

1-1 By: Perry S.B. No. 1180
1-2 (In the Senate - Filed February 24, 2023; March 9, 2023,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 6, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 6, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Whitmire</u>	X		
1-10	<u>Flores</u>	X		
1-11	<u>Bettencourt</u>	X		
1-12	<u>Hinojosa</u>	X		
1-13	<u>Huffman</u>	X		
1-14	<u>King</u>	X		
1-15	<u>Miles</u>	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1180 By: Whitmire

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to civil actions by a civilly committed individual.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Subtitle A, Title 2, Civil Practice and Remedies
1-22 Code, is amended by adding Chapter 14A to read as follows:
1-23 CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL
1-24 SUBCHAPTER A. GENERAL PROVISIONS
1-25 Sec. 14A.001. DEFINITIONS. In this chapter:
1-26 (1) "Civilly committed individual" means a sexually
1-27 violent predator as defined by Section 841.003, Health and Safety
1-28 Code, who has been committed to a facility operated by or under
1-29 contract with the Texas Civil Commitment Office.
1-30 (2) "Claim" means a cause of action governed by this
1-31 chapter.
1-32 (3) "Office" means the Texas Civil Commitment Office.
1-33 (4) "Trust account" means a civilly committed
1-34 individual's trust account administered by the office or by a
1-35 facility under contract with the office.
1-36 (5) "Unsworn declaration" means a document executed in
1-37 accordance with Chapter 132.
1-38 Sec. 14A.002. SCOPE OF CHAPTER. (a) This chapter applies
1-39 only to an action, including an appeal or original proceeding,
1-40 brought by a civilly committed individual in a district, county, or
1-41 justice court or an appellate court, including the supreme court or
1-42 the court of criminal appeals, in which an affidavit or unsworn
1-43 declaration of inability to pay costs is filed by the civilly
1-44 committed individual.
1-45 (b) This chapter does not apply to an action brought under
1-46 the Family Code.
1-47 SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM
1-48 Sec. 14A.051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS
1-49 CLAIM. (a) A court may dismiss a claim, either before or after
1-50 service of process, if the court finds that:
1-51 (1) the allegation of poverty in the affidavit or
1-52 unsworn declaration is false;
1-53 (2) the claim is frivolous or malicious; or
1-54 (3) the civilly committed individual filed an
1-55 affidavit or unsworn declaration required by this chapter that the
1-56 individual knew was false.
1-57 (b) In determining whether a claim is frivolous or
1-58 malicious, the court may consider whether:
1-59 (1) the claim's realistic chance of ultimate success
1-60 is slight;

2-1 (2) the claim has no arguable basis in law or in fact;
2-2 (3) it is clear that the civilly committed individual
2-3 cannot prove the facts in support of the claim; or

2-4 (4) the claim is substantially similar to a previous
2-5 claim filed by the civilly committed individual because the claim
2-6 arises from the same operative facts.

2-7 (c) In determining whether Subsection (a) applies, the
2-8 court may hold a hearing. The hearing may be held before or after
2-9 service of process, and it may be held on motion of the court, a
2-10 party, or the court clerk.

2-11 (d) On the filing of a motion under Subsection (c), the
2-12 court shall suspend discovery relating to the claim pending the
2-13 hearing.

2-14 (e) A court that dismisses a claim brought by a civilly
2-15 committed individual housed in a facility operated by or under
2-16 contract with the office may notify the office of the dismissal and,
2-17 on the court's own motion or the motion of any party or the court
2-18 clerk, may advise the office that a mental health evaluation of the
2-19 individual may be appropriate.

2-20 Sec. 14A.052. AFFIDAVIT RELATING TO PREVIOUS FILINGS. (a)
2-21 A civilly committed individual who files an affidavit or unsworn
2-22 declaration of inability to pay costs shall file a separate
2-23 affidavit or declaration:

2-24 (1) identifying the court that ordered the
2-25 individual's civil commitment under Chapter 841, Health and Safety
2-26 Code;

2-27 (2) indicating whether any cause of action or
2-28 allegation contained in the petition has previously been filed in
2-29 any other court, and if so, stating the cause of action or
2-30 allegation previously filed and complying with Subdivision (6) and
2-31 Subsection (b);

2-32 (3) identifying each action, other than an action
2-33 under the Family Code, previously brought by the individual in
2-34 which the individual was not represented by an attorney, without
2-35 regard to whether the individual was civilly committed at the time
2-36 the action was brought;

2-37 (4) certifying that all grievance processes
2-38 applicable to the matter that is the basis of the claim, if any,
2-39 have been exhausted;

2-40 (5) certifying that no court has found the individual
2-41 to be a vexatious litigant under Chapter 11; and

2-42 (6) describing each action that was previously brought
2-43 by:

2-44 (A) stating the operative facts for which relief
2-45 was sought;

2-46 (B) listing the case name, the cause number, and
2-47 the court in which the action was brought;

2-48 (C) identifying each party named in the action;
2-49 and

2-50 (D) stating the result of the action, including
2-51 whether the action or a claim that was a basis for the action was
2-52 dismissed as frivolous or malicious under Section 13.001, 14.003,
2-53 or 14A.051 or otherwise.

