

By: Kleinschmidt

H.B. No. 2661

A BILL TO BE ENTITLED

AN ACT

relating to settlement of certain civil actions.

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

SECTION 1. Chapter 42, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 42. SETTLEMENT

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages or to obtain other relief. The term does not include a request to recover litigation costs.

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

(3) "Defendant" means a person from whom a claimant seeks recovery on a claim, including a counterdefendant, cross-defendant, or third-party defendant.

(4) "Governmental unit" means the state, a unit of state government, or a political subdivision of this state.

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

(A) court costs;

(B) reasonable deposition costs;

(C) reasonable fees for not more than two

1 ~~[testifying]~~ expert witnesses; and

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

3 (6) "Settlement offer" means an offer to settle or
4 compromise a claim made in compliance with Section 42.004 ~~[this~~
5 ~~chapter]~~.

6 Sec. 42.002. APPLICABILITY AND EFFECT. (a) ~~[The~~
7 ~~settlement procedures provided in this chapter apply only to claims~~
8 ~~for monetary relief.~~

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 (4) ~~[(5)]~~ an action to collect workers' compensation
- 15 benefits under Subtitle A, Title 5, Labor Code; or
- 16 (5) ~~[(6)]~~ an action filed in a justice of the peace
- 17 court.

18 (b) ~~[(c) This chapter does not apply until a defendant files~~
19 ~~a declaration that the settlement procedure allowed by this chapter~~
20 ~~is available in the action. If there is more than one defendant, the~~
21 ~~settlement procedure allowed by this chapter is available only in~~
22 ~~relation to the defendant that filed the declaration and to the~~
23 ~~parties that make or receive offers of settlement in relation to~~
24 ~~that defendant.~~

25 ~~[(d)]~~ This chapter does not limit or affect the ability of
26 any person to:

- 27 (1) make an offer to settle or compromise a claim that

1 does not comply with Section 42.004 [~~this chapter~~]; or

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

4 (c) [~~e~~] An offer by a party to settle or compromise that
5 does not comply with Section 42.004 [~~is not made under this chapter~~]
6 or an offer to settle or compromise made in an action to which this
7 chapter does not apply does not entitle the [~~offering~~] party to
8 recover litigation costs under this chapter.

9 Sec. 42.003. ELECTION BY GOVERNMENTAL UNITS; WAIVER. (a)
10 This chapter does not apply to an action by or against a
11 governmental unit unless the governmental unit elects to seek
12 recovery of litigation costs under this chapter or elects to waive
13 immunity from liability for costs awarded under this chapter.

14 (b) To be effective as an election or waiver, the
15 governmental unit must make the election or waiver specifically and
16 affirmatively by a writing filed with the court on or before the
17 45th day after the date the governmental unit files its original
18 petition or original answer.

19 (c) An election or waiver is effective only in the action in
20 which it is filed.

21 Sec. 42.004. MAKING SETTLEMENT OFFER. (a) A defendant may
22 serve on a claimant a settlement offer to settle all claims in the
23 action between that defendant and claimant.

24 (b) A settlement offer must:

25 (1) be in writing;

26 (2) state that it is made under this chapter;

27 (3) state the terms by which the claims may be settled;

1 (4) state a deadline by which the settlement offer
2 must be accepted; and

3 (5) be served on all parties to whom the settlement
4 offer is made.

5 (c) A defendant may not make a settlement offer under this
6 section before the 60th day after the date the defendant files a
7 responsive pleading or otherwise appears in the action.

8 (d) A defendant may not make a settlement offer under this
9 section after the 14th day before the date set for trial.

10 (e) The parties are not required to file a settlement offer
11 with the court.

12 Sec. 42.005. ACCEPTING SETTLEMENT OFFER. (a) A claimant
13 may accept a settlement offer on or before 5 p.m. on the 14th day
14 after the date the claimant received the settlement offer or before
15 the deadline stated in the settlement offer, whichever is later.

16 (b) Acceptance of a settlement offer must be:

17 (1) in writing; and

18 (2) served on the defendant who made the settlement
19 offer.

20 Sec. 42.006. WITHDRAWING SETTLEMENT OFFER. (a) A
21 defendant may withdraw a settlement offer by serving a written
22 withdrawal on the claimant to whom the settlement offer was made
23 before the claimant accepts the settlement offer. A claimant may
24 not accept a settlement offer after it is withdrawn.

25 (b) If a defendant withdraws a settlement offer, that
26 settlement offer does not entitle the defendant to recover
27 litigation costs.

1 Sec. 42.007. REJECTING SETTLEMENT OFFER. For purposes of
2 this chapter, a settlement offer is rejected if:

3 (1) the claimant to whom the settlement offer was made
4 rejects the settlement offer by serving a written rejection on the
5 defendant making the settlement offer; or

6 (2) the settlement offer is not withdrawn and is not
7 accepted before the deadline for accepting the offer.

8 Sec. 42.008 [42.004]. AWARDING LITIGATION COSTS. (a) A
9 defendant who makes a settlement offer to a claimant seeking
10 monetary relief shall recover litigation costs from the claimant
11 if:

12 (1) the settlement offer is rejected;

13 (2) the court signs a judgment on the claim;

14 (3) the amount of monetary relief awarded to the
15 claimant in the judgment is more favorable to the defendant who made
16 the settlement offer than the settlement offer; and

17 (4) the difference between the amount of monetary
18 relief awarded to the claimant in the judgment and the amount of the
19 settlement offer is equal to or greater than 10 percent of the
20 amount of the settlement offer.

