

By: Perry

S.B. No. 1442

A BILL TO BE ENTITLED

AN ACT

relating to civil actions by a civilly committed individual.

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

SECTION 1. Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 14A to read as follows:

CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14A.0001. DEFINITIONS. In this chapter:

(1) "Civilly committed individual" means a sexually violent predator as defined by Section 841.003, Health and Safety Code, who has been committed to a facility operated by or under the supervision of the Texas Civil Commitment Office.

(2) "Claim" means a cause of action governed by this chapter.

(3) "Office" means the Texas Civil Commitment Office.

(4) "Trust account" means a civilly committed individual's trust account administered by the office by a facility under contract with the office.

(5) "Unsworn declaration" means a document executed in accordance with Chapter 132.

Sec. 14A.0002. SCOPE OF CHAPTER. (a) This chapter applies only to an action, including an appeal or original proceeding, brought by a civilly committed individual in a district, county, justice of the peace, or small claims court or an appellate court,

1 including the supreme court or the court of criminal appeals, in
2 which an affidavit or unsworn declaration of inability to pay costs
3 is filed by the civilly committed individual.

4 (b) This chapter does not apply to an action brought under
5 the Family Code.

6 SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

7 Sec. 14A.0051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS
8 CLAIM. (a) A court may dismiss a claim, either before or after
9 service of process, if the court finds that:

10 (1) the allegation of poverty in the affidavit or
11 unsworn declaration is false;

12 (2) the claim is frivolous or malicious; or

13 (3) the civilly committed individual filed an
14 affidavit or unsworn declaration required by this chapter that the
15 individual knew was false.

16 (b) In determining whether a claim is frivolous or
17 malicious, the court may consider whether:

18 (1) the claim's realistic chance of ultimate success
19 is slight;

20 (2) the claim has no arguable basis in law or in fact;

21 (3) it is clear that the civilly committed individual
22 cannot prove the facts in support of the claim; or

23 (4) the claim is substantially similar to a previous
24 claim filed by the civilly committed individual because the claim
25 arises from the same operative facts.

26 (c) In determining whether Subsection (a) applies, the
27 court may hold a hearing. The hearing may be held before or after

1 service of process, and it may be held on motion of the court, a
2 party, or the clerk of the court.

3 (d) On the filing of a motion under Subsection (c), the
4 court shall suspend discovery relating to the claim pending the
5 hearing.

6 (e) A court that dismisses a claim brought by an individual
7 housed in a facility operated by or under contract with the office
8 may notify the office of the dismissal and, on the court's own
9 motion or the motion of any party or the clerk of the court, may
10 advise the office that a mental health evaluation of the civilly
11 committed individual may be appropriate.

12 Sec. 14A.0052. AFFIDAVIT RELATING TO PREVIOUS FILINGS. (a)
13 A civilly committed individual who files an affidavit or unsworn
14 declaration of inability to pay costs shall file a separate
15 affidavit or declaration:

16 (1) identifying the court that ordered the
17 individual's civil commitment under Chapter 841, Health and Safety
18 Code;

19 (2) indicating whether any cause of action or
20 allegation contained in the petition has previously been filed in
21 any other court, and if so, state the cause of action or allegation
22 previously filed and comply with Subdivision (6) and Subsection
23 (b);

24 (3) identifying each action, other than an action
25 under the Family Code, previously brought by the individual and in
26 which the individual was not represented by an attorney, without
27 regard to whether the individual was civilly committed at the time

1 the action was brought;

2 (4) certifying that all grievance processes
3 applicable to the matter that is the basis of the claim, if any,
4 have been exhausted;

5 (5) certifying that no court has found the individual
6 to be a vexatious litigant under Chapter 11; and

7 (6) describing each action that was previously brought
8 by:

9 (A) stating the operative facts for which relief
10 was sought;

11 (B) listing the case name, cause number, and the
12 court in which the action was brought;

13 (C) identifying each party named in the action;
14 and

15 (D) stating the result of the action, including
16 whether the action or a claim that was a basis for the action was
17 dismissed as frivolous or malicious under Section 13.001, 14.003,
18 or 14A.0051 or otherwise.

