

By: Creighton, Aliseda, Kleinschmidt,
Jackson, Sheets, et al.

H.B. No. 274

A BILL TO BE ENTITLED

AN ACT

relating to the reform of certain remedies and procedures in civil actions and family law matters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. EARLY DISMISSAL OF ACTIONS

SECTION 1.01. Section 22.004, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The supreme court shall adopt rules to provide for the dismissal of certain causes of action and defenses that the supreme court determines should be disposed of as a matter of law on motion and without evidence. Rules adopted under this subsection do not apply to an action under the Family Code.

SECTION 1.02. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.021 to read as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. 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 under Section 22.004(g), Government Code, the court may award costs and reasonable and necessary attorney's fees to the prevailing party that the court determines are equitable and just. This section does not apply to an action under the Family Code.

ARTICLE 2. EXPEDITED CIVIL ACTIONS

SECTION 2.01. Section 22.004, Government Code, is amended

1 by adding Subsection (h) to read as follows:

2 (h) The supreme court shall adopt rules to promote the
3 prompt, efficient, and cost-effective resolution of civil actions.
4 The rules shall apply to civil actions in district courts, county
5 courts at law, and statutory probate courts in which the amount in
6 controversy, inclusive of all claims for damages of any kind,
7 whether actual or exemplary, a penalty, attorney's fees, expenses,
8 costs, interest, or any other type of damage of any kind, does not
9 exceed \$100,000. The rules shall address the need for lowering
10 discovery costs in these actions and the procedure for ensuring
11 that these actions will be expedited in the civil justice system.
12 The supreme court may not adopt rules under this subsection that
13 conflict with a provision of:

- 14 (1) Chapter 74, Civil Practice and Remedies Code;
15 (2) the Family Code;
16 (3) the Property Code; or
17 (4) the Tax Code.

18 ARTICLE 3. NO IMPLIED CAUSE OF ACTION

19 SECTION 3.01. Subchapter C, Chapter 311, Government Code,
20 is amended by adding Section 311.035 to read as follows:

21 Sec. 311.035. NO IMPLIED CAUSE OF ACTION. A statute may not
22 be construed to create a cause of action unless the statute by clear
23 and unambiguous language creates a cause of action. This section
24 does not apply to an action under the Family Code.

25 ARTICLE 4. APPEAL OF CONTROLLING QUESTION OF LAW

26 SECTION 4.01. Section 51.014, Civil Practice and Remedies
27 Code, is amended by amending Subsections (d) and (e) and adding

1 Subsection (f) to read as follows:

2 (d) On a party's motion or on its own initiative, a trial
3 court in a civil action [~~A district court, county court at law, or~~
4 ~~county court~~] may, by [~~issue a~~] written order, permit an appeal from
5 an order that is [~~for interlocutory appeal in a civil action~~] not
6 otherwise appealable [~~under this section~~] if:

7 (1) [~~the parties agree that~~] the order to be appealed
8 involves a controlling question of law as to which there is a
9 substantial ground for difference of opinion; and

10 (2) an immediate appeal from the order may materially
11 advance the ultimate termination of the litigation[~~, and~~

12 [~~(3) the parties agree to the order~~].

13 (e) An appeal under Subsection (d) does not stay proceedings
14 in the trial court unless:

15 (1) the parties agree to a stay; or

16 (2) [~~and~~] the trial or appellate court[~~, the court of~~
17 ~~appeals, or a judge of the court of appeals~~] orders a stay of the
18 proceedings pending appeal.

19 (f) An appellate court may accept an appeal permitted by
20 Subsection (d) if the appealing party, not later than the 15th day
21 after the date the trial court signs the order to be appealed, files
22 in the court of appeals having appellate jurisdiction over the
23 action an application for interlocutory appeal explaining why an
24 appeal is warranted under Subsection (d). If the court of appeals
25 accepts the appeal, the appeal is governed by the procedures in the
26 Texas Rules of Appellate Procedure for pursuing an accelerated
27 appeal. The date the court of appeals enters the order accepting

1 the appeal starts the time applicable to filing the notice of
2 appeal.

3 SECTION 4.02. Section 22.225(d), Government Code, is
4 amended to read as follows:

5 (d) A petition for review is allowed to the supreme court
6 for an appeal from an interlocutory order described by Section
7 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies
8 Code.

9 ARTICLE 5. RECOVERY OF ATTORNEY'S FEES

10 SECTION 5.01. Section 38.001, Civil Practice and Remedies
11 Code, is amended to read as follows:

12 Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. A person may
13 recover reasonable attorney's fees from an individual or
14 corporation, in addition to the amount of a valid claim and costs,
15 if the claim is for:

- 16 (1) rendered services;
- 17 (2) performed labor;
- 18 (3) furnished material;
- 19 (4) freight or express overcharges;
- 20 (5) lost or damaged freight or express;
- 21 (6) killed or injured stock;
- 22 (7) a sworn account; or
- 23 (8) an appeal to the court under Section 11.43, Tax
24 Code, or an appeal to the court of a determination of an appraisal
25 review board on a motion filed under Section 11.45, Tax Code [~~an~~
26 ~~oral or written contract~~].

27 SECTION 5.02. Chapter 38, Civil Practice and Remedies Code,

1 is amended by adding Section 38.0015 to read as follows:

2 Sec. 38.0015. ORAL AND WRITTEN CONTRACTS. Unless otherwise
3 provided in a written contract, the prevailing party may recover
4 reasonable attorney's fees from an individual, corporation, or
5 other legal entity if the claim is for breach of an oral or written
6 contract.

