

## **BILL ANALYSIS**

C.S.H.B. 2442  
By: Parker  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been expressed regarding a recent increase in the use of pre-suit depositions by offenders in cases that normally would be disposed of as frivolous. Interested parties contend that because the Texas Rules of Civil Procedure allow any person to petition a state court for authorization to depose an individual in anticipation of a valid cause of action, offenders are circumventing certain requirements that govern offender litigation. C.S.H.B. 2442 seeks to impose additional procedural requirements on offenders to help ensure that pre-suit depositions are not abused.

### **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. 2442 amends the Civil Practice and Remedies Code to prohibit a court from granting a petition by an inmate who is not represented by an attorney for a pre-suit deposition in anticipation of an action brought in a district, county, justice of the peace, or small claims court or an appellate court and in which the inmate files an affidavit or unsworn declaration of inability to pay costs. The bill requires such an inmate, at the time the inmate files a petition for a pre-suit deposition, to submit to the court an affidavit certifying that the inmate is not indigent; a certified copy of the inmate's trust fund account statement; proof that the inmate has exhausted all administrative remedies in the prescribed manner through the inmate grievance system with respect to all anticipated claims; and a bond deposited with the clerk of the court in the amount of the filing fees applicable to the anticipated action and refundable on notice of abandonment of the anticipated action. The bill requires a court, after reasonable notice to the parties, to deny a petition for a pre-suit deposition with respect to which an inmate fails to submit the required information. The bill requires an inmate, not later than the date the inmate files a petition for a pre-suit deposition, to serve a copy of the petition on the attorney general. The bill provides that, to the extent that the bill's provisions conflict with the Texas Rules of Civil Procedure, the bill's provisions control.

### **EFFECTIVE DATE**

September 1, 2013.

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

While C.S.H.B. 2442 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

No equivalent provision.

SECTION 1. Chapter 14, Civil Practice and Remedies Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. PRE-SUIT DEPOSITION.

(a) Upon receipt of an inmate's petition for a pre-suit deposition, the court shall determine if the potential claim or suit is frivolous or malicious and provide the potential defendant with an opportunity to respond within a reasonable period of time.

(b) If the court finds that the potential claim or suit is frivolous or malicious, the court shall deny the inmate's petition for a deposition.

(c) To the extent that this section conflicts with the Texas Rules of Civil Procedure, this section controls.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 14.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) Except as provided by Section 14.0025, this [This] chapter applies only to an action, including an appeal or original proceeding, brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

SECTION 2. Chapter 14, Civil Practice and Remedies Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. PRE-SUIT DEPOSITION.

(a) This section applies to an inmate seeking to file a petition for a pre-suit deposition in a court listed in Section 14.002(a). This section does not apply to an inmate represented by an attorney.

(b) A court may not grant a petition for a pre-suit deposition in anticipation of an action described by Section 14.002(a).

(c) At the time an inmate files a petition for a pre-suit deposition, the inmate shall submit to the court:

(1) an affidavit certifying that the inmate is not indigent;

(2) a certified copy of the inmate's trust fund account statement;

(3) proof that the inmate has exhausted all administrative remedies in the manner provided by Section 14.005(a) with respect to all anticipated claims; and

(4) a bond deposited with the clerk of the court in the amount of the filing fees applicable to the anticipated action and refundable on notice of abandonment of the anticipated action.

(d) A court shall deny, after reasonable notice to the parties, a petition for a pre-suit deposition with respect to which an inmate fails to comply with Subsection (c).

(e) Not later than the date an inmate files a petition for a pre-suit deposition, the inmate shall serve a copy of the petition on the attorney general.

(f) To the extent that this section conflicts with the Texas Rules of Civil Procedure, this section controls.

SECTION 2. The change in law made by this Act applies only to a petition for a deposition filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.