21 (b) A defendant who makes a settlement offer to a claimant
22 seeking nonmonetary relief, other than injunctive relief, may
23 recover litigation costs from the claimant if:

24 (1) the settlement offer is rejected;

25 (2) the court signs a judgment on the claim; and

26 (3) the judgment is more favorable to the defendant
27 who made the settlement offer than the settlement offer.

1 (c) A court may include in litigation costs awarded to a
2 defendant under this section only those litigation costs incurred
3 by the defendant who made a settlement offer after the rejection of
4 the earliest settlement offer that entitles the defendant to the
5 award of litigation costs under this section.

6 (d) If a court awards litigation costs against a claimant
7 under this section, the court may not award the claimant the
8 post-settlement offer portion of any litigation costs to which the
9 claimant would otherwise be entitled under Chapter 38 or other
10 applicable law.

11 (e) An award of litigation costs by the court under this
12 section is reviewable under a de novo standard. [~~If a settlement~~
13 ~~offer is made and rejected and the judgment to be rendered will be~~
14 ~~significantly less favorable to the rejecting party than was the~~
15 ~~settlement offer, the offering party shall recover litigation costs~~
16 ~~from the rejecting party.~~

17 [~~(b) A judgment will be significantly less favorable to the~~
18 ~~rejecting party than is the settlement offer if:~~

19 [~~(1) the rejecting party is a claimant and the award~~
20 ~~will be less than 80 percent of the rejected offer; or~~

21 [~~(2) the rejecting party is a defendant and the award~~
22 ~~will be more than 120 percent of the rejected offer.~~

23 [~~(c) The litigation costs that may be recovered by the~~
24 ~~offering party under this section are limited to those litigation~~
25 ~~costs incurred by the offering party after the date the rejecting~~
26 ~~party rejected the settlement offer.~~

27 [~~(d) The litigation costs that may be awarded under this~~

1 ~~chapter may not be greater than an amount computed by:~~

2 ~~[(1) determining the sum of:~~

3 ~~[(A) 50 percent of the economic damages to be~~
4 ~~awarded to the claimant in the judgment,~~

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

7 ~~[(C) 100 percent of the exemplary or additional~~
8 ~~damages to be awarded to the claimant in the judgment; and~~

9 ~~[(2) subtracting from the amount determined under~~
10 ~~Subdivision (1) the amount of any statutory or contractual liens in~~
11 ~~connection with the occurrences or incidents giving rise to the~~
12 ~~claim.~~

13 ~~[(c) If a claimant or defendant is entitled to recover fees~~
14 ~~and costs under another law, that claimant or defendant may not~~
15 ~~recover litigation costs in addition to the fees and costs~~
16 ~~recoverable under the other law.~~

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

22 ~~[(g) If litigation costs are to be awarded against a~~
23 ~~claimant, those litigation costs shall be awarded to the defendant~~
24 ~~in the judgment as an offset against the claimant's recovery from~~
25 ~~that defendant.]~~

26 Sec. 42.009 [42.005]. SUPREME COURT [TO MAKE] RULES. [~~a~~]
27 The supreme court may amend or adopt rules that are not inconsistent

1 with this chapter ~~[shall promulgate rules implementing this~~
2 ~~chapter. The rules must be limited to settlement offers made under~~
3 ~~this chapter. The rules must be in effect on January 1, 2004.~~

4 ~~[(b) The rules promulgated by the supreme court must~~
5 ~~provide:~~

6 ~~[(1) the date by which a defendant or defendants must~~
7 ~~file the declaration required by Section 42.002(c),~~

8 ~~[(2) the date before which a party may not make a~~
9 ~~settlement offer,~~

10 ~~[(3) the date after which a party may not make a~~
11 ~~settlement offer, and~~

12 ~~[(4) procedures for:~~

13 ~~[(A) making an initial settlement offer,~~

14 ~~[(B) making successive settlement offers,~~

15 ~~[(C) withdrawing a settlement offer,~~

16 ~~[(D) accepting a settlement offer,~~

17 ~~[(E) rejecting a settlement offer, and~~

18 ~~[(F) modifying the deadline for making,~~
19 ~~withdrawing, accepting, or rejecting a settlement offer.~~

20 ~~[(c) The rules promulgated by the supreme court must address~~
21 ~~actions in which there are multiple parties and must provide that if~~
22 ~~the offering party joins another party or designates a responsible~~
23 ~~third party after making the settlement offer, the party to whom the~~
24 ~~settlement offer was made may declare the offer void.~~

25 ~~[(d) The rules promulgated by the supreme court may:~~

26 ~~[(1) designate other actions to which the settlement~~
27 ~~procedure of this chapter does not apply, and~~

1 ~~[(2) address other matters considered necessary by the~~
2 ~~supreme court to the implementation of this chapter].~~

3 Sec. 42.010. MODIFICATION OF TIME LIMITS. A court may by
4 order modify a time limit specified in this chapter as the result of
5 a pretrial conference conducted under Rule 166, Texas Rules of
6 Civil Procedure.

7 Sec. 42.011. SERVICE. Service on a party as required by
8 this chapter is adequate if performed as provided by Rule 21a, Texas
9 Rules of Civil Procedure.

10 Sec. 42.012. ADMISSIBILITY OF EVIDENCE. (a) This chapter
11 does not affect the admissibility or inadmissibility of evidence as
12 provided in the Texas Rules of Evidence.

13 (b) The provisions of this chapter may not be made known to
14 the jury through any means, including voir dire, introduction into
15 evidence, instruction, or argument.

16 SECTION 2. The changes in law made by this Act to Chapter
17 42, Civil Practice and Remedies Code, apply only to a civil action
18 commenced on or after the effective date of this Act. A civil
19 action commenced before the effective date of this Act is governed
20 by the law in effect immediately before the effective date of this
21 Act, and that law is continued in effect for that purpose.

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