

1-1 By: Creighton, et al. (Senate Sponsor - Huffman) H.B. No. 274
1-2 (In the Senate - Received from the House May 10, 2011;
1-3 May 10, 2011, read first time and referred to Committee on State
1-4 Affairs; May 23, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 23, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 274 By: Huffman

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

1-10 relating to the reform of certain remedies and procedures in civil
1-11 actions and family law matters.

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

1-13 ARTICLE 1. EARLY DISMISSAL OF ACTIONS

1-14 SECTION 1.01. Section 22.004, Government Code, is amended
1-15 by adding Subsection (g) to read as follows:

1-16 (g) The supreme court shall adopt rules to provide for the
1-17 dismissal of causes of action that have no basis in law or fact on
1-18 motion and without evidence. The rules shall provide that the
1-19 motion to dismiss shall be granted or denied within 45 days of the
1-20 filing of the motion to dismiss. The rules shall not apply to
1-21 actions under the Family Code.

1-22 SECTION 1.02. Chapter 30, Civil Practice and Remedies Code,
1-23 is amended by adding Section 30.021 to read as follows:

1-24 Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO
1-25 CERTAIN MOTIONS TO DISMISS. In a civil proceeding, on a trial
1-26 court's granting or denial, in whole or in part, of a motion to
1-27 dismiss filed under the rules adopted by the supreme court under
1-28 Section 22.004(g), Government Code, the court shall award costs and
1-29 reasonable and necessary attorney's fees to the prevailing party.
1-30 This section does not apply to actions by or against the state,
1-31 other governmental entities, or public officials acting in their
1-32 official capacity or under color of law.

1-33 ARTICLE 2. EXPEDITED CIVIL ACTIONS

1-34 SECTION 2.01. Section 22.004, Government Code, is amended
1-35 by adding Subsection (h) to read as follows:

1-36 (h) The supreme court shall adopt rules to promote the
1-37 prompt, efficient, and cost-effective resolution of civil actions.
1-38 The rules shall apply to civil actions in district courts, county
1-39 courts at law, and statutory probate courts in which the amount in
1-40 controversy, inclusive of all claims for damages of any kind,
1-41 whether actual or exemplary, a penalty, attorney's fees, expenses,
1-42 costs, interest, or any other type of damage of any kind, does not
1-43 exceed \$100,000. The rules shall address the need for lowering
1-44 discovery costs in these actions and the procedure for ensuring
1-45 that these actions will be expedited in the civil justice system.
1-46 The supreme court may not adopt rules under this subsection that
1-47 conflict with a provision of:

- 1-48 (1) Chapter 74, Civil Practice and Remedies Code;
- 1-49 (2) the Family Code;
- 1-50 (3) the Property Code; or
- 1-51 (4) the Tax Code.

1-52 ARTICLE 3. APPEAL OF CONTROLLING QUESTION OF LAW

1-53 SECTION 3.01. Section 51.014, Civil Practice and Remedies
1-54 Code, is amended by amending Subsections (d), (d-1), and (e) and
1-55 adding Subsection (f) to read as follows:

1-56 (d) On a party's motion or on its own initiative, a trial
1-57 court in a civil action [A district court, county court at law, or
1-58 county court] may, by [issue a] written order, permit an appeal from
1-59 an order that is [for interlocutory appeal in a civil action] not
1-60 otherwise appealable [under this section] if:

1-61 (1) [the parties agree that] the order to be appealed
1-62 involves a controlling question of law as to which there is a
1-63 substantial ground for difference of opinion; and

2-1 (2) an immediate appeal from the order may materially
2-2 advance the ultimate termination of the litigation~~[, and~~
2-3 ~~[(3) the parties agree to the order]~~.

2-4 (d-1) Subsection (d) does not apply to an action brought
2-5 under the Family Code.

2-6 (e) An appeal under Subsection (d) does not stay proceedings
2-7 in the trial court unless:

2-8 (1) the parties agree to a stay; or

2-9 (2) [and] the trial or appellate court~~[, the court of~~
2-10 ~~appeals, or a judge of the court of appeals]~~ orders a stay of the
2-11 proceedings pending appeal.

2-12 (f) An appellate court may accept an appeal permitted by
2-13 Subsection (d) if the appealing party, not later than the 15th day
2-14 after the date the trial court signs the order to be appealed, files
2-15 in the court of appeals having appellate jurisdiction over the
2-16 action an application for interlocutory appeal explaining why an
2-17 appeal is warranted under Subsection (d). If the court of appeals
2-18 accepts the appeal, the appeal is governed by the procedures in the
2-19 Texas Rules of Appellate Procedure for pursuing an accelerated
2-20 appeal. The date the court of appeals enters the order accepting
2-21 the appeal starts the time applicable to filing the notice of
2-22 appeal.

2-23 SECTION 3.02. Section 22.225(d), Government Code, is
2-24 amended to read as follows:

2-25 (d) A petition for review is allowed to the supreme court
2-26 for an appeal from an interlocutory order described by Section
2-27 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies
2-28 Code.

