

## **BILL ANALYSIS**

C.S.H.B. 382  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Settlement agreements entered into by governmental entities generally must be disclosed under public information law. However, observers note that settlement agreements often lack detail and give no indication of the underlying allegations or facts, which can be shielded from public scrutiny with gag orders. Interested parties contend that recent events demonstrate how gag orders can prevent citizens from knowing any details about lawsuit settlements funded by taxpayer money and point to a recent sexual harassment lawsuit filed against a Texas public official as an example. Those parties note that the settlement agreement in that case contained a gag order preventing the accuser from discussing the allegations or the settlement, and county officials refused to release an investigative report on the allegations even though thousands of taxpayer dollars were used to investigate the allegations.

Concerned parties contend that barring gag orders for settlements involving governmental entities would not provide any disincentive for plaintiffs to settle lawsuits because, if the plaintiffs are willing to file lawsuits, they are willing to testify on their allegations in open court. C.S.H.B. 382 seeks to address this issue by prohibiting an attorney representing a governmental unit from entering into certain settlement agreements if a gag order is a condition of the settlement.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 382 amends the Civil Practice and Remedies Code to prohibit the attorney general or another attorney representing a governmental unit from entering into a settlement of a claim or action against the governmental unit in which the amount of the settlement is greater than or equal to \$30,000 and a condition of the settlement requires a party seeking affirmative relief against the governmental unit to agree not to disclose any fact, allegation, evidence, or other matter to any other person, including a journalist or other member of the media. The bill makes a settlement agreement in violation of that prohibition void and unenforceable. The bill's provisions do not affect information that is privileged or confidential under other law.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 382 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 111, Civil Practices and Remedies Code, is amended by adding Section 111.007 to read as follows:

Sec. 111.007

(a) PUBLIC DISCLOSURE AGREEMENT.

In civil cases in which a settlement agreement is funded in whole or in part by taxpayer dollars or releases claims against a State or local governmental entity or public official, the State government or local governmental entities shall not require or impose any other condition on any party to agree to any provision or other condition of any settlement agreement that requires any party to keep allegations, evidence, settlement amounts or any other information confidential from any other person, including but not limited to any member of the media.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2013.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. LIMITATION ON SETTLEMENT OF CLAIM OR ACTION AGAINST A GOVERNMENTAL UNIT

Sec. 112.001. CERTAIN LIMITATIONS ON SETTLEMENT BY A GOVERNMENTAL UNIT.

(a) In this chapter, "governmental unit" has the meaning assigned by Section 101.001.

(b) The attorney general or another attorney representing a governmental unit may not enter into a settlement of a claim or action against the governmental unit in which the amount of the settlement is greater than or equal to \$30,000 and a condition of the settlement requires a party seeking affirmative relief against the governmental unit to agree not to disclose any fact, allegation, evidence, or other matter to any other person, including a journalist or other member of the media. A settlement agreement in violation of this chapter is void and unenforceable.

(c) This chapter does not affect information that is privileged or confidential under other law.

SECTION 2. The change in law made by this Act applies to the settlement of a claim or action with respect to which the cause of action on which the claim or action is based accrues on or after the effective date of this Act. A claim or action with respect to which the cause of action on which the claim or action is based accrues 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 3. Same as introduced version.