2-54 (b) If the affidavit or unsworn declaration filed under this
2-55 section states that a previous action or claim was dismissed as
2-56 frivolous or malicious, the affidavit or unsworn declaration must
2-57 state the date of the final order affirming the dismissal.

2-58 (c) The affidavit or unsworn declaration must be
2-59 accompanied by the certified copy of the trust account statement
2-60 required by Section 14A.054(f).

2-61 Sec. 14A.053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF
2-62 ADMINISTRATIVE REMEDIES. (a) A civilly committed individual who
2-63 files a claim that is subject to a grievance system established by
2-64 the office or a facility under contract with the office shall file
2-65 with the court:

2-66 (1) an affidavit or unsworn declaration stating the
2-67 date that the grievance was filed and the date the written decision
2-68 was received by the individual; and

2-69 (2) a copy of the written decision from the grievance

3-1 system.

3-2 (b) A court shall dismiss a claim if the civilly committed
 3-3 individual fails to file the claim before the 31st day after the
 3-4 date the individual receives the written decision from the
 3-5 grievance system.

3-6 (c) If a claim is filed before the grievance system
 3-7 procedure is complete, the court shall stay the proceeding with
 3-8 respect to the claim for a period not to exceed 180 days to permit
 3-9 completion of the grievance system procedure.

3-10 Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A
 3-11 court may order a civilly committed individual who has filed a claim
 3-12 to pay court fees, court costs, and other costs in accordance with
 3-13 this section and Section 14A.055. The court clerk shall mail a copy
 3-14 of the court's order and a certified bill of costs to the office or
 3-15 facility under contract with the office, as appropriate.

3-16 (b) On the court's order, the civilly committed individual
 3-17 shall pay an amount equal to the lesser of:

3-18 (1) 20 percent of the preceding six months' deposits to
 3-19 the individual's trust account; or

3-20 (2) the total amount of court fees, court costs, and
 3-21 other costs.

3-22 (c) In each month following the month in which payment is
 3-23 made under Subsection (b), the civilly committed individual shall
 3-24 pay an amount equal to the lesser of:

3-25 (1) 10 percent of that month's deposits to the trust
 3-26 account; or

3-27 (2) the total amount of court fees, court costs, and
 3-28 other costs that remains unpaid.

3-29 (d) Payments under Subsection (c) shall continue until the
 3-30 total amount of court fees, court costs, and other costs are paid or
 3-31 until the civilly committed individual is released from
 3-32 confinement.

3-33 (e) On receipt of a copy of an order issued under Subsection
 3-34 (a), the office or facility under contract with the office shall
 3-35 withdraw money from the trust account in accordance with
 3-36 Subsections (b), (c), and (d). The office or facility shall hold
 3-37 the money in a separate account and shall forward the money to the
 3-38 court clerk on the earlier of the following dates:

3-39 (1) the date the total amount to be forwarded equals
 3-40 the total amount of court fees, court costs, and other costs that
 3-41 remains unpaid; or

3-42 (2) the date the civilly committed individual is
 3-43 released.

3-44 (f) The civilly committed individual shall file a certified
 3-45 copy of the individual's trust account statement with the court.
 3-46 The statement must reflect the balance of the account at the time
 3-47 the claim is filed and activity in the account during the six months
 3-48 preceding the date on which the claim is filed. The court may
 3-49 request the office to furnish the information required under this
 3-50 subsection.

3-51 (g) A civilly committed individual may authorize payment in
 3-52 addition to that required by this section.

3-53 (h) The court may dismiss a claim if the civilly committed
 3-54 individual fails to pay fees and costs assessed under this section.

3-55 (i) A civilly committed individual may not avoid the fees
 3-56 and costs assessed under this section by nonsuiting a party or by
 3-57 voluntarily dismissing the action.

3-58 Sec. 14A.055. OTHER COSTS. (a) An order under Section
 3-59 14A.054(a) must include the costs described by Subsection (b) if
 3-60 the court finds that:

3-61 (1) the civilly committed individual has previously
 3-62 filed an action to which this chapter or Chapter 14 applies; and

3-63 (2) a final order has been issued that affirms that the
 3-64 action was dismissed as frivolous or malicious under Section
 3-65 13.001, 14.003, or 14A.051 or otherwise.

