

BILL ANALYSIS

C.S.H.B. 2661
By: Kleinschmidt
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some people believe that creating a dispute resolution mechanism that encourages a defendant to make a fair offer to a claimant at the earliest possible time and that encourages a claimant to accept a reasonable offer would help eliminate costly and time-consuming litigation for both parties.

C.S.H.B. 2661 seeks to achieve this goal by setting out provisions relating to the settlement of certain civil actions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2661 amends the Civil Practice and Remedies Code to make provisions of law relating to claim settlement procedures inapplicable to an action filed in a small claims court. The bill authorizes a defendant and any party with a claim against the defendant, after that defendant files a declaration that the settlement procedure allowed by state law is available in the action, 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 under provisions of law relating to awarding litigation costs by the party offering the settlement 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, rather than costs incurred after the date the rejecting party rejected the settlement offer.

C.S.H.B. 2661 repeals a provision setting out the formula for computing the maximum amount of litigation costs that may be awarded under certain circumstances to a party that made a settlement offer that was rejected by the other party in the suit. The bill repeals a provision requiring, if litigation costs are to be awarded against a claimant, those litigation costs to be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

C.S.H.B. 2661 redefines "litigation costs" and "settlement offer" and makes conforming and nonsubstantive changes.

C.S.H.B. 2661 repeals Sections 42.004(d) and (g), Civil Practice and Remedies Code.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2661 omits a provision included in the original redefining "claim" to mean, among other things, a request to obtain relief other than monetary and providing that the term does not include a request to recover litigation costs. The substitute differs from the original, in a provision of law defining "litigation costs" and including in that definition, among other costs, reasonable fees for not more than two testifying expert witnesses, by retaining the clarification that the witnesses are testifying, whereas the original removes that clarifying term. The substitute contains a provision not included in the original making provisions of law relating to claim settlement procedures inapplicable to an action filed in a small claims court. The substitute omits a provision contained in the original removing statutory provisions relating to the applicability and availability of claim settlement procedures.

C.S.H.B. 2661 omits provisions contained in the original making provisions relating to the applicability of claim settlement procedures inapplicable to an action by or against a governmental unit. The substitute differs from the original by authorizing a defendant and any party with a claim against the defendant, after that defendant files a declaration applicable to certain settlement procedures, to make a settlement offer to settle all claims in the action between the parties, whereas the original authorizes a defendant to serve on a claimant a settlement offer to settle all claims in the action between that defendant and claimant. The substitute omits provisions contained in the original prohibiting the defendant from making a settlement offer before or after certain dates. The substitute omits provisions contained in the original establishing procedures and terms for accepting, withdrawing, and rejecting a settlement offer. The substitute omits provisions contained in the original setting out procedures for a defendant to recover litigation costs from the claimant.

C.S.H.B. 2661 omits provisions contained in the original removing a statutory provision under which recovery of litigation costs is determined by the rejection of a settlement offer by either the claimant or defendant in the action and removing a statutory provision setting out the conditions under which a judgment is significantly less favorable to the rejecting party in a settlement. The substitute differs from the original by specifying, in a statutory provision relating to a limitation on litigation costs that may be recovered by the offering party in a settlement, that the costs that may be recovered 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, whereas the original removes the statutory provision relating to a limitation on litigation costs that may be recovered by the offering party in a settlement. The substitute omits provisions contained in the original removing statutory provisions relating to a claimant's or defendant's entitlement to recover certain fees and costs.

C.S.H.B. 2661 omits a provision included in the original authorizing the Supreme Court of Texas to amend or adopt rules that are not inconsistent with the original's provisions. The substitute omits provisions contained in the original removing statutory provisions requiring the supreme court to promulgate certain rules. The substitute omits provisions contained in the original relating to the modification of a time limit specified under the original's provisions, adequate service on a party as required by the original's provisions, and the effect of the original's provisions on the admissibility of evidence. The substitute omits a provision contained in the original prohibiting its provisions from being made known to the jury through any means.

C.S.H.B. 2661 contains a provision not included in the original repealing Sections 42.004(d) and (g), Civil Practice and Remedies Code, relating to the amount and nature of litigation costs that may be awarded.

C.S.H.B. 2661 differs in nonsubstantive ways reflective of certain bill drafting conventions.