

BILL ANALYSIS

C.S.H.B. 1463
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that certain entities have become the target of frivolous lawsuits under state law prohibiting discrimination against persons with disabilities that represent an attempt to force the entity to settle claims for alleged minor violations to avoid expending time and resources to defend itself in court. C.S.H.B. 1463 seeks to reduce the negative impact of such lawsuits by requiring a claimant to give notice to such an entity of intent to file a claim under the act and by providing the entity an opportunity to correct the violation before judicial intervention.

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. 1463 amends the Human Resources Code to require a claimant filing or intending to file an action alleging a violation of statutory prohibitions against discrimination based on a person's disability and alleging a failure to comply with applicable design, construction, technical, or similar standards, including website accessibility guidelines, to accommodate persons with disabilities to give written notice of the claim to the respondent not later than the 60th day before the date the action is filed. The bill sets out the required contents of the written notice, which may be given in a manner prescribed for service of process in a civil action, and prohibits the notice from demanding a sum of damages, requesting settlement, or offering to settle the claim without a determination of whether a condition stated in the notice is excused by law or may be remedied.

C.S.H.B. 1463 authorizes a respondent who has received such a written notice to correct the alleged violation before the earliest date on which the claimant may file the action. The bill requires a respondent who has so corrected to provide a notice of the correction to the claimant that describes each correction and the manner in which the correction addresses the alleged violation. The bill requires a respondent who concludes that an alleged violation has not occurred and that a correction is not necessary to provide the claimant an explanation of the respondent's conclusion. The bill authorizes such a notice of correction or explanation to be given in a manner prescribed for service of process in a civil action.

C.S.H.B. 1463 requires a claimant who files an action to which the bill's provisions apply to establish by a preponderance of the evidence that the respondent has not corrected one or more

of the alleged violations stated in the written notice of intent to file a claim. The bill authorizes a respondent against whom an action is filed to file a plea in abatement and to request an evidentiary hearing on the plea. The bill requires the court to abate the action for a period not to exceed 60 days after the date of the hearing if the court finds by a preponderance of the evidence that the respondent initiated action to correct the alleged violation during the time allowed under the bill's provisions, that the respondent could not complete the corrections within that time, and that the corrections will be completed by the end of the period of abatement. The bill authorizes a claimant to file a motion to dismiss the action without prejudice, and authorizes a respondent to file a motion for summary judgment in accordance with the Texas Rules of Civil Procedure, if the respondent has provided a notice of correction or has completed corrections during a period of abatement.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1463 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. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 27A to read as follows:

CHAPTER 27A. ACTIONS INVOLVING THE AMERICANS WITH DISABILITIES ACT

Sec. 27A.001. DEFINITIONS. In this chapter:

(1) "Americans with Disabilities Act" means the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(2) "Claimant" means a person seeking relief under the Americans with Disabilities Act.

(3) "Respondent" means the person against whom a claimant is seeking relief under the Americans with Disabilities Act.

Sec. 27A.002. APPLICABILITY. This chapter applies to a claim under the Americans with Disabilities Act based on a respondent's failure to comply with applicable design, construction, technical, or other standards required by the Americans with Disabilities Act, including complying with website accessibility guidelines.

Sec. 27A.003. NOTICE OF INTENT TO FILE CLAIM. (a) Notwithstanding any other law, before a claimant files an action asserting a claim under the Americans with Disabilities Act, the claimant must give notice to the respondent of intent to file the

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. *(But see the following notations.)*

(See SECTION 2, Sec. 121.0041(a) below.)

(See SECTION 2, Sec. 121.0041(b) below.)

(See SECTION 2, Sec. 121.0041(c) below.)

claim. Notice required under this section must be made not later than the 150th day before the date the action asserting the claim is filed.

(b) The notice must state:

(1) the name of the individual asserting the claim under the Americans with Disabilities Act and the specific provision of the Americans with Disabilities Act that gives the individual standing to file an action asserting the claim;

(2) each alleged violation of the Americans with Disabilities Act, including each applicable statutory or regulatory provision alleged to have been violated;

(3) each design, construction, technical, or other standard alleged to have been violated; and

(4) the time, place, and manner in which the claimant discovered the alleged violation.

