

## **BILL ANALYSIS**

C.S.H.B. 969  
By: King, Ken  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties explain that a 19th century Texas court decision determined that the injury inflicted, rather than the defendant's ability to pay, was the relevant consideration for a jury tasked with assessing exemplary damages, commonly called punitive damages. In a more recent decision, the Texas court overruled that determination and permitted the discovery and use of net worth evidence to support a claim for exemplary damages. The parties note that the latter ruling, which has been codified in law, is detrimental. C.S.H.B. 969 seeks to clarify the use of net worth to determine the amount of exemplary damages.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 969 amends the Civil Practice and Remedies Code to authorize a trial court, on the motion of a party and after notice and a hearing, to authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. The bill authorizes evidence submitted by a party to the court in support of or in opposition to such a motion to be in the form of an affidavit or a response to discovery. The bill limits the trial court's order, if the trial court authorizes discovery of evidence of a defendant's net worth, to authorizing the use of the least burdensome method available to obtain the net worth evidence. The bill limits the evidence a reviewing court may consider when reviewing an order authorizing or denying discovery of net worth evidence to evidence submitted by the parties to the trial court in support of or in opposition to the motion authorizing the discovery. The bill defines "net worth" as the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.

### **EFFECTIVE DATE**

September 1, 2015.

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

While C.S.H.B. 969 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Section 41.011, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.011. EVIDENCE RELATING TO [AMOUNT—OF] EXEMPLARY DAMAGES.

SECTION 2. Section 41.011, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) In determining the amount of exemplary damages, the trier of fact shall consider evidence, if any, relating to:

- (1) the nature of the wrong;
- (2) the character of the conduct involved;
- (3) the degree of culpability of the wrongdoer;
- (4) the situation and sensibilities of the parties concerned; and
- (5) the extent to which such conduct offends a public sense of justice and propriety[; ~~and~~

~~[(6) the net worth of the defendant].~~

(c) Evidence of the financial condition or net worth of a party is not relevant for the purposes of supporting a claim for or the amount of exemplary damages.

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision.

SECTION 1. Section 41.001, Civil Practice and Remedies Code, is amended by adding Subdivision (7-a) to read as follows:

(7-a) "Net worth" means the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.

SECTION 2. Chapter 41, Civil Practice and Remedies Code, is amended by adding Section 41.0115 to read as follows:

Sec. 41.0115. DISCOVERY OF EVIDENCE OF NET WORTH FOR EXEMPLARY DAMAGES CLAIM. (a) On the motion of a party and after notice and a hearing, a trial court may authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. Evidence submitted by a party to the court

in support of or in opposition to a motion made under this subsection may be in the form of an affidavit or a response to discovery.

(b) If a trial court authorizes discovery under Subsection (a), the court's order may only authorize use of the least burdensome method available to obtain the net worth evidence.

(c) When reviewing an order authorizing or denying discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion described by Subsection (a).

SECTION 3. The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. The change in law made by this Act applies only to an action filed on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.