

By: Burrows

H.B. No. 4575

A BILL TO BE ENTITLED

AN ACT

relating to civil actions involving the exercise of certain constitutional rights.

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

SECTION 1. Sections 27.001(2), (6), and (7), Civil Practice and Remedies Code, are amended to read as follows:

(2) "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests relating to public participation in governmental or official proceedings.

(6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief. The term does not include:

(A) an alternative dispute resolution procedure, including arbitration;

(B) a petition under Rule 202, Texas Rules of Civil Procedure; or

(C) a discovery request in litigation, including a subpoena request.

(7) "Matter of public concern" means a public ~~[includes an]~~ issue related to:

(A) health or safety;

- 1 (B) environmental, economic, or community
- 2 well-being;
- 3 (C) the government;
- 4 (D) a public official or public figure; or
- 5 (E) a good, product, or service in the
- 6 marketplace.

7 SECTION 2. The heading to Section 27.003, Civil Practice  
8 and Remedies Code, is amended to read as follows:

9 Sec. 27.003. MOTION TO DISMISS; RESPONSE TO MOTION.

10 SECTION 3. Section 27.003, Civil Practice and Remedies  
11 Code, is amended by amending Subsection (c) and adding Subsections  
12 (d) and (e) to read as follows:

13 (c) Except as provided by Section 27.006(b), on the filing  
14 of a motion under this section, all discovery in the legal action  
15 related to the claim that is the subject of the motion is suspended  
16 until the court has ruled on the motion to dismiss.

17 (d) The moving party shall provide written notice of the  
18 date and time of a hearing under Section 27.004 not later than the  
19 14th day before the date of the hearing.

20 (e) The party bringing the legal action that is the subject  
21 of a motion under this section may file a response to the motion not  
22 later than the seventh day before the date of a hearing described by  
23 Section 27.004.

24 SECTION 4. Section 27.005(d), Civil Practice and Remedies  
25 Code, is amended to read as follows:

26 (d) Notwithstanding the provisions of Subsection (c), the  
27 court shall dismiss a legal action against the moving party if:

1           (1) the moving party establishes by a preponderance of  
2 the evidence each essential element of a valid defense to the  
3 nonmovant's claim; and

4           (2) there is no material fact in dispute regarding  
5 each essential element described by Subdivision (1).

6           SECTION 5. Section 27.006, Civil Practice and Remedies  
7 Code, is amended by amending Subsection (a) and adding Subsection  
8 (c) to read as follows:

9           (a) In determining whether a legal action should be  
10 dismissed under this chapter, the court shall consider the  
11 pleadings, evidence obtained from discovery, and supporting and  
12 opposing affidavits stating the facts on which the liability or  
13 defense is based.

14           (c) To determine the amount of any award that may be made  
15 under Section 27.009, the court may hear testimony or require the  
16 parties to submit affidavits.

17           SECTION 6. Section 27.008, Civil Practice and Remedies  
18 Code, is amended by adding Subsections (c) and (d) to read as  
19 follows:

20           (c) Discovery in the legal action is suspended during an  
21 interlocutory appeal under this section only for the part of the  
22 legal action that is the subject of the motion under Section 27.003.

23           (d) If a party intends to appeal any other procedural  
24 ruling, the party must include in that appeal the appeal of the  
25 trial court's order on the motion to dismiss.

26           SECTION 7. Section 27.009(a), Civil Practice and Remedies  
27 Code, is amended to read as follows:

1 (a) If the court orders dismissal of a legal action under  
2 this chapter, the court may [~~shall~~] award to the moving party:

3 (1) court costs, reasonable attorney's fees, and other  
4 expenses incurred in defending against the legal action as justice  
5 and equity may require; [~~and~~]

6 (2) sanctions against the party who brought the legal  
7 action as the court determines sufficient to deter the party who  
8 brought the legal action from bringing similar actions described in  
9 this chapter; or

10 (3) the remedies described by Subdivisions (1) and  
11 (2).

12 SECTION 8. Section 27.010(b), Civil Practice and Remedies  
13 Code, is amended to read as follows:

14 (b) This chapter does not apply to a legal action brought  
15 against a person [~~primarily~~] engaged in the business of selling or  
16 leasing goods or services, if the statement or conduct arises out  
17 of:

18 (1) the sale or lease of goods, services, or an  
19 insurance product;

20 (2) [7] insurance services;

21 (3) [7-~~or~~] a commercial transaction in which the  
22 intended audience is an actual or potential buyer or customer;

23 (4) a deceptive trade practice under Chapter 17,  
24 Business & Commerce Code; or

25 (5) a covenant not to compete.

26 SECTION 9. Section 27.011, Civil Practice and Remedies  
27 Code, is amended by adding Subsection (c) to read as follows:

1        (c) This chapter does not affect discovery related to a  
2 motion filed before a motion to dismiss under Section 27.003.

3        SECTION 10. Section 51.014(b), Civil Practice and Remedies  
4 Code, is amended to read as follows:

5        (b) An interlocutory appeal under Subsection (a), other  
6 than an appeal under Subsection (a)(4) or in a suit brought under  
7 the Family Code, stays the commencement of a trial in the trial  
8 court pending resolution of the appeal. An interlocutory appeal  
9 under Subsection (a)(3), (5), or (8) [~~, or (12)~~] also stays all other  
10 proceedings in the trial court pending resolution of that appeal.

11        SECTION 11. The change in law made by this Act applies only  
12 to an action filed on or after the effective date of this Act. An  
13 action filed before the effective date of this Act is governed by  
14 the law applicable to the action immediately before the effective  
15 date of this Act, and that law is continued in effect for that  
16 purpose.

17        SECTION 12. This Act takes effect September 1, 2019.