

By: Madden

H.B. No. 2031

Substitute the following for H.B. No. 2031:

By: Lewis

C.S.H.B. No. 2031

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of a voluntary compensation plan as a
3 method of alternative dispute resolution.

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

5 SECTION 1. Title 7, Civil Practice and Remedies Code, is
6 amended by adding Chapter 160 to read as follows:

7 CHAPTER 160. VOLUNTARY COMPENSATION PLANS

8 Sec. 160.001. DEFINITIONS. In this chapter:

9 (1) "Claim" means a request to obtain compensation
10 from a voluntary compensation plan.

11 (2) "Claimant" means a person making a claim.

12 (3) "Legitimate claim" means a claim that, in the plan
13 administrator's opinion, likely would result in the claimant
14 recovering damages from the plan creator if the claim was asserted
15 in a civil action by the claimant against the plan creator.

16 (4) "Plan administrator" means an individual a
17 claimant can contact to obtain information about or compensation
18 from a voluntary compensation plan. There may be more than one plan
19 administrator.

20 (5) "Plan creator" means a person who establishes a
21 voluntary compensation plan under this chapter.

22 (6) "Potentially liable person" means a person against
23 whom a civil action for damages for injury, death, or property
24 damage might be filed by a claimant.

1 (7) "Voluntary compensation plan" means a plan
2 established under this chapter to compensate a claimant for damages
3 for injury, death, or property damage that may have been caused by
4 the plan creator.

5 Sec. 160.002. ESTABLISHING A PLAN. (a) A potentially
6 liable person, acting individually or with another potentially
7 liable person, may establish a voluntary compensation plan under
8 this chapter at any time.

9 (b) A voluntary compensation plan is established for
10 purposes of this chapter when the plan creator has both published
11 and posted a notice as required by Subsections (c) and (d).

12 (c) A plan creator must publish a notice of the
13 establishment of a voluntary compensation plan in a newspaper of
14 record in the county in which the plan creator has the plan
15 creator's principal office or principal place of business in this
16 state and in a newspaper in the county in this state where the acts
17 or omissions giving rise to the establishment or potential
18 establishment of the plan occurred. The notice must be at least 20
19 column inches in size, must state that the plan creator has
20 established a plan, and must contain the information required by
21 Sections 160.004(a)(1), (2), (3), and (4).

22 (d) A plan creator must post a notice of the establishment
23 of a voluntary compensation plan on the plan creator's Internet
24 website. The notice must state that the plan creator has
25 established a plan, contain the information required by Sections
26 160.004(a)(1), (2), (3), and (4), and provide a link to a website a
27 potential claimant can use to contact the plan administrator. The

1 notice must remain posted on the Internet website until the plan is
2 discontinued.

3 Sec. 160.003. APPOINTMENT OF PLAN ADMINISTRATOR. (a) A
4 plan creator may develop a plan with or without the participation of
5 a person who serves or may serve as the plan administrator.

6 (b) A plan administrator must be an independent third party
7 appointed by a multidistrict litigation panel. The panel shall
8 appoint the plan administrator as soon as reasonably practicable
9 after a request for an appointment is made by a plan creator or
10 after the need for appointing a plan administrator arises.

11 Sec. 160.004. CONTENTS OF PLAN. (a) A voluntary
12 compensation plan established under this chapter must contain the
13 following elements:

14 (1) the name of the plan creator;

15 (2) the name, address, telephone number, and e-mail
16 address of the plan administrator;

17 (3) the kind or class of claimants who may be eligible
18 to receive compensation from the plan;

19 (4) the deadline by which claims must be filed with the
20 plan administrator;

21 (5) the criteria the plan administrator will use to
22 determine whether a claim is legitimate;

23 (6) the formula, method, or information the plan
24 administrator will use to determine the amount that will be paid to
25 a claimant for a legitimate claim, or a schedule showing the amounts
26 the plan administrator will pay claimants for legitimate claims;

27 (7) the dates and methods by which claims will be paid;

1 (8) a statement disclosing the extent to which
2 accepting payment from the plan bars suit against the plan creator
3 or others; and

4 (9) any other information necessary for a claimant to
5 obtain information about or request compensation from the plan.

