

## **BILL ANALYSIS**

C.S.H.B. 2850  
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Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 2020, the Texas Supreme Court made changes to both Rule 194 and Rule 195 of the Texas Rules of Civil Procedure. These changes relating to requests for disclosures and discoveries regarding testifying expert witnesses have placed an unneeded burden on pro se litigants and attorneys, especially in rural areas. C.S.H.B. 2850 seeks to address these issues by reversing the policy changes made by the supreme court relating to disclosure requirements and discovery regarding testifying expert witnesses.

### **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. 2850 amends the Family Code to set out discovery procedures that apply to suits under the Family Code.

C.S.H.B. 2850 authorizes a party to request not later than the 30th day before the last day of any applicable discovery period to obtain disclosure from another party of any or all of the following information and material:

- the correct names of the parties to the action;
- the name, address, and telephone number of any potential parties;
- the legal theories and, in general, the factual bases of the responding party's claims or defenses;
- the amount and any method of calculating economic damages;
- the name, address, and telephone number of any person having knowledge of relevant facts and a brief statement of each identified person's connection with the action;
- for any testifying expert:
  - the expert's name, address, and telephone number;
  - the subject matter on which the expert will testify;
  - the general substance of the expert's mental impressions and opinions and a brief summary of the basis for those impressions and opinions, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting that information; and
  - certain other materials if the expert is retained by, employed by, or otherwise subject to the control of the responding party;
- any discoverable settlement agreement;

- any discoverable witness settlement;
- in an action alleging physical or mental injury and damages from the occurrence that is the subject of the action, all medical records and bills that are reasonably related to the injuries or damages asserted or an authorization permitting the disclosure of such information;
- in an action alleging physical or mental injury and damages from the occurrence that is the subject of the action, all medical records and bills obtained by the responding party through an authorization provided by the requesting party; and
- the name, address, and telephone number of any person who may be designated as a responsible third party.

The bill establishes that that the responding party is not required to compile all evidence that may be offered at trial as a part of a such a request for the legal theories and, in general, the factual bases of the responding party's claims or defenses. The bill establishes that a response to a request for legal theories or a request for the amount and any method of calculating economic damages is not admissible if it has been changed by an amended or supplemental response and prohibits its use for impeachment.

C.S.H.B. 2850 requires the responding party to serve a written response on the requesting party for applicable information regarding expert testimony not later than the 30th day after the date the requesting party serves a request, except that a defendant served with a request before the defendant's answer is due is not required to respond until the 50th day after the date the request is served.

C.S.H.B. 2850 requires a responding party, unless otherwise ordered by the court, to provide the requested information regarding any testifying expert not later than the 30th day after the date the request is served or the following date, as applicable:

- with respect to an expert testifying for a party seeking affirmative relief, the 90th day before the end of the discovery period; or
- with respect to any other expert, the 60th day before the end of the discovery period.

C.S.H.B. 2850 requires the responding party to provide a copy of the documents and other tangible things with their response to the request unless all of the following conditions apply:

- the responsive documents are voluminous;
- the response states a reasonable time and place for the production of the documents;
- the responding party produces the documents at the time and place stated in the response unless otherwise agreed by the parties or ordered by the court; and
- the responding party provides the requesting party a reasonable opportunity to inspect the documents.

C.S.H.B. 2850 authorizes a party, in addition to a disclosure request, to obtain discovery by oral deposition and a report containing the following information:

- the subject matter on which a testifying expert is expected to testify;
- the expert's mental impressions and opinions;
- the facts known to the expert, regardless of when the factual information is acquired, that relate to or form the basis of the expert's mental impressions and opinions; and
- other discoverable items, including documents not produced in response to a disclosure request.

C.S.H.B. 2850 requires a party to an applicable suit who is seeking affirmative relief to make an expert retained by, employed by, or otherwise under the control of the party available for a deposition in accordance with the following provisions:

- if the party does not provide a report of the expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert:
  - the party must make the expert available for a deposition reasonably promptly after the designation; and

- if the deposition cannot be reasonably concluded more than 15 days before the deadline for designating other experts due to the actions of the party who designated the expert, the court must extend the deadline for other experts testifying on the same subject; and
- if the party does provide that required report when the party designates the expert, the party is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.

C.S.H.B. 2850 requires a party to an applicable suit who is not seeking affirmative relief to make an expert retained by, employed by, or otherwise under the control of the party available for a deposition reasonably promptly after the party designates the expert and the experts testifying on the same subject for the party seeking affirmative relief have been deposed. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, the court may order that information be reduced to tangible form and produced into a report, in addition to the deposition.

C.S.H.B. 2850 prohibits a party in an applicable suit from asserting a work product privilege or objecting on the basis of a work product privilege to a disclosure request provided under the bill's provisions.

C.S.H.B. 2850 expressly limits the methods a party may use to request that another party designate and disclose information concerning testifying expert witnesses in an applicable suit to a disclosure request or a deposition or report in accordance with the procedures provided by the bill. The bill establishes that a party's duty to amend and supplement written discovery regarding a testifying expert is governed by the applicable provision of the Texas Rules of Civil Procedure establishing that duty for responses to written discovery in general. The bill requires a party who retains, employs, or otherwise controls an expert witness to supplement the expert's deposition testimony or written report only with regard to the expert's mental impressions or opinions and the basis for those impressions or opinions. When a party takes the oral deposition of an expert witness retained by an opposing party, the party retaining the expert is required to pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

C.S.H.B. 2850 prohibits the modification or repeal of its provisions by a rule adopted by the Texas Supreme Court. The bill applies only to a civil action brought under the Family Code filed on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2850 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits a provision from the introduced that prohibited a court from exempting a party to one of the following civil actions from the requirements for initial disclosure under the Texas Rules of Civil Procedure:

- an action brought by or against the Office of the Attorney General in a Title IV-D case;
- an action for a family violence protective order; or
- a child protection suit.

The substitute omits a provision found in the introduced that sets out certain information and statements that a court is prohibited from requiring a party to provide in a suit for dissolution of

a marriage or a suit under the Family Code for spousal or child support. The substitute also omits a provision included in the introduced that prohibits a court from exempting a party to an applicable action from an initial disclosure requirement. Instead, the substitute provides for the content for which a party is authorized to request disclosure.

The substitute includes a provision not in the introduced establishing that certain requests that have been changed by an amended or supplemental response are inadmissible and prohibits their use for impeachment.

Both the introduced and the substitute prohibit a party in an applicable suit from asserting work product privilege, however the substitute additionally prohibits a party from objecting on the basis of a work product privilege.

The provisions in the introduced regarding information provided before a discovery request applied to a civil action under the Family Code for divorce, annulment, to declare a marriage void, or for child or spousal support, whereas all of the substitute's provisions apply to a civil action brought under the Family Code.

Whereas the introduced set deadlines for a responding party to provide certain information relating to testifying and nontestifying experts, the substitute makes these deadlines applicable to a request for information regarding any testifying expert.

The substitute sets a deadline that was not in the introduced for a responding party to respond to the requesting party for a general request for disclosure not later than the 30th day after the date the requesting party serves the request. The substitute includes an exception from the deadline requirement absent from the introduced that a defendant served with a request before the defendant's answer is due is not required to respond until the 50th day after the date the request is served. The substitute requires that the responding party's response be served as a written response, whereas the introduced did not make such a specification.