2-29 ARTICLE 4. ALLOCATION OF LITIGATION COSTS

2-30 SECTION 4.01. Sections 42.001(5) and (6), Civil Practice
2-31 and Remedies Code, are amended to read as follows:

2-32 (5) "Litigation costs" means money actually spent and
2-33 obligations actually incurred that are directly related to the
2-34 action ~~[case]~~ in which a settlement offer is made. The term
2-35 includes:

2-36 (A) court costs;

2-37 (B) reasonable deposition costs;

2-38 (C) reasonable fees for not more than two
2-39 testifying expert witnesses; and

2-40 (D) ~~[(C)]~~ reasonable attorney's fees.

2-41 (6) "Settlement offer" means an offer to settle or
2-42 compromise a claim made in compliance with Section 42.003 ~~[this~~
2-43 ~~chapter]~~.

2-44 SECTION 4.02. Sections 42.002(b), (d), and (e), Civil
2-45 Practice and Remedies Code, are amended to read as follows:

2-46 (b) This chapter does not apply to:

2-47 (1) a class action;

2-48 (2) a shareholder's derivative action;

2-49 (3) an action by or against a governmental unit;

2-50 (4) an action brought under the Family Code;

2-51 (5) an action to collect workers' compensation
2-52 benefits under Subtitle A, Title 5, Labor Code; or

2-53 (6) an action filed in a justice of the peace court or
2-54 a small claims court.

2-55 (d) This chapter does not limit or affect the ability of any
2-56 person to:

2-57 (1) make an offer to settle or compromise a claim that
2-58 does not comply with Section 42.003 ~~[this chapter]~~; or

2-59 (2) offer to settle or compromise a claim in an action
2-60 to which this chapter does not apply.

2-61 (e) An offer to settle or compromise that does not comply
2-62 with Section 42.003 ~~[is not made under this chapter]~~ or an offer to
2-63 settle or compromise made in an action to which this chapter does
2-64 not apply does not entitle any ~~[the offering]~~ party to recover
2-65 litigation costs under this chapter.

2-66 SECTION 4.03. Section 42.003, Civil Practice and Remedies
2-67 Code, is amended to read as follows:

2-68 Sec. 42.003. MAKING SETTLEMENT OFFER. (a) A settlement
2-69 offer must:

- 3-1 (1) be in writing;
- 3-2 (2) state that it is made under this chapter;
- 3-3 (3) state the terms by which the claims may be settled;
- 3-4 (4) state a deadline by which the settlement offer
- 3-5 must be accepted; and
- 3-6 (5) be served on all parties to whom the settlement
- 3-7 offer is made.
- 3-8 (b) The parties are not required to file a settlement offer
- 3-9 with the court.

3-10 SECTION 4.04. Section 42.004(d), Civil Practice and
 3-11 Remedies Code, is amended to read as follows:

3-12 (d) The litigation costs that may be awarded under this
 3-13 chapter to any party may not be greater than the total amount that
 3-14 the claimant recovers or would recover before adding an award of
 3-15 litigation costs under this chapter in favor of the claimant or
 3-16 subtracting as an offset an award of litigation costs under this
 3-17 chapter in favor of the defendant. [an amount computed by:

- 3-18 [~~(1) determining the sum of:~~
- 3-19 [~~(A) 50 percent of the economic damages to be~~
- 3-20 ~~awarded to the claimant in the judgment;~~
- 3-21 [~~(B) 100 percent of the noneconomic damages to be~~
- 3-22 ~~awarded to the claimant in the judgment; and~~
- 3-23 [~~(C) 100 percent of the exemplary or additional~~
- 3-24 ~~damages to be awarded to the claimant in the judgment; and~~
- 3-25 [~~(2) subtracting from the amount determined under~~
- 3-26 ~~Subdivision (1) the amount of any statutory or contractual liens in~~
- 3-27 ~~connection with the occurrences or incidents giving rise to the~~
- 3-28 ~~claim.]~~

3-29 ARTICLE 5. DESIGNATION OF RESPONSIBLE THIRD PARTIES

3-30 SECTION 5.01. Section 33.004, Civil Practice and Remedies
 3-31 Code, is amended by adding subsection (d) to read as follows:

3-32 (d) A defendant may not designate a person as a responsible
 3-33 third party with respect to a claimant's cause of action after the
 3-34 applicable limitations period on the cause of action has expired
 3-35 with respect to the responsible third party if the defendant has
 3-36 failed to comply with its obligations, if any, to timely disclose
 3-37 that the person may be designated as a responsible third party under
 3-38 the Texas Rules of Civil Procedure.

3-39 SECTION 5.02. Section 33.004(e), Civil Practice and
 3-40 Remedies Code, is repealed.

3-41 Article 6. EFFECTIVE DATE

3-42 SECTION 6.01. The changes in law made by this Act apply only
 3-43 to a civil action commenced on or after the effective date of the
 3-44 change in law as provided by this article. A civil action commenced
 3-45 before the effective date of the change in law as provided by this
 3-46 article is governed by the law in effect immediately before the
 3-47 effective date of the change in law, and that law is continued in
 3-48 effect for that purpose.

3-49 SECTION 6.02. This Act takes effect September 1, 2011.

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