6 (b) A potential claimant must be able to obtain from the
7 plan administrator, or ascertain by using a program or other method
8 made available by the plan administrator, a reasonably accurate
9 statement of the amount of compensation the potential claimant
10 could receive from the plan.

11 (c) A voluntary compensation plan may be amended at any
12 time.

13 Sec. 160.005. LEGAL EFFECT OF ESTABLISHING PLAN. (a)
14 Establishing, attempting to establish, or planning in regard to
15 establishing a voluntary compensation plan under this chapter is
16 not an admission of liability by any person.

17 (b) Evidence that a person established, attempted to
18 establish, planned in regard to establishing, or sought information
19 or compensation from a voluntary compensation plan is not
20 admissible in any civil, criminal, or administrative proceeding in
21 which the tribunal will determine liability for the acts or
22 omissions that gave rise to the establishment or potential
23 establishment of the voluntary compensation plan.

24 (c) A notice published and posted as required by Section
25 160.002 is not admissible in any civil, criminal, or administrative
26 proceeding in which the tribunal will determine liability for the
27 acts or omissions that gave rise to the establishment of the

1 voluntary compensation plan.

2 (d) Any statement by the plan creator or plan administrator,
3 whether oral or written, regarding the plan or the plan creator
4 establishing, attempting to establish, or planning to establish a
5 voluntary compensation plan under this chapter is not admissible in
6 any civil, criminal, or administrative proceeding in which the
7 tribunal will determine liability for the acts or omissions that
8 gave rise to the establishment or potential establishment of the
9 voluntary compensation plan.

10 (e) A plan creator's consideration of or planning for
11 establishing a voluntary compensation plan is privileged from
12 discovery or disclosure in any civil, criminal, or administrative
13 proceeding in which the tribunal will determine liability for the
14 acts or omissions that gave rise to the establishment or potential
15 establishment of the voluntary compensation plan.

16 (f) Establishing, attempting to establish, or planning in
17 regard to establishing a voluntary compensation plan under this
18 chapter does not create a legal duty owed by the plan administrator
19 or plan creator to anyone. Establishing, attempting to establish,
20 or planning in regard to establishing a voluntary compensation plan
21 does not give rise to a cause of action against a plan administrator
22 or plan creator for breach of a duty of good faith and fair dealing,
23 breach of Subchapter E, Chapter 17, Business & Commerce Code, or
24 other similar statute, or breach of any other common law or
25 statutory duty.

26 (g) Establishing a voluntary compensation plan under this
27 chapter does not create an obligation for the plan administrator or

1 plan creator to negotiate the terms or conditions of payment from
2 the plan or for the settlement of litigation or threatened
3 litigation.

4 (h) Because it is the public policy of this state to
5 encourage the quick, fair, and inexpensive resolution of potential
6 civil actions, this section is to be interpreted and applied
7 liberally to encourage the use of voluntary compensation plans by
8 protecting potentially liable persons from having their liability
9 based in any respect on establishing, attempting to establish, or
10 planning in regard to establishing a voluntary compensation plan.

11 Sec. 160.006. PROHIBITED CONTACT. (a) A plan creator or
12 plan administrator may not contact a claimant or potential claimant
13 who the plan creator knows or reasonably should know is represented
14 by an attorney.

15 (b) A plan creator or plan administrator may not initiate
16 contact with a claimant or potential claimant for the purpose of
17 encouraging or attempting to induce the claimant or potential
18 claimant to accept compensation under the plan.

19 Sec. 160.007. SUPREME COURT RULES. The supreme court may
20 adopt rules to implement or govern proceedings under this chapter.

21 SECTION 2. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.