19 (b) If the affidavit or unsworn declaration filed under this
20 section states that a previous action or claim was dismissed as
21 frivolous or malicious, the affidavit or unsworn declaration must
22 state the date of the final order affirming the dismissal.

23 (c) The affidavit or unsworn declaration must be
24 accompanied by the certified copy of the trust account statement
25 required by Section 14A.0054(f).

26 Sec. 14A.0053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF
27 ADMINISTRATIVE REMEDIES. (a) A civilly committed individual who

1 files a claim that is subject to the grievance system established by
2 the office or a facility under contract with the office shall file
3 with the court:

4 (1) an affidavit or unsworn declaration stating the
5 date that the grievance was filed and the date the written decision
6 was received by the individual; and

7 (2) a copy of the written decision from the grievance
8 system.

9 (b) A court shall dismiss a claim if the civilly committed
10 individual fails to file the claim before the 31st day after the
11 date the individual receives the written decision from the
12 grievance system.

13 (c) If a claim is filed before the grievance system
14 procedure is complete, the court shall stay the proceeding with
15 respect to the claim for a period not to exceed 180 days to permit
16 completion of the grievance system procedure.

17 Sec. 14A.0054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A
18 court may order a civilly committed individual who has filed a claim
19 to pay court fees, court costs, and other costs in accordance with
20 this section and Section 14A.0055. The clerk of the court shall mail
21 a copy of the court's order and a certified bill of costs to the
22 office or facility under contract with the office, as appropriate.

23 (b) On the court's order, the civilly committed individual
24 shall pay an amount equal to the lesser of:

25 (1) 20 percent of the preceding six months' deposits to
26 the individual's trust account; or

27 (2) the total amount of court fees and costs.

1 (c) In each month following the month in which payment is
2 made under Subsection (b), the civilly committed individual shall
3 pay an amount equal to the lesser of:

4 (1) 10 percent of that month's deposits to the trust
5 account; or

6 (2) the total amount of court fees and costs that
7 remain unpaid.

8 (d) Payments under Subsection (c) shall continue until the
9 total amount of court fees and costs are paid or until the civilly
10 committed individual is released from confinement.

11 (e) On receipt of a copy of an order issued under Subsection
12 (a), the office or facility under contract with the office shall
13 withdraw money from the trust account in accordance with
14 Subsections (b), (c), and (d). The office or facility shall hold
15 the money in a separate account and shall forward the money to the
16 court clerk on the earlier of the following dates:

17 (1) the date the total amount to be forwarded equals
18 the total amount of court fees and costs that remains unpaid; or

19 (2) the date the civilly committed individual is
20 released.

21 (f) The civilly committed individual shall file a certified
22 copy of the individual's trust account statement with the court.
23 The statement must reflect the balance of the account at the time
24 the claim is filed and activity in the account during the six months
25 preceding the date on which the claim is filed. The court may
26 request the office to furnish the information required under this
27 subsection.

1 (g) A civilly committed individual may authorize payment in
2 addition to that required by this section.

3 (h) The court may dismiss a claim if the civilly committed
4 individual fails to pay fees and costs assessed under this section.

5 (i) A civilly committed individual may not avoid the fees
6 and costs assessed under this section by nonsuiting a party or by
7 voluntarily dismissing the action.

8 Sec. 14A.0055. OTHER COSTS. (a) An order of a court under
9 Section 14A.0054(a) shall include the costs described by Subsection
10 (b) if the court finds that:

11 (1) the civilly committed individual has previously
12 filed an action to which this chapter or Chapter 14 applies; and

13 (2) a final order has been issued that affirms that the
14 action was dismissed as frivolous or malicious under Section
15 13.001, 14.003, or 14A.0051 or otherwise.