3-66 (b) If Subsection (a) applies, costs of court must include
 3-67 expenses incurred by the court or by the office or facility under
 3-68 contract with the office, in connection with the claim and not
 3-69 otherwise charged to the civilly committed individual under Section

4-1 14A.054, including:

4-2 (1) expenses of service of process;

4-3 (2) postage; and

4-4 (3) transportation, housing, or medical care incurred
 4-5 in connection with the appearance of the individual in the court for
 4-6 any proceeding.

4-7 Sec. 14A.056. HEARING. (a) The court may hold a hearing
 4-8 under this chapter at a facility operated by or under contract with
 4-9 the office or may conduct the hearing with video communications
 4-10 technology that permits the court to see and hear the civilly
 4-11 committed individual and that permits the individual to see and
 4-12 hear the court and any other witness.

4-13 (b) A hearing conducted under this section by video
 4-14 communications technology shall be recorded on videotape or by
 4-15 other electronic means. The recording is sufficient to serve as a
 4-16 permanent record of the hearing.

4-17 Sec. 14A.057. SUBMISSION OF EVIDENCE. (a) The court may
 4-18 request a person with an admissible document or admissible
 4-19 testimony relevant to the subject matter of the hearing to submit a
 4-20 copy of the document or written statement stating the substance of
 4-21 the testimony.

4-22 (b) A written statement submitted under this section must be
 4-23 made under oath or made as an unsworn declaration under Section
 4-24 132.001.

4-25 (c) A copy of a document submitted under this section must
 4-26 be accompanied by a certification executed under oath by an
 4-27 appropriate custodian of the record stating that the copy is
 4-28 correct and any other matter relating to the admissibility of the
 4-29 document that the court requires.

4-30 (d) A person submitting a written statement or document
 4-31 under this section is not required to appear at the hearing.

4-32 (e) The court shall require that the civilly committed
 4-33 individual be provided with a copy of each written statement or
 4-34 document not later than the 14th day before the date on which the
 4-35 hearing is to begin.

4-36 Sec. 14A.058. DISMISSAL OF CLAIM. (a) The court may enter
 4-37 an order dismissing the entire claim or a portion of the claim under
 4-38 this chapter.

4-39 (b) If a portion of the claim is dismissed, the court shall
 4-40 designate the issues and defendants on which the claim may proceed,
 4-41 subject to Sections 14A.054 and 14A.055.

4-42 (c) An order under this section is not subject to
 4-43 interlocutory appeal by the civilly committed individual.

4-44 Sec. 14A.059. EFFECT ON OTHER CLAIMS. (a) Except as
 4-45 provided by Subsection (b), on receipt of an order assessing fees
 4-46 and costs under Section 14A.054 that indicates that the court made
 4-47 the finding described by Section 14A.055(a), a court clerk may not
 4-48 accept for filing another claim by the civilly committed individual
 4-49 until the fees and costs assessed under Section 14A.054 are paid.

4-50 (b) A court may allow a civilly committed individual who has
 4-51 not paid the fees and costs assessed against the individual to file
 4-52 a claim for injunctive relief seeking to enjoin an act or failure to
 4-53 act that creates a substantial threat of irreparable injury or
 4-54 serious physical harm to the individual.

4-55 Sec. 14A.060. QUESTIONNAIRE. To implement this chapter, a
 4-56 court may develop, for use in that court, a questionnaire to be
 4-57 filed by the civilly committed individual.

4-58 Sec. 14A.061. REVIEW AND RECOMMENDATION BY MAGISTRATES.
 4-59 (a) The supreme court shall, by rule, adopt a system under which a
 4-60 court may refer a suit governed by this chapter to a magistrate for
 4-61 review and recommendation.

4-62 (b) The system adopted under Subsection (a) may be funded
 4-63 from money appropriated to the supreme court or from money received
 4-64 by the supreme court through interagency contract or contracts.

4-65 (c) For the purposes of Section 14A.062, the adoption of a
 4-66 system by rule under Subsection (a) does not constitute a
 4-67 modification or repeal of a provision of this chapter.

4-68 Sec. 14A.062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE.
 4-69 Notwithstanding Section 22.004, Government Code, this chapter may

5-1 not be modified or repealed by a rule adopted by the supreme court.

5-2 SECTION 2. Chapter 14A, Civil Practice and Remedies Code,
5-3 as added by this Act, applies only to an action filed on or after the
5-4 effective date of this Act.

5-5 SECTION 3. This Act takes effect immediately if it receives
5-6 a vote of two-thirds of all the members elected to each house, as
5-7 provided by Section 39, Article III, Texas Constitution. If this
5-8 Act does not receive the vote necessary for immediate effect, this
5-9 Act takes effect September 1, 2023.

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