

## **BILL ANALYSIS**

Senate Research Center  
87R1329 SCL-F

H.B. 3360  
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Jurisprudence  
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Engrossed

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

Civilly committed sexually violent predators are a highly litigious group and many of their lawsuits may be frivolous or new suits regarding the same facts. There is significant cost to courts in addition to the time spent by the Texas Civil Commitment Office and the Office of the Attorney General when dealing with indigent individuals who are exempt from court costs. H.B. 3360 seeks to reduce frivolous lawsuits concerning civilly committed sexually violent predators by establishing procedures governing an action brought by such an individual relating to the individual's inability to pay court costs.

H.B. 3360 amends current law relating to civil actions by a civilly committed individual.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Section 14B.0061, Civil Practice and Remedies Code) of this bill.

Rulemaking authority previously granted to the Supreme Court of Texas is modified in SECTION 1 (Section 14B.0062, Civil Practice and Remedies Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle A, Title 2, Civil Practice and Remedies Code, by adding Chapter 14B, as follows:

#### CHAPTER 14B. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 14B.0001. DEFINITIONS. Defines "civilly committed individual," "claim," "office," "trust account," and "unsworn declaration" for this chapter.

Sec. 14B.0002. SCOPE OF CHAPTER. (a) Provides that this chapter applies only to an action, including an appeal or original proceeding, brought by a civilly committed individual in a district, county, or justice court or an appellate court, including the Supreme Court of Texas or the Texas Court of Criminal Appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the civilly committed individual.

(b) Provides that this chapter does not apply to an action brought under the Family Code.

##### SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

Sec. 14B.0051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS CLAIM. (a) Authorizes a court to dismiss a claim, either before or after service of process, if the court finds that:

- (1) the allegation of poverty in the affidavit or unsworn declaration is false;
- (2) the claim is frivolous or malicious; or
- (3) the civilly committed individual filed an affidavit or unsworn declaration required by this chapter that the individual knew was false.

(b) Authorizes the court, in determining whether a claim is frivolous or malicious, to consider whether:

- (1) the claim's realistic chance of ultimate success is slight;
- (2) the claim has no arguable basis in law or in fact;
- (3) it is clear that the civilly committed individual cannot prove the facts in support of the claim; or
- (4) the claim is substantially similar to a previous claim filed by the civilly committed individual because the claim arises from the same operative facts.

(c) Authorizes the court, in determining whether Subsection (a) applies, to hold a hearing. Authorizes that the hearing be held before or after service of process, and authorizes that it be held on motion of the court, a party, or the clerk of the court.

(d) Requires the court, on the filing of a motion under Subsection (c), to suspend discovery relating to the claim pending the hearing.

(e) Authorizes a court that dismisses a claim brought by a civilly committed individual housed in a facility operated by or under contract with the Texas Civil Commitment Office (TCCO) to notify TCCO of the dismissal and, on the court's own motion or the motion of any party or the clerk of the court, to advise TCCO that a mental health evaluation of the individual may be appropriate.

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

- (1) identifying the court that ordered the individual's civil commitment under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code;
- (2) indicating whether any cause of action or allegation contained in the petition has previously been filed in any other court, and if so, stating the cause of action or allegation previously filed and complying with Subdivision (6) and Subsection (b);
- (3) identifying each action, other than an action under the Family Code, previously brought by the individual in which the individual was not represented by an attorney, without regard to whether the individual was civilly committed at the time the action was brought;
- (4) certifying that all grievance processes applicable to the matter that is the basis of the claim, if any, have been exhausted;
- (5) certifying that no court has found the individual to be a vexatious litigant under Chapter 11 (Vexatious Litigants); and
- (6) describing each action that was previously brought by:

- (A) stating the operative facts for which relief was sought;
- (B) listing the case name, the cause number, and the court in which the action was brought;
- (C) identifying each party named in the action; and
- (D) stating the result of the action, including whether the action or a claim that was a basis for the action was dismissed as frivolous or malicious under Section 13.001 (Dismissal of Action), 14.003 (Dismissal of Claim), or 14B.0051 or otherwise.

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

(c) Requires that the affidavit or unsworn declaration be accompanied by the certified copy of the trust account statement required by Section 14B.0054(f).

Sec. 14B.0053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF ADMINISTRATIVE REMEDIES. (a) Requires a civilly committed individual who files a claim that is subject to a grievance system established by TCCO or a facility under contract with TCCO to file with the court:

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

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

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

(c) Requires the court, if a claim is filed before the grievance system procedure is complete, to stay the proceeding with respect to the claim for a period not to exceed 180 days to permit completion of the grievance system procedure.

