsible, in whole or in part, for damages arising out of personal injury, death, or property damage caused by an event covered by the bill's provisions and other applicable provisions of

law; and by defining "voluntary compensation plan" to mean a plan established under the bill's provisions to compensate a claimant for damages for injury, death, or property damage that may have been caused by the plan creator, whereas the original defines "voluntary compensation plan" to mean a plan established under the bill's provisions to compensate a claimant for damages arising out of personal injury, death, or property damage caused by an event or product covered by the bill's provisions. The substitute contains a provision not included in the original defining "legitimate claim."

C.S.H.B. 2031 omits a provision contained in the original making the bill's provisions applicable to specified events and products that cause death, serious bodily injury, or damage to real property. The substitute differs from the original by specifying that the authorization for certain persons to establish a voluntary compensation plan under the bill's provisions applies to the establishment of such a plan at any time, whereas the original does not include that specification.

C.S.H.B. 2031 differs from the original by requiring notice of the establishment of a plan to be at least 20 column inches in size, whereas the original requires the notice to be 25 square inches in size. The substitute omits a provision included in the original setting a deadline by which a voluntary compensation plan for damages caused by an event must be established at not later than the 90th day after the date the event occurred.

C.S.H.B. 2031 contains a provision not included in the original authorizing a plan creator to develop a plan with or without the participation of a person who serves or may serve as the plan administrator and setting out requirements related to the qualifications and appointment of such a plan administrator. The bill omits provisions included in the original relating to an authorization to file a petition in district court to request an extension of time to establish a voluntary compensation plan for an event and an authorization to file a plea in abatement of a suit arising out of personal injury, death, or property damage caused by an event or product covered by the bill's provisions.

C.S.H.B. 2031 differs from the original by requiring a potential claimant to be able to obtain from the plan administrator a reasonably accurate statement of the amount of compensation the potential claimant could receive from the plan, whereas the original requires a plan administrator, on the request of a potential claimant, to provide a potential claimant such statement and authorizes that statement to be in the form of a program or other method the potential claimant may use to determine a reasonable estimate of the compensation. The substitute omits a provision included in the original requiring any amendment to a voluntary compensation plan to be published in the same manner as required for the establishment of the plan. The substitute omits a provision included in the original requiring a plan creator to use the best method reasonably available under the circumstances to notify known potential claimants of the voluntary compensation plan's establishment.

C.S.H.B. 2031 omits a provision included in the original authorizing a plan creator who has been named as a defendant in an action seeking damages caused by an event or a product covered by the bill's provisions to apply certain provisions of law relating to settlement offers to the action. The substitute omits a provision included in the original relating to the determination of a significantly less favorable judgment under certain circumstances.

C.S.H.B. 2031 differs from the original by making evidence that a person established, attempted to establish, planned in regard to establishing, or sought information or compensation from a voluntary compensation plan inadmissible in any civil, criminal, or administrative proceeding in which a tribunal will determine liability for the acts or omissions that gave rise to the establishment or potential establishment of the voluntary compensation plan, whereas the original makes such evidence inadmissible in any civil, criminal, or administrative proceeding to determine liability arising from an event or product, or damages caused by a product or that are a result of an event.

C.S.H.B. 2031 differs from the original by establishing that a plan creator's consideration of or planning for establishing a voluntary compensation plan is privileged from discovery or disclosure in any civil, criminal, or administrative proceeding in which the tribunal will determine liability for the acts or omissions that gave rise to the establishment or potential establishment of the voluntary compensation plan, whereas the original establishes that same privilege from discovery or disclosure in any civil, criminal or administrative proceeding to determine liability arising from an event or product, or damages caused by a product or that are a result of an event.

C.S.H.B. 2031 differs from the original by specifying that establishing, attempting to establish, or planning in regard to establishing a voluntary compensation plan does not create a legal duty owed by the plan administrator or plan creator to anyone, whereas the original specifies that such actions do not create a duty owed by the plan administrator or plan creator. The bill contains a provision not included in the original establishing that the bill's provisions relating to the legal effect of establishing a voluntary compensation plan are to be interpreted and applied liberally to encourage the use of voluntary compensation plans.

C.S.H.B. 2031 differs from the original by prohibiting a plan creator or plan administrator from contacting a claimant or potential claimant who the plan creator knows or reasonably should know is represented by an attorney, whereas the original prohibits a plan creator or plan administrator from initiating first contact with a claimant or potential claimant except to provide notice of the establishment of a voluntary compensation plan.

C.S.H.B. 2031 contains a provision not included in the original authorizing the Supreme Court of Texas to adopt rules to implement or govern proceedings under the bill's provisions.

C.S.H.B. 2031 omits provisions included in the original relating to the duty of an attorney or plan administrator in regard to abatement of an action under a voluntary compensation plan.

C.S.H.B. 2031 omits a procedural provision included in the original and differs from the original in nonsubstantive ways. The substitute differs from the original by making the bill effective date on passage or, if the bill does not receive the necessary vote, September 1, 2011, whereas the original makes the bill effective September 1, 2011.