

BILL ANALYSIS

C.S.H.B. 1038
By: Rinaldi
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that the current process by which a party may file a motion to dismiss a baseless cause of action is not serving its intended purpose of reducing frivolous lawsuits as parties are reluctant to avail themselves of the process because costs and attorney's fees are awarded to the prevailing party regardless of other considerations. C.S.H.B. 1038 seeks to increase the viability of the motion to dismiss as a defense against frivolous lawsuits by authorizing such an award rather than requiring it.

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. 1038 amends the Civil Practice and Remedies Code to replace a requirement that a trial court award costs and reasonable and necessary attorney's fees to the prevailing party in a civil proceeding on the court's granting or denial, in whole or in part, of a motion to dismiss certain causes of action that have no basis in law or fact with an authorization for a court to do so.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1038 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. Section 30.021, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 30.021. AWARD OF COSTS AND ATTORNEY'S FEES IN RELATION TO

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 30.021, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN

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 if the prevailing party is the party that filed the motion. 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.

SECTION 2. Section 22.004(g), Government Code, is amended 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. Notwithstanding Subsection (c), the rules may not require that costs and attorney's fees be awarded to a prevailing party that is not the party that filed the motion. The rules shall not apply to actions under the Family Code.

SECTION 3. The changes in law made by this Act apply only to a civil action commenced on or after the effective date of this Act. A civil action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

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 ~~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.

No equivalent provision.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.