Sec. 14B.0054. COURT FEES, COURT COSTS, OTHER COSTS. (a) Authorizes a court to order a civilly committed individual who has filed a claim to pay court fees, court costs, and other costs in accordance with this section and Section 14B.0055. Requires the clerk of the court to mail a copy of the court's order and a certified bill of costs to TCCO or facility under contract with TCCO, as appropriate.

(b) Requires the civilly committed individual, on the court's order, to pay an amount equal to the lesser of 20 percent of the preceding six months' deposits to the individual's trust account or the total amount of court fees, court costs, and other costs.

(c) Requires the civilly committed individual, in each month following the month in which payment is made under Subsection (b), to pay an amount equal to the lesser of 10 percent of that month's deposits to the trust account or the total amount of court fees, court costs, and other costs that remains unpaid.

(d) Requires that payments under Subsection (c) continue until the total amount of court fees, court costs, and other costs are paid or until the civilly committed individual is released from confinement.

(e) Requires TCCO or the facility under contract with the office, on receipt of a copy of an order issued under Subsection (a), to withdraw money from the trust account in accordance with Subsections (b), (c), and (d). Requires TCCO or the facility to hold the money in a separate account and to forward the money to the court clerk on the earlier of the following dates:

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

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

(f) Requires the civilly committed individual to file a certified copy of the individual's trust account statement with the court. Requires that the statement reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed. Authorizes the court to request TCCO to furnish the information required under this subsection.

(g) Authorizes a civilly committed individual to authorize payment in addition to that required by this section.

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

(i) Prohibits a civilly committed individual from avoiding the fees and costs assessed under this section by nonsuiting a party or by voluntarily dismissing the action.

Sec. 14B.0055. OTHER COSTS. (a) Requires that an order of a court under Section 14B.0054(a) include the costs described by Subsection (b) if the court finds that:

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

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

(b) Requires that costs of court, if Subsection (a) applies, include expenses incurred by the court or by TCCO or the facility under contract with TCCO, in connection with the claim and not otherwise charged to the civilly committed individual under Section 14B.0054, including:

(1) expenses of service of process;

(2) postage; and

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

Sec. 14B.0056. HEARING. (a) Authorizes the court to hold a hearing under this chapter at a facility operated by or under contract with TCCO or to conduct the hearing with video communications technology that permits the court to see and hear the civilly committed individual and that permits the individual to see and hear the court and any other witness.

(b) Requires that a hearing conducted under this section by video communications technology be recorded on videotape or by other electronic means. Provides that the recording is sufficient to serve as a permanent record of the hearing.

Sec. 14B.0057. SUBMISSION OF EVIDENCE. (a) Authorizes the court to request a person with an admissible document or admissible testimony relevant to the subject matter of the hearing to submit a copy of the document or written statement stating the substance of the testimony.

(b) Requires that a written statement submitted under this section be made under oath or made as an unsworn declaration under Section 132.001 (Unsworn Declaration).

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

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

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

Sec. 14B.0058. DISMISSAL OF CLAIM. (a) Authorizes the court to enter an order dismissing the entire claim or a portion of the claim under this chapter.

(b) Requires a court, if a portion of the claim is dismissed, to designate the issues and defendants on which the claim is authorized to proceed, subject to Sections 14B.0054 and 14B.0055.

(c) Provides that an order under this section is not subject to interlocutory appeal by the civilly committed individual.

Sec. 14B.0059. EFFECT ON OTHER CLAIMS. (a) Prohibits a clerk of a court, except as provided by Subsection (b), on receipt of an order assessing fees and costs under Section 14B.0054 that indicates that the court made the finding described by Section 14B.0055(a), from accepting for filing another claim by the civilly committed individual until the fees and costs assessed under Section 14B.0054 are paid.

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

Sec. 14B.0060. QUESTIONNAIRE. Authorizes a court, to implement this chapter, to develop, for use in that court, a questionnaire to be filed by the civilly committed individual.

Sec. 14B.0061. REVIEW AND RECOMMENDATION BY MAGISTRATES. (a) Requires the Supreme Court of Texas to, by rule, adopt a system under which a court is authorized to refer a suit governed by this chapter to a magistrate for review and recommendation.

(b) Authorizes that the system adopted under Subsection (a) be funded from money appropriated to the Supreme Court of Texas or from money received by the Supreme Court of Texas through interagency contract or contracts.

(c) Provides that for the purposes of Section 14B.0062, the adoption of a system by rule under Subsection (a) does not constitute a modification or repeal of a provision of this chapter.

Sec. 14B.0062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE. Prohibits this chapter, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from being modified or repealed by a rule adopted by the Supreme Court of Texas.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.