

By: Huffman

S.B. No. 13

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 174 to read as follows:

CHAPTER 174. EARLY DISMISSAL OF ACTIONS

Sec. 174.001. It is the policy of this state that all civil actions shall be disposed of fairly, promptly, and with the least possible expense to the litigants and to the state.

Sec. 174.002. ADOPTION OF RULES BY THE SUPREME COURT.

(a) The supreme court shall adopt rules to provide for the fair and early dismissal of nonmeritorious cases.

(b) The supreme court shall adopt rules under this chapter on or before December 31, 2011.

SECTION 2. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 175 to read as follows:

Sec. 175.001. ADOPTION OF RULES BY SUPREME COURT. (a) The supreme court shall adopt rules by which a plaintiff in a civil action may elect a procedure for the prompt, efficient, and cost-effective resolution of civil actions in which the damages are at least \$10,000 but not more than \$100,000.

(b) In this section, "damages" means all claims under common law, statutory, and equitable causes of action for actual damages,

1 including economic and noneconomic damages, and all forms of
2 additional damages including without limitation knowing damages,
3 punitive damages, trebling of damages of any kind, penalties,
4 prejudgment interest, postjudgment interest, attorney's fees,
5 litigation costs, costs of court, and all other damages of any kind
6 or character.

7 (c) The rules promulgated by the supreme court shall not
8 apply to a class action, a civil action primarily governed by the
9 Family Code, a workers' compensation case, or an action governed by
10 Chapter 74.

11 (d) The supreme court shall adopt rules under this section
12 to be in effect by January 1, 2012.

13 SECTION 3. Subchapter C, Chapter 311, Government Code, is
14 amended by adding Section 311.035 to read as follows:

15 Sec. 311.035. NO IMPLIED CAUSE OF ACTION. A statute may not
16 be construed to create a cause of action unless a cause of action is
17 created by clear and unambiguous language in the statute.

18 SECTION 4. Subchapter B, Chapter 312, Government Code, is
19 amended by adding Section 312.017 to read as follows:

20 Sec. 312.017. NO IMPLIED CAUSE OF ACTION. A statute may not
21 be construed to create a cause of action unless a cause of action is
22 created by clear and unambiguous language in the statute.

23 SECTION 5. Sections 38.001 and 38.002, Civil Practice and
24 Remedies Code, are amended to read as follows:

25 Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. The prevailing
26 party [~~A person~~] may recover reasonable attorney's fees from an
27 individual, [~~or~~] corporation, or other legal entity [~~in addition to~~

1 ~~the amount of a valid claim and costs,~~] if the claim is for:

- 2 (1) rendered services;
- 3 (2) performed labor;
- 4 (3) furnished material;
- 5 (4) freight or express overcharges;
- 6 (5) lost or damaged freight or express;
- 7 (6) killed or injured stock;
- 8 (7) a sworn account; [~~or~~]
- 9 (8) an oral or written contract; or
- 10 (9) defamation.

11 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES.

12 For [~~To recover~~] attorney's fees to be recovered under this
13 subchapter [~~chapter~~]:

- 14 (1) the person seeking to recover attorney's fees
15 [~~claimant~~] must be represented by an attorney;
- 16 (2) the claimant must present the claim to the
17 opposing party or to a duly authorized agent of the opposing party;
18 and
- 19 (3) payment for the just amount owed must not have been
20 tendered before the expiration of the 30th day after the claim is
21 presented.

22 SECTION 6. Subdivisions (1), (5), and (6), Section 42.001,
23 Civil Practice and Remedies Code, are amended to read as follows:

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

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

5 (A) court costs;

6 (B) reasonable deposition costs;

7 (C) reasonable fees for not more than two
8 [~~testifying~~] expert witnesses; and

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

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

13 SECTION 7. Chapter 42, Civil Practice and Remedies Code, is
14 amended by amending Sections 42.003, 42.004, and 42.005 and adding
15 Section 42.006 to read as follows:

16 Sec. 42.003. MAKING SETTLEMENT OFFER. (a) A defendant may
17 serve on a claimant a settlement offer to settle all claims in the
18 action between that defendant and claimant.

19 (b) A settlement offer must:

20 (1) be in writing;

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

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

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

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

27 (c) A defendant may not make a settlement offer under this

1 section before the 60th day after the date the defendant files a
2 responsive pleading or otherwise appears in the action.

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

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

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

10 (1) the settlement offer is rejected;

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

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

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

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

22 (1) the settlement offer is rejected;

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

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

26 (c) A court may include in litigation costs awarded to a
27 defendant under this section only those litigation costs incurred

1 by the defendant who made a settlement offer after the rejection of
2 the earliest settlement offer that entitles the defendant to the
3 award of litigation costs under this section.

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

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

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

17 [~~(1) the rejecting party is a claimant and the award~~
18 ~~will be less than 80 percent of the rejected offer, or~~

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

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 settlement offer.~~

25 [~~(d) The litigation costs that may be awarded under this~~
26 ~~chapter may not be greater than an amount computed by:~~

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

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

3 ~~[(B) 100 percent of the noneconomic damages to be~~
4 ~~awarded to the claimant in the judgment, and~~

5 ~~[(C) 100 percent of the exemplary or additional~~
6 ~~damages to be awarded to the claimant in the judgment, and~~

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

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.]~~

24 Sec. 42.005. SUPREME COURT ~~[TO MAKE]~~ RULES. ~~[(a)]~~ The
25 supreme court may amend or adopt rules that are not inconsistent
26 with this chapter ~~[shall promulgate rules implementing this~~
27 ~~chapter. The rules must be limited to settlement offers made under~~

1 ~~this chapter. The rules must be in effect on January 1, 2004.~~

2 ~~[(b) The rules promulgated by the supreme court must~~
3 ~~provide:~~

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

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

8 ~~[(3) the date after which a party may not make a~~
9 ~~settlement offer; and~~

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

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

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

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

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

15 ~~[(E) rejecting a settlement offer; and~~

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

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

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

24 ~~[(1) designate other actions to which the settlement~~
25 ~~procedure of this chapter does not apply; and~~

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

1 Sec. 42.006. ADMISSIBILITY OF EVIDENCE. (a) This chapter
2 does not affect the admissibility or inadmissibility of evidence as
3 provided in the Texas Rules of Evidence.

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

7 SECTION 8. (a) The Texas Supreme Court shall conduct a
8 study to determine the most effective method to implement a system
9 in which the prevailing party in a civil action may recover its
10 attorney's fees, court costs, and other litigation costs from
11 adverse parties. The system should allow a defendant to determine
12 if the fee-shifting system would apply to a lawsuit and should
13 discourage the filing of frivolous lawsuits.

14 (b) Not later than December 1, 2012, the Texas Supreme Court
15 shall prepare a report of the findings of the study and provide a
16 copy of the report to the governor, the lieutenant governor, and
17 each member of the legislature.

18 SECTION 9. The change in law made by this Act applies only
19 to an action filed on or after the effective date of this Act. An
20 action filed before the effective date of this Act, including an
21 action to which a party is joined or designated after the effective
22 date of this Act, is governed by the law in effect immediately
23 before the change in law made by this Act, and that law is continued
24 in effect for that purpose.

25 SECTION 10. If any provision of this Act or its application
26 to any person or circumstance is held invalid, the invalidity does
27 not affect other provisions or applications of this Act that can be

S.B. No. 13

1 given effect without the invalid provision or application, and to
2 this end the provisions of this Act are declared to be severable.

3 SECTION 11. This Act takes effect September 1, 2011.