7 SECTION 5.03. Section 38.002, Civil Practice and Remedies
8 Code, is amended to read as follows:

9 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. To
10 recover attorney's fees under this chapter:

11 (1) the person seeking to recover attorney's fees
12 [~~claimant~~] must be represented by an attorney;

13 (2) the claimant must present the claim to the
14 opposing party or to a duly authorized agent of the opposing party;
15 and

16 (3) payment for the just amount owed, if any, must not
17 have been tendered before the expiration of the 30th day after the
18 claim is presented.

19 ARTICLE 6. ALLOCATION OF LITIGATION COSTS

20 SECTION 6.01. Sections 42.001(5) and (6), Civil Practice
21 and Remedies Code, are amended to read as follows:

22 (5) "Litigation costs" means money actually spent and
23 obligations actually incurred that are directly related to the
24 action [~~case~~] in which a settlement offer is made. The term
25 includes:

26 (A) court costs;

27 (B) reasonable deposition costs;

1 (C) reasonable fees for not more than two
2 testifying expert witnesses; and

3 (D) [~~(C)~~] reasonable attorney's fees.

4 (6) "Settlement offer" means an offer to settle or
5 compromise a claim made in compliance with Section 42.003 [~~this~~
6 ~~chapter~~].

7 SECTION 6.02. Sections 42.002(b), (d), and (e), Civil
8 Practice and Remedies Code, are amended to read as follows:

9 (b) This chapter does not apply to:

- 10 (1) a class action;
- 11 (2) a shareholder's derivative action;
- 12 (3) an action by or against a governmental unit;
- 13 (4) an action brought under the Family Code;
- 14 (5) an action to collect workers' compensation
15 benefits under Subtitle A, Title 5, Labor Code; or
- 16 (6) an action filed in a justice of the peace court or
17 a small claims court.

18 (d) This chapter does not limit or affect the ability of any
19 person to:

20 (1) make an offer to settle or compromise a claim that
21 does not comply with Section 42.003 [~~this chapter~~]; or

22 (2) offer to settle or compromise a claim in an action
23 to which this chapter does not apply.

24 (e) An offer to settle or compromise that does not comply
25 with Section 42.003 [~~is not made under this chapter~~] or an offer to
26 settle or compromise made in an action to which this chapter does
27 not apply does not entitle any [~~the offering~~] party to recover

1 litigation costs under this chapter.

2 SECTION 6.03. Section 42.003, Civil Practice and Remedies
3 Code, is amended to read as follows:

4 Sec. 42.003. MAKING SETTLEMENT OFFER. (a) After a
5 defendant files a declaration under Section 42.002(c), the
6 defendant filing the declaration and any party with a claim against
7 that defendant may make a settlement offer to settle all claims in
8 the action between the parties.

9 (b) A settlement offer must:

- 10 (1) be in writing;
- 11 (2) state that it is made under this chapter;
- 12 (3) state the terms by which the claims may be settled;
- 13 (4) state a deadline by which the settlement offer
- 14 must be accepted; and
- 15 (5) be served on all parties to whom the settlement
- 16 offer is made.

17 (c) The parties are not required to file a settlement offer
18 with the court.

19 SECTION 6.04. Section 42.004(c), Civil Practice and
20 Remedies Code, is amended to read as follows:

21 (c) The litigation costs that may be recovered by the
22 offering party under this section are limited to those litigation
23 costs incurred by the offering party after the date the rejecting
24 party rejected the earliest settlement offer that entitles the
25 party to an award of litigation costs under this section.

26 SECTION 6.05. Sections 42.004(d) and (g), Civil Practice
27 and Remedies Code, are repealed.

ARTICLE 7. DESIGNATION OF RESPONSIBLE THIRD PARTIES

SECTION 7.01. Section 33.004(e), Civil Practice and Remedies Code, is repealed.

ARTICLE 8. FAMILY LAW MATTERS

SECTION 8.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:

CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States.

Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT.
(a) A contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as

1 applied, violate a right guaranteed by the United States
2 Constitution or the constitution of this state.

3 SECTION 8.02. (a) Section 148.002, Civil Practice and
4 Remedies Code, as added by this Act, applies only to a ruling or
5 decision that becomes final on or after the effective date of this
6 Act. A ruling or decision that becomes final before the effective
7 date of this Act and any appeal of that ruling or decision are
8 governed by the law in effect immediately before the effective date
9 of this Act, and that law is continued in effect for that purpose.

10 (b) Section 148.003, Civil Practice and Remedies Code, as
11 added by this Act, applies only to a contract entered into on or
12 after the effective date of this Act. A contract entered into
13 before the effective date of this Act is governed by the law in
14 effect immediately before that date, and that law is continued in
15 effect for that purpose.

16 SECTION 8.03. This Act takes effect September 1, 2011.

17 ARTICLE 9. CONTESTED TAX APPRAISAL COSTS

18 SECTION 9.01. In an action contesting a tax appraisal a
19 taxpayer who prevails is entitled to an award of costs and
20 attorney's fees. If the appraisal district or taxing authority
21 prevails the appraisal district or taxing authority is not entitled
22 to costs and attorney's fees.

23 ARTICLE 10. EFFECTIVE DATE

24 SECTION 10.01. The changes in law made by this Act apply
25 only to a civil action commenced on or after the effective date of
26 the change in law as provided by this article. A civil action
27 commenced before the effective date of the change in law as provided

1 by this article is governed by the law in effect immediately before
2 the effective date of the change in law, and that law is continued
3 in effect for that purpose.

4 SECTION 10.02. (a) Except as provided by Subsection (b) of
5 this section:

6 (1) this Act takes effect immediately if it receives a
7 vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution; and

9 (2) if this Act does not receive the vote necessary for
10 immediate effect, this Act takes effect September 1, 2011.

11 (b) Articles 4, 5, 6, and 7 of this Act take effect September
12 1, 2011.