

By: Geren

H.B. No. 2825

A BILL TO BE ENTITLED

AN ACT

relating to disclosures and discovery regarding expert witnesses in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 22, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EXPERT WITNESSES

Sec. 22.041. DISCLOSURE OF WITNESS IDENTITY. In addition to any other disclosure required by the Texas Rules of Civil Procedure, a party shall disclose to the other parties the identity of any person the party may use to present expert testimony at trial.

Sec. 22.042. EXPERT REPORT. Except as otherwise stipulated or ordered by the court, if the witness is retained or specially employed by a party to provide expert testimony in the case or is a person whose duties as the party's employee regularly involve giving expert testimony, the disclosure required by Section 22.041 must be accompanied by a written report prepared and signed by the witness. The report must include:

(1) a complete statement of all opinions to be expressed by the witness and the basis and reasons for those opinions;

(2) the facts or data considered by the witness in forming the opinions;

1 (3) copies of any exhibits to be used to summarize or
2 support the opinions;

3 (4) the witness's qualifications, including a list of
4 all publications authored by the witness in the preceding 10 years;

5 (5) a list of any other cases in which the witness has
6 testified as an expert at trial or by deposition in the preceding
7 four years; and

8 (6) a statement of the compensation to be paid for
9 study and testimony in the case.

10 Sec. 22.043. EXPERT WITNESS NOT PROVIDING REPORT. Except
11 as otherwise stipulated or ordered by the court, if an expert
12 witness is not required to provide a written report under Section
13 22.042, the disclosure required by Section 22.041 must state:

14 (1) the subject matter on which the witness is
15 expected to present expert testimony; and

16 (2) a summary of the facts and opinions to which the
17 witness is expected to testify.

18 Sec. 22.044. TIME FOR DISCLOSURE. A party shall make
19 disclosures under this subchapter at the times and in the sequence
20 the court orders. Except as otherwise stipulated or ordered by the
21 court, a disclosure required by this subchapter must be made:

22 (1) not later than the 90th day before the date set for
23 trial; or

24 (2) if the evidence is intended solely to contradict
25 or rebut evidence on the same subject matter identified by another
26 party in a report or disclosure provided under Section 22.042 or
27 22.043, not later than the 30th day after the date the other party's

1 disclosure is made.

2 Sec. 22.045. SUPPLEMENTATION OF DISCLOSURE. A party must
3 supplement a disclosure made by the party under this subchapter:

4 (1) in a timely manner if the party learns that in some
5 material respect the disclosure is incomplete or incorrect, and if
6 the additional or corrective information has not otherwise been
7 made known to the other parties during the discovery process or in
8 writing; or

9 (2) as ordered by the court.

10 Sec. 22.046. DISCOVERY OF COMMUNICATIONS BETWEEN ATTORNEY
11 AND EXPERT WITNESS. (a) Subject to Subsection (b), a court in a
12 civil action may not order discovery of a communication made in
13 anticipation of litigation or deposition or for trial between a
14 party's attorney and a witness expected to provide expert testimony
15 in the action, regardless of the form of the communication and
16 regardless of whether the witness provides an expert affidavit or a
17 written report under Section 22.042.

18 (b) Subsection (a) does not bar discovery to the extent a
19 communication:

20 (1) relates to compensation for the witness's study or
21 testimony;

22 (2) identifies facts or data that the party's attorney
23 provided and that the witness considered in forming the opinions to
24 be expressed; or

25 (3) identifies assumptions that the party's attorney
26 provided and that the witness relied on in forming the opinions to
27 be expressed.

1 Sec. 22.047. DISCOVERY OF DRAFT REPORT OR DISCLOSURE NOT
2 PERMITTED. A court in a civil action may not order discovery of any
3 draft of a written report or other disclosure required by this
4 subchapter, regardless of the form in which the draft is recorded.

5 Sec. 22.048. SUPREME COURT RULES. Notwithstanding Section
6 22.004, Government Code, the supreme court may not amend or adopt
7 rules in conflict with this subchapter.

8 SECTION 2. The change in law made by this Act applies only
9 to an action commenced on or after the effective date of this Act.

10 SECTION 3. This Act takes effect September 1, 2019.