(c) The notice may be given in a manner prescribed for service of process in a civil action.

Sec. 27A.004. RIGHT TO CORRECT. A respondent who has received a notice of intent to file a claim under Section 27A.003 may correct an alleged violation of the Americans with Disabilities Act before the earliest date on which the claimant may file an action under Section 27A.003.

(See SECTION 2, Sec. 121.0041(d) below.)

Sec. 27A.005. NOTICE OF CORRECTION OR OTHER EXPLANATION. (a) A respondent who has corrected an alleged violation of the Americans with Disabilities Act shall provide notice of the correction to the claimant.

(See SECTION 2, Sec. 121.0041(e) below.)

(b) The notice must describe each correction and the manner in which the correction addresses the alleged violation.

(c) If the respondent concludes that the alleged violation has not occurred and that a correction is not necessary, the respondent shall provide the claimant an explanation of the respondent's conclusion.

(d) The notice of correction or explanation may be given in a manner prescribed for service of process in a civil action.

Sec. 27A.006. FILING AND ABATEMENT OF ACTION. (a) If a claimant files an action asserting a claim under the Americans with Disabilities Act, the claimant must establish by a preponderance of the evidence that the respondent has not corrected one or more of

(See SECTION 2, Sec. 121.0041(f) below.)

the alleged violations stated in the notice of intent to file a claim provided under Section 27A.003.

(b) If an action is filed, the respondent may file a plea in abatement and request an evidentiary hearing on the plea. The court shall abate the action for a period not to exceed 60 days from the date of the hearing if the court finds, by a preponderance of the evidence, that:

(1) the respondent initiated action to correct the alleged violation during the time allowed under Section 27A.004;

(2) the respondent could not complete the corrections within that time; and

(3) the corrections will be completed by the end of the period of abatement.

Sec. 27A.007. DISMISSAL OR CONTINUATION OF ACTION. If a respondent has provided a notice of correction or has completed corrections during a period of abatement under Section 27A.006:

(1) the claimant may file a motion to dismiss the action without prejudice; or

(2) the respondent may file a motion for summary judgment in accordance with the Texas Rules of Civil Procedure.

Sec. 27A.008. BAD FAITH CLAIMS. (a) A claimant may not in bad faith provide a notice of intent to file a claim under the Americans with Disabilities Act.

(b) A notice of intent to file a claim is in bad faith if the notice includes a claim that the respondent has violated the Americans with Disabilities Act and is liable for that violation and the notice:

(1) does not meet the requirements prescribed by Section 27A.003; or

(2) describes a claim that is objectively baseless because:

(A) the claimant does not have standing to file an action asserting the claim under the Americans with Disabilities Act; or

(B) the premises is not subject to the requirements of the Americans with Disabilities Act.

Sec. 27A.009. ATTORNEY GENERAL ENFORCEMENT. (a) If the attorney general believes that a person has violated or is violating Section 27A.008, the attorney general may bring an action on behalf of the state to enjoin the person from violating that section.

(b) In addition to seeking an injunction

(See SECTION 2, Sec. 121.0041(g) below.)

(See SECTION 2, Sec. 121.0041(h) below.)

under Subsection (a), the attorney general may request and the court may order any other relief that may be in the public interest, including:

(1) the imposition of a civil penalty in an amount not to exceed \$50,000 for each violation of Section 27A.008;

(2) an order requiring reimbursement to this state for the reasonable value of investigating and prosecuting a violation of Section 27A.008; and

(3) an order requiring restitution to a recipient of a bad faith notice of intent to file a claim for legal and professional expenses related to the violation.

Sec. 27A.010. CONSTRUCTION OF CHAPTER. This chapter may not be construed to:

(1) limit rights and remedies available to the state or another person under any other law; or

(2) alter or restrict the attorney general's authority under other law with regard to conduct involving claims under the Americans with Disabilities Act.

Sec. 27A.011. NO PRIVATE CAUSE OF ACTION. This chapter does not create a private cause of action for violation of Section 27A.008.

