

By: Sheets

H.B. No. 2437

A BILL TO BE ENTITLED

AN ACT

relating to an award of litigation costs after the rejection of certain settlement offers.

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

SECTION 1. Section 42.004, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:

(a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party. Subject to Subsections (d) and (d-1), the amount of litigation costs awarded under this chapter shall be determined by the court prior to the entry of judgment. The court must, upon request, conduct a hearing on a request for an award of litigation costs, at which the affected parties may present evidence.

(d) If damages are awarded to the claimant, the ~~[The]~~ litigation costs that may be awarded under this chapter may not be greater than an amount computed by:

(1) determining the sum of:

(A) 50 percent of the economic damages to be awarded to the claimant in the judgment;

(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and

1 (C) 100 percent of the exemplary or additional
2 damages to be awarded to the claimant in the judgment; and

3 (2) subtracting from the amount determined under
4 Subdivision (1) the amount of any statutory or contractual liens in
5 connection with the occurrences or incidents giving rise to the
6 claim.

7 (d-1) If damages are not awarded to the claimant, the
8 litigation costs that may be awarded under this chapter to the
9 defendant may not be greater than the amount of the defendant's most
10 recent settlement offer.

11 (e) If a claimant or defendant is entitled to recover fees
12 and costs under another law, that claimant or defendant may not
13 recover litigation costs in addition to the fees and costs
14 recoverable under the other law.

15 (f) If a claimant or defendant is entitled to recover fees
16 and costs under another law, the court must not include fees and
17 costs incurred by that claimant or defendant after the date of
18 rejection of the settlement offer when calculating the amount of
19 the judgment to be rendered under Subsection (a).

20 (g) If litigation costs are to be awarded against a
21 claimant, those litigation costs shall be awarded to the defendant
22 in the judgment as an offset against the claimant's recovery from
23 that defendant, or if damages are not awarded to the claimant, as a
24 judgment against the claimant.

25 SECTION 2. The change in law made by this Act applies only
26 to an action commenced on or after the effective date of this Act.
27 An action commenced before the effective date of this Act is

1 governed by the law in effect immediately before that date, and that
2 law is continued in effect for that purpose.

3 SECTION 3. This Act takes effect September 1, 2011.