

BILL ANALYSIS

Senate Research Center

H.B. 2850
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State Affairs
5/18/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2850 amends current law relating to discovery procedures for civil actions brought under the Family Code.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Family Code by adding Title 6, as follows:

TITLE 6. CIVIL PROCEDURE

CHAPTER 301. DISCOVERY PROCEDURES FOR CIVIL ACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. **APPLICABILITY OF CHAPTER.** Provides that this chapter applies only to a civil action brought under this code.

Sec. 301.002. **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this chapter, notwithstanding Section 22.004 (Rules of Civil Procedure), Government Code, from being modified or repealed by a rule adopted by the Supreme Court of Texas.

Sec. 301.003. **DRAFT EXPERT REPORTS AND DISCLOSURES PROTECTED.** Provides that a draft expert report or draft disclosure required under this chapter is protected from discovery, regardless of the form in which the draft is recorded.

SUBCHAPTER B. REQUEST FOR DISCLOSURE

Sec. 301.051. **REQUEST.** Authorizes a party, not later than the 30th day before the last day of any applicable discovery period, to obtain disclosure from another party of the information or material described by Section 301.052 by serving the other party a certain request. Sets forth the language required to be included on the request.

Sec. 301.052. **CONTENT.** (a) Authorizes a party to request disclosure under Section 301.051 of any or all of the following:

- (1) the correct names of the parties to the action;
- (2) the name, address, and telephone number of any potential parties;
- (3) the legal theories and, in general, the factual bases of the responding party's claims or defenses;
- (4) the amount and any method of calculating economic damages;

(5) 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;

(6) for any testifying expert:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) 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

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(ii) the expert's current resume and biography;

(7) any discoverable settlement agreement described by Rule 192.3(g), Texas Rules of Civil Procedure;

(8) any discoverable witness settlement described by Rule 192.3(h), Texas Rules of Civil Procedure;

(9) in an action alleging physical or mental injury and damages from the occurrence that is the subject of the action:

(A) all medical records and bills that are reasonably related to the injuries or damages asserted; or

(B) an authorization permitting the disclosure of the information described by Paragraph (A);

(10) 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

(11) the name, address, and telephone number of any person who is authorized to be designated as a responsible third party.

(b) Provides that the responding party, for purposes of Subsection (a)(3), is not required to compile all evidence that is authorized to be offered at trial.

Sec. 301.053. RESPONSE. Requires the responding party to serve a written response on the requesting party not later than the 30th day after the date the requesting party serves a request under Section 301.051, except that:

(1) 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; and

(2) a response to a request under Section 301.052(a)(6) is governed by Subchapter C.

Sec. 301.054. **PRODUCTION OF DOCUMENTS AND TANGIBLE ITEMS.** Requires the responding party to provide copies of documents and other tangible items with the response to a request served under Section 301.051 unless:

- (1) the responsive documents are voluminous;
- (2) the responding party states a reasonable time and place for the production of the documents;
- (3) the responding party produces the documents at the time and place stated under Subdivision (2) unless otherwise agreed by the parties or ordered by the court; and
- (4) the responding party provides the requesting party a reasonable opportunity to inspect the documents.

Sec. 301.055. **WORK PRODUCT OBJECTION PROHIBITED.** Prohibits a party from asserting a work product privilege for or object on the basis of a work product privilege to a request served under Section 301.051.

Sec. 301.056. **CERTAIN RESPONSES NOT ADMISSIBLE.** Provides that a response to a request under Section 301.052(a)(3) or (4) that has been changed by an amended or supplemental response is not admissible and the response is prohibited from being used for impeachment.

SUBCHAPTER C. DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

Sec. 301.101. **PERMISSIBLE DISCOVERY METHODS.** Authorizes a party to request another party to designate and disclose information concerning testifying expert witnesses only through:

- (1) a disclosure request served under Section 301.051; or
- (2) a deposition or report permitted by this subchapter.

Sec. 301.102. **DEADLINE FOR RESPONSE.** Requires a responding party, unless otherwise ordered by the court, to provide the information requested under Section 301.052(a)(6) not later than the later of:

- (1) the 30th day after the date the request is served; or
- (2) either, as applicable:
 - (A) with respect to an expert testifying for a party seeking affirmative relief, the 90th day before the end of the discovery period; or
 - (B) with respect to an expert not described by Paragraph (A), the 60th day before the end of the discovery period.

Sec. 301.103. **DEPOSITION AVAILABILITY.** (a) Requires a party 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 this section.

- (b) Requires a party seeking affirmative relief, if the party does not provide a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, to make the expert available for a deposition reasonably promptly after the

designation. Requires the court, 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, to extend the deadline for other experts testifying on the same subject.

(c) Provides that a party seeking affirmative relief, if the party provides a report of the party's expert's factual observations, tests, supporting data, calculations, photographs, and opinions when the party designates the expert, is not required to make the expert available for a deposition until reasonably promptly after all other experts have been designated.

(d) Requires a party 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.

Sec. 301.104. **CONTENT OF ORAL DEPOSITIONS AND COURT-ORDERED REPORTS.** Authorizes a party, in addition to a disclosure request served under Section 301.051, to obtain discovery by oral deposition and a report prepared in accordance with Section 301.105 of:

- (1) the subject matter on which a testifying expert is expected to testify;
- (2) the expert's mental impressions and opinions;
- (3) 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
- (4) other discoverable items, including documents not produced in response to a disclosure request.

Sec. 301.105. **COURT-ORDERED REPORTS.** Authorizes the court, if the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert are not recorded and reduced to tangible form, to order that information be reduced to tangible form and produced in addition to the deposition.

Sec. 301.106. **AMENDMENT AND SUPPLEMENTATION OF DISCOVERY.** Provides that a party's duty to amend and supplement written discovery regarding a testifying expert is governed by Rule 193.5, Texas Rules of Civil Procedure. Requires a party, if the party retains, employs, or otherwise controls an expert witness, to amend or 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.

Sec. 301.107. **COST OF EXPERT WITNESSES.** Requires the party retaining the expert, when a party takes the oral deposition of an expert witness retained by an opposing party, to pay all reasonable fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition.

Sec. 301.108. **EXPERT COMMUNICATIONS PROTECTED.** Provides that communications between a party's attorney and a testifying expert witness in an action subject to this chapter are protected from discovery regardless of the form of the communications, except to the extent that the communications:

- (1) relate to compensation for the expert's study or testimony;
- (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions the expert will express; or

(3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions the expert will express.

SECTION 2. Makes application of Chapter 301, Family Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.