

By: Creighton

H.B. No. 274

A BILL TO BE ENTITLED

AN ACT

relating to attorney's fees, early dismissal, expedited trials, and the reform of certain remedies and procedures in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Civil Practice and Remedies Code, is amended by designating Sections 38.001 through 38.006 as Subchapter A, Chapter 38, Civil Practice and Remedies Code, and adding a heading to Subchapter A to read as follows:

SUBCHAPTER A. RECOVERY OF ATTORNEY'S FEