

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

ARTICLE 1. EARLY DISMISSAL OF ACTIONS

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

(g) The supreme court shall adopt rules to provide for the dismissal of certain causes of action and defenses that the supreme court determines should be disposed of as a matter of law on motion and without evidence. Rules adopted under this subsection do not apply to an action under the Family Code.

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

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court may award costs and reasonable and necessary attorney's fees to the prevailing party that the court determines are equitable and just. This section does not apply to an action under the Family Code.

ARTICLE 2. EXPEDITED CIVIL ACTIONS

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

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district courts, county

SENATE VERSION (CS)

ARTICLE 1. Same as House version.

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

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

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

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

ARTICLE 2. Same as House version.

SECTION 2.01. Same as House version.

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed \$100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:

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

ARTICLE 3. NO IMPLIED CAUSE OF ACTION

SECTION 3.01. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.035 to read as follows:

Sec. 311.035. NO IMPLIED CAUSE OF ACTION. A statute may not be construed to create a cause of action unless the statute by clear and unambiguous language creates a cause of action. This section does not apply to an action under the Family Code.

ARTICLE 4. APPEAL OF CONTROLLING QUESTION OF LAW

SECTION 4.01. Section 51.014, Civil Practice and Remedies Code, is amended by amending Subsections (d) and (e) and adding Subsection (f) to read as follows:

- (d) On a party's motion or on its own initiative, a trial court in

SENATE VERSION (CS)

No equivalent provision.

No equivalent provision.

ARTICLE 3. Same as House version.

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

- (d) On a party's motion or on its own initiative, a trial court in

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~a civil action [A district court, county court at law, or county court] may, by [issue a] written order, permit an appeal from an order that is [for interlocutory appeal in a civil action] not otherwise appealable [under this section] if:~~

- ~~(1) [the parties agree that] the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and~~
- ~~(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and~~
- ~~[(3) the parties agree to the order].~~

~~(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:~~

- ~~(1) the parties agree to a stay; or~~
- ~~(2) [and] the trial or appellate court[, the court of appeals, or a judge of the court of appeals] orders a stay of the proceedings pending appeal.~~

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

SECTION 4.02. Section 22.225(d), Government Code, is amended to read as follows:

SENATE VERSION (CS)

~~a civil action [A district court, county court at law, or county court] may, by [issue a] written order, permit an appeal from an order that is [for interlocutory appeal in a civil action] not otherwise appealable [under this section] if:~~

- ~~(1) [the parties agree that] the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and~~
- ~~(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and~~
- ~~[(3) the parties agree to the order].~~

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

~~(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:~~

- ~~(1) the parties agree to a stay; or~~
- ~~(2) [and] the trial or appellate court[, the court of appeals, or a judge of the court of appeals] orders a stay of the proceedings pending appeal.~~

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

SECTION 3.02. Same as House version.

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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

ARTICLE 5. RECOVERY OF ATTORNEY'S FEES

No equivalent provision.

SECTION 5.01. Section 38.001, Civil Practice and Remedies Code, is amended to read as follows:

No equivalent provision.

Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. A person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for:

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;
- (5) lost or damaged freight or express;
- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an appeal to the court under Section 11.43, Tax Code, or an appeal to the court of a determination of an appraisal review board on a motion filed under Section 11.45, Tax Code [~~an oral or written contract~~].

SECTION 5.02. Chapter 38, Civil Practice and Remedies Code, is amended by adding Section 38.0015 to read as follows:

No equivalent provision.

Sec. 38.0015. ORAL AND WRITTEN CONTRACTS. Unless otherwise provided in a written contract, the prevailing party may recover reasonable attorney's fees from an individual, corporation, or other legal entity if the claim is for

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

breach of an oral or written contract.

SECTION 5.03. Section 38.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. To recover attorney's fees under this chapter:

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

ARTICLE 6. ALLOCATION OF LITIGATION COSTS

SECTION 6.01. Sections 42.001(5) and (6), Civil Practice and Remedies Code, are amended to read as follows:

(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 testifying expert witnesses; and
- (D) [~~C~~] reasonable attorney's fees.

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

No equivalent provision.

ARTICLE 4. Same as House version.

SECTION 4.01. Same as House version.

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 6.02. Sections 42.002(b), (d), and (e), Civil Practice and Remedies Code, are amended to read as follows:

(b) This chapter does not apply to:

- (1) a class action;
- (2) a shareholder's derivative action;
- (3) an action by or against a governmental unit;
- (4) an action brought under the Family Code;
- (5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or
- (6) an action filed in a justice of the peace court or a small claims court.

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

- (1) make an offer to settle or compromise a claim that does not comply with Section 42.003 ~~[this chapter]~~; or
- (2) offer to settle or compromise a claim in an action to which this chapter does not apply.

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

SECTION 6.03. Section 42.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 42.003. MAKING SETTLEMENT OFFER. (a) After a defendant files a declaration under Section 42.002(c), the defendant filing the declaration and any party with a claim against that defendant may make a settlement offer to settle all claims in the action between the parties.

(b) A settlement offer must:

- (1) be in writing;

SENATE VERSION (CS)

SECTION 4.02. Same as House version.

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

Sec. 42.003. MAKING SETTLEMENT OFFER.

(a) A settlement offer must:

- (1) be in writing;

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

SECTION 6.04. Section 42.004(c), Civil Practice and Remedies Code, is amended to read as follows:

- (c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the earliest settlement offer that entitles the party to an award of litigation costs under this section.

SECTION 6.05. Sections 42.004(d) and (g), Civil Practice and Remedies Code, are repealed.

No equivalent provision.

SENATE VERSION (CS)

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

No equivalent provision.

No equivalent provision.

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

- (d) The litigation costs that may be awarded under this chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant. ~~[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;~~

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

~~[(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and
[(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and
[(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.]~~

ARTICLE 7. DESIGNATION OF RESPONSIBLE THIRD PARTIES

ARTICLE 5. Same as House version.

No equivalent provision.

SECTION 5.01. Section 33.004, Civil Practice and Remedies Code, is amended by adding subsection (d) to read as follows:
(d) A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

SECTION 7.01. Section 33.004(e), Civil Practice and Remedies Code, is repealed.

SECTION 5.02. Same as House version.

ARTICLE 8. FAMILY LAW MATTERS

No equivalent provision.

SECTION 8.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:
CHAPTER 148. APPLICATION OF FOREIGN LAWS:

No equivalent provision.

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States.

Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) A contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION 8.02. (a) Section 148.002, Civil Practice and Remedies Code, as added by this Act, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 148.003, Civil Practice and Remedies Code, as

No equivalent provision.

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 8.03. This Act takes effect September 1, 2011.

ARTICLE 9. CONTESTED TAX APPRAISAL COSTS

SECTION 9.01. In an action contesting a tax appraisal a taxpayer who prevails is entitled to an award of costs and attorney's fees. If the appraisal district or taxing authority prevails the appraisal district or taxing authority is not entitled to costs and attorney's fees.

ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

SECTION 10.02. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as

SENATE VERSION (CS)

SECTION 6.02. Same as House version.

No equivalent provision.

No equivalent provision.

Article 6. Same as House version.

SECTION 6.01. Same as House version.

No equivalent provision.

CONFERENCE

House Bill 274
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

provided by Section 39, Article III, Texas Constitution; and
(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.
(b) Articles 4, 5, 6, and 7 of this Act take effect September 1, 2011.

SENATE VERSION (CS)

CONFERENCE