SECTION 2. Chapter 27A, Civil Practice and Remedies Code, as added by this Act, applies only to an action filed or a notice of intent to file a claim provided on or after the effective date of this Act.

No equivalent provision.

No equivalent provision.

SECTION 1. Section 121.004(b), Human Resources Code, is amended to read as follows:

(b) In addition to the penalty provided in Subsection (a), a person, including a firm, association, corporation, or other public or private organization, or the agent of the person, who violates the provisions of Section 121.003 is deemed to have deprived a person with a disability of his or her civil liberties. Subject to Section 121.0041, if applicable, the [The] person with a disability deprived of his or her civil liberties may maintain an [a cause of] action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least \$300 to the person with a disability.

No equivalent provision. (But see the following notations.)

(See SECTION 1, Sec. 27A.001 above.)

(See SECTION 1, Sec. 27A.002 above.)

(See SECTION 1, Sec. 27A.003 above.)

(See SECTION 1, Sec. 27A.004 above.)

SECTION 2. Chapter 121, Human Resources Code, is amended by adding Section 121.0041 to read as follows:

Sec. 121.0041. PROCEDURES FOR CERTAIN ACTIONS; OPPORTUNITY TO CURE. (a) In this section:

(1) "Claimant" means a person filing or intending to file an action under Section 121.004(b).

(2) "Respondent" means the person against whom a claimant files or intends to file an action under Section 121.004(b).

(b) This section applies only to an action under Section 121.004(b) alleging a failure to comply with applicable design, construction, technical, or similar standards required under Chapter 469, Government Code, or other applicable state or federal laws that require compliance with specified design, construction, technical, or similar standards, including Internet website accessibility guidelines, to accommodate persons with disabilities.

(c) Not later than the 60th day before the date an action to which this section applies is filed, the claimant must give written notice of the claim to the respondent. The notice may be given in a manner prescribed for service of process in a civil action. The written notice:

(1) must state:

(A) the name of the individual alleging a failure to comply with applicable design, construction, technical, or similar standards;

(B) in reasonable detail:

(i) each condition on the respondent's premises or Internet website that does not comply with an applicable design, construction, technical, or similar standard on which the claim is based; and

(ii) each design, construction, technical, or similar standard alleged to have been violated; and

(C) the time, place, and manner in which the claimant discovered the alleged violation; and

(2) may not demand a sum of damages, request settlement, or offer to settle the claim without a determination of whether a condition stated in the notice is excused by law or may be remedied.

(d) A respondent who has received a written notice under Subsection (c) may correct the alleged violation before the earliest date on which the claimant may file

(See SECTION 1, Sec. 27A.005 above.)

(See SECTION 1, Sec. 27A.006(a) above.)

(See SECTION 1, Sec. 27A.006(b) above.)

(See SECTION 1, Sec. 27A.007 above.)

SECTION 3. This Act takes effect September 1, 2017.

the action.

(e) A respondent who has corrected an alleged violation shall provide a notice of the correction to the claimant that describes each correction and the manner in which the correction addresses the alleged violation. If the respondent concludes that an alleged violation has not occurred and that a correction is not necessary, the respondent shall provide the claimant an explanation of the respondent's conclusion. The notice of correction or explanation may be given in a manner prescribed for service of process in a civil action.

(f) If a claimant files an action to which this section applies, the claimant must establish by a preponderance of the evidence that the respondent has not corrected one or more of the alleged violations stated in the written notice provided under Subsection (c).

(g) If an action is filed, the respondent may file a plea in abatement and request an evidentiary hearing on the plea. The court shall abate the action for a period not to exceed 60 days after the date of the hearing if the court finds by a preponderance of the evidence that:

(1) the respondent initiated action to correct the alleged violation during the time allowed under Subsection (d);

(2) the respondent could not complete the corrections within that time; and

(3) the corrections will be completed by the end of the period of abatement.

(h) If a respondent has provided the notice of correction or has completed corrections during a period of abatement under Subsection (g):

(1) the claimant may file a motion to dismiss the action without prejudice; or

(2) the respondent may file a motion for summary judgment in accordance with the Texas Rules of Civil Procedure.

SECTION 3. Same as introduced version.