

SUBJECT: Establishing statutory procedures for filing a bill of review

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 8 ayes — Bosse, Janek, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek

0 nays

1 absent — Alvarado

WITNESSES: None

BACKGROUND: The equitable bill of review is a procedural device that dates back to English common law. Bills of review have long been used in Texas as a means of examining prior judgments by a court. The Texas Supreme Court recognized the use of bills of review in *Garrett v. Gaines*, 6 Tex. 435 (1851).

To file a bill of review, applicants must show that a judgment has been entered against them, that through no fault of their own the judgment was not defended, and that they have a meritorious defense against that judgment. If the bill of review is granted, the prior judgment is set aside on principles of equity and fairness, and the case is decided on its merits.

A bill of review is used not to examine erroneous judgments or to appeal cases but only when procedural errors deny a person the opportunity to defend the original claim. While the appeal of a judgment generally must be filed within 60 days of that judgment, an application for a bill of review may be filed at any time within the general statute-of-limitations period of four years. The general limitations period is used because the bill of review is considered essentially a new suit, not an appeal of an earlier judgment.

DIGEST: HB 900 would specify that an application for a bill of review to set aside a prior judgment would have to be filed within four years of the judgment date in the court that rendered the judgment or a successor of that court.

As amended, the bill would require applicants filing for a bill of review to claim that they were not at fault in not having contested a prior judgment in a timely manner, that they did not receive proper notice, or that they did not

have an opportunity to discover the notice made through publication. The application would have to state, through verified affidavit, the grounds justifying the bill of review.

Under HB 900, all parties affected by the judgment could intervene in the action at any time. The bill also would allow any party to request a pretrial hearing and would authorize judges to call a pretrial hearing on their own initiative.

HB 900 would take effect September 1, 1999, and would apply only to an application for a bill of review filed on or after that date.

**SUPPORTERS
SAY:**

HB 900 is an attempt to codify existing case law and procedure for applications for a bill of review. The use of a bill of review has long been accepted practice in Texas. However, any party or attorney who wishes to use a bill of review or any judge who wishes to rule on an application must wade through dozens of cases interpreting the procedure.

Because no one case sets out a clear standard, different courts can apply the case law on bills of review in varied manners. Divergent applications are not necessarily incorrect but merely reflect the fact that case law is interpretive in nature and based on the details of the case before the court. Statutory law, on the other hand, sets out clear rules that can be applied in all courts and adapted to the particular facts. HB 900 simply would take a morass of legal interpretation and set it down in clear, easy-to-understand language.

A bill of review, as interpreted by case law and set out in HB 900, is an unusual procedure used only when equity and fairness demand that a prior judgment be set aside. The procedure could be used only in very specific circumstances when applicants for the bill could show they previously were denied the ability to defend their rights.

Codifying the bill-of-review procedure would allow judges — especially those in justice-of-the-peace courts who sometimes lack formal legal training and have limited research resources — to grasp quickly the basics of a complicated legal procedure. HB 900 should be a model for other legislation that helps to promote judicial economy. Reducing a complex set of case law to either a statute or a rule would help Texas judges to apply the law more

easily and would ensure that its application will be more uniform throughout the state.

A previous version of this bill, passed by the House and Senate in 1997, was vetoed by the governor. HB 900 has been modified to address the concerns raised by the governor and would not change any existing law dealing with bills of review.

OPPONENTS
SAY:

HB 900 is unnecessary, as it merely restates law that already is applied in Texas. Specifying in statute the procedure for a bill of review also could limit a judge's discretion in these cases. The bill of review never was designed to be a carefully delineated procedure. According to legal historians, it was developed so that a judge could go outside the bounds of standard procedure to prevent manifest injustice. Establishing a strict statutory procedure could limit some of the flexibility the current case law allows.

NOTES:

The committee amendment would remove a provision requiring that an applicant for bill of review allege a meritorious claim or defense against the original suit.

In 1997, a similar bill, HB 506 by Dutton, passed both the House and the Senate, but was vetoed by the governor. The governor's veto message stated: "House Bill 506 proposes changes that are unconstitutional and contrary to existing law. It seeks to codify Texas law on equitable bills of review, but is contrary to U.S. Supreme Court precedent and unwisely changes the common law on statute of limitations on bills of review."