

By: Hughes, Bettencourt
Creighton

S.B. No. 27

A BILL TO BE ENTITLED

AN ACT

relating to recovery of damages, attorney's fees, and costs related to frivolous claims and regulatory actions by state agencies.

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

SECTION 1. The heading to Chapter 105, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 105. FRIVOLOUS CLAIM OR REGULATORY ACTION BY STATE AGENCY

SECTION 2. Section 105.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES FOR FRIVOLOUS CLAIM. A party to a civil suit in a court of this state brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is entitled to recover, in addition to all other costs allowed by law or rule, a total amount not to exceed \$1 million for fees, expenses, and reasonable attorney's fees incurred by the party in defending the agency's action if:

(1) the court finds that the action is frivolous[~~7 unreasonable, or without foundation~~]; and

(2) the action is dismissed or judgment is awarded to the party.

SECTION 3. Section 105.003(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) To recover under Section 105.002 [~~this chapter~~], the

1 party must file a written motion alleging that the agency's claim is
2 frivolous[~~, unreasonable, or without foundation~~]. The motion may
3 be filed at any time after the filing of the pleadings in which the
4 agency's cause of action is alleged.

5 SECTION 4. Chapter 105, Civil Practice and Remedies Code,
6 is amended by adding Section 105.005 to read as follows:

7 Sec. 105.005. RECOVERY OF ATTORNEY'S FEES AND COSTS IN
8 FRIVOLOUS REGULATORY ACTION. The court reviewing a decision in a
9 contested case under Chapter 2001, Government Code, may award a
10 person, in addition to all other costs allowed by law or rule, an
11 amount not to exceed \$1 million for reasonable attorney's fees and
12 costs incurred in defending against a frivolous regulatory action
13 during the contested case and judicial review of the decision in the
14 contested case if:

- 15 (1) the person prevails on review; and
16 (2) there is a final determination that the regulatory
17 action is frivolous.

18 SECTION 5. Chapter 105, Civil Practice and Remedies Code,
19 is amended by adding Section 105.006 to read as follows:

20 Sec. 105.006. COURT FACTORS FOR FRIVOLOUS CLAIM OR ACTION.
21 In determining whether a claim or regulatory action is frivolous
22 under this chapter, the court may consider whether:

- 23 (1) the claim's or action's realistic chance of
24 ultimate success is slight;
25 (2) the claim or action has no arguable basis in law or
26 fact;
27 (3) it is clear that the state agency cannot prove

1 facts in support of the claim or action; or

2 (4) the totality of the tendered evidence fails to
3 demonstrate any arguable basis for the claim or action.

4 SECTION 6. Section 2001.058, Government Code, is amended by
5 adding Subsection (e-1) to read as follows:

6 (e-1) Notwithstanding Subsection (e), a state agency may
7 not vacate or modify an order of an administrative law judge that
8 awards attorney's fees and costs under Section 2001.903.

9 SECTION 7. Subchapter Z, Chapter 2001, Government Code, is
10 amended by adding Section 2001.903 to read as follows:

11 Sec. 2001.903. RECOVERY OF ATTORNEY'S FEES AND COSTS IN
12 CONTESTED CASES INVOLVING FRIVOLOUS REGULATORY ACTION. (a) The
13 administrative law judge in a contested case may award a person, in
14 addition to all other costs allowed by law or rule, an amount not to
15 exceed \$1 million for reasonable attorney's fees and costs incurred
16 in defending against a frivolous regulatory action during the case
17 if there is no judicial review of the decision in the case and:

18 (1) the person prevails in the case; and

19 (2) there is a final determination that the regulatory
20 action is frivolous.

21 (b) In determining whether a regulatory action is frivolous
22 under Subsection (a), the administrative law judge may consider
23 whether:

24 (1) the action's realistic chance of ultimate success
25 is slight;

26 (2) the action has no arguable basis in law or fact;

27 (3) it is clear that the state agency cannot prove

1 facts in support of the action; or

2 (4) the totality of the tendered evidence fails to
3 demonstrate any arguable basis for the action.

4 SECTION 8. The change in law made by this Act applies only
5 to a claim filed or regulatory action taken on or after the
6 effective date of this Act. A claim filed or regulatory action
7 taken before the effective date of this Act is governed by the law
8 applicable to the claim or regulatory action immediately before the
9 effective date of this Act, and that law is continued in effect for
10 that purpose.

11 SECTION 9. This Act takes effect September 1, 2019.