16 (b) Costs under Subsection (a) shall include, as costs of
17 court, expenses incurred by the court or by the office or facility
18 under contract with the office, in connection with the claim and not
19 otherwise charged to the civilly committed individual under Section
20 14A.0054, including:

21 (1) expenses of service of process;

22 (2) postage; and

23 (3) transportation, housing, or medical care incurred
24 in connection with the appearance of the individual in the court for
25 any proceeding.

26 Sec. 14A.0056. HEARING. (a) The court may hold a hearing
27 under this chapter at a facility operated by or under contract with

1 the office or may conduct the hearing with video communications
2 technology that permits the court to see and hear the civilly
3 committed individual and that permits the individual to see and
4 hear the court and any other witness.

5 (b) A hearing conducted under this section by video
6 communications technology shall be recorded on videotape or by
7 other electronic means. The recording is sufficient to serve as a
8 permanent record of the hearing.

9 Sec. 14A.0057. SUBMISSION OF EVIDENCE. (a) The court may
10 request a person with an admissible document or admissible
11 testimony relevant to the subject matter of the hearing to submit a
12 copy of the document or written statement stating the substance of
13 the testimony.

14 (b) A written statement submitted under this section must be
15 made under oath or made as an unsworn declaration under Section
16 [132.001](#).

17 (c) A copy of a document submitted under this section must
18 be accompanied by a certification executed under oath by an
19 appropriate custodian of the record stating that the copy is
20 correct and any other matter relating to the admissibility of the
21 document that the court requires.

22 (d) A person submitting a written statement or document
23 under this section is not required to appear at the hearing.

24 (e) The court shall require that the civilly committed
25 individual be provided with a copy of each written statement or
26 document not later than the 14th day before the date on which the
27 hearing is to begin.

1 Sec. 14A.0058. DISMISSAL OF CLAIM. (a) The court may enter
2 an order dismissing the entire claim or a portion of the claim under
3 this chapter.

4 (b) If a portion of the claim is dismissed, the court shall
5 designate the issues and defendants on which the claim may proceed,
6 subject to Sections 14A.0054 and 14A.0055.

7 (c) An order under this section is not subject to
8 interlocutory appeal by the civilly committed individual.

9 Sec. 14A.0059. EFFECT ON OTHER CLAIMS. (a) Except as
10 provided by Subsection (b), on receipt of an order assessing fees
11 and costs under Section 14A.0054 that indicates that the court made
12 the finding described by Section 14A.0055(a), a clerk of a court may
13 not accept for filing another claim by the civilly committed
14 individual until the fees and costs assessed under Section 14A.0054
15 are paid.

16 (b) A court may allow a civilly committed individual who has
17 not paid the fees and costs assessed against the individual to file
18 a claim for injunctive relief seeking to enjoin an act or failure to
19 act that creates a substantial threat of irreparable injury or
20 serious physical harm to the individual.

21 Sec. 14A.0060. QUESTIONNAIRE. To implement this chapter, a
22 court may develop, for use in that court, a questionnaire to be
23 filed by the civilly committed individual.

24 Sec. 14A.0061. REVIEW AND RECOMMENDATION BY MAGISTRATES.

25 (a) The supreme court shall, by rule, adopt a system under which a
26 court may refer a suit governed by this chapter to a magistrate for
27 review and recommendation.

1 (b) The system adopted under Subsection (a) may be funded
2 from money appropriated to the supreme court or from money received
3 by the supreme court through interagency contract or contracts.

4 (c) For the purposes of Section 14A.0062, the adoption of a
5 system by rule under Subsection (a) does not constitute a
6 modification or repeal of a provision of this chapter.

7 Sec. 14A.0062. CONFLICT WITH TEXAS RULES OF CIVIL
8 PROCEDURE. Notwithstanding Section 22.004, Government Code, this
9 chapter may not be modified or repealed by a rule adopted by the
10 supreme court.

11 SECTION 2. Chapter 14A, Civil Practice and Remedies Code,
12 as added by this Act, applies only to an action filed on or after the
13 effective date of this Act.

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