

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 274  
By: Creighton et al. (Huffman)  
State Affairs  
5/21/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 274 allows for the efficient resolution of certain civil matters in certain Texas courts. The changes to statute will make the civil justice system more accessible, more efficient, and less costly to all Texans while reducing the overall costs of the civil justice system to all taxpayers.

C.S.H.B. 274 amends current law relating to the reform of certain remedies and procedures in civil actions and family law matters.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1.01 (Section 22.004, Government Code) and SECTION 2.01 (Section 22.004, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. EARLY DISMISSAL OF ACTIONS

SECTION 1.01. Amends Section 22.004, Government Code, by adding Subsection (g), as follows:

(g) Requires the Supreme Court of Texas (supreme court) to adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. Requires that the rules provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. Prohibits the rules from applying to actions under the Family Code.

SECTION 1.02. Amends Chapter 30, Civil Practice and Remedies Code, by adding Section 30.021, as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. Requires the court, in a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, to award costs and reasonable and necessary attorney's fees to the prevailing party. Provides that this section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.

#### ARTICLE 2. EXPEDITED CIVIL ACTIONS

SECTION 2.01. Amends Section 22.004, Government Code, by adding Subsection (h), as follows:

(h) Requires the supreme court to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. Requires that the rules apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of

damage of any kind, does not exceed \$100,000. Requires that the rules address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. Prohibits the supreme court from adopting rules under this subsection that conflict with a provision of Chapter 74 (Medical Liability), Civil Practice and Remedies Code; the Family Code; the Property Code; or the Tax Code.

#### ARTICLE 3. APPEAL OF CONTROLLING QUESTION OF LAW

SECTION 3.01. Amends Section 51.014, Civil Practice and Remedies Code, by amending Subsections (d) and (e) and adding Subsections (d-1) and (f), as follows:

(d) Authorizes a trial court in a civil action, on a party's motion or on its own initiative, by written order, to permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Deletes existing text authorizing a district court, county court at law, or county court to issue a written order for interlocutory appeal in a civil action not otherwise appealable under this section if the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion, an immediate appeal from the order may materially advance the ultimate termination of the litigation, and the parties agree to the order.

(d-1) Provides that Subsection (d) does not apply to an action brought under the Family Code.

(e) Provides that an appeal under Subsection (d) does not stay proceedings in the trial court unless the parties agree to a stay, or the trial or appellate court orders a stay of the proceedings pending appeal, rather than unless the parties agree and the trial court, the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.

(f) Authorizes an appellate court to accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). Provides that if the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. Provides that the date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

SECTION 3.02. Amends Section 22.225(d), Government Code, to provide that a petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) (relating to an appeal of an order that certifies or refuses to certify a class in a suit), (6) (relating to an appeal of an order that denies a motion for summary judgment), or (11) (relating to an appeal of an order that denies a motion to dismiss), or (d), Civil Practice and Remedies Code.

#### ARTICLE 4. ALLOCATION OF LITIGATION COSTS

SECTION 4.01. Amends Sections 42.001(5) and (6), Civil Practice and Remedies Code, to redefine "litigation costs" and "settlement offer."

SECTION 4.02. Amends Sections 42.002(b), (d), and (e), Civil Practice and Remedies Code, as follows:

(b) Provides that this chapter does not apply to certain actions, including an action filed in a justice of the peace court or a small claims court.

(d) Provides that this chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with Section 42.003 (Making Settlement Offer), rather than this chapter; or

(2) offer to settle or compromise a claim in an action to which this chapter does not apply.

(e) Provides that an offer to settle or compromise that does not comply with Section 42.003, rather than that is not made under this chapter, or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle any party, rather than the offering party, to recover litigation costs under this chapter.

SECTION 4.03. Amends Section 42.003, Civil Practice and Remedies Code, as follows:

Sec. 42.003. MAKING SETTLEMENT OFFER. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that the parties are not required to file a settlement offer with the court.

SECTION 4.04. Amends Section 42.004(d), Civil Practice and Remedies Code, as follows:

(d) Prohibits the litigation costs that may be awarded under this chapter to any party from being greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant. Deletes existing text prohibiting the litigation costs that may be awarded under this chapter from being greater than an amount computed by determining the sum of 50 percent of the economic damages to be awarded to the claimant in the judgment, 100 percent of the noneconomic damages to be awarded to the claimant in the judgment, and 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and subtracting from that amount, the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.

## ARTICLE 5. DESIGNATION OF RESPONSIBLE THIRD PARTIES

SECTION 5.01. Amends Section 33.004, Civil Practice and Remedies Code, by adding Subsection (d), as follows:

(d) Prohibits a defendant from designating a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

SECTION 5.02. Repealer: Section 33.004(e) (relating to limitations from seeking to join certain persons designated as a responsible third party), Civil Practice and Remedies Code.

## ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Makes application of this Act prospective.

SECTION 6.02. Effective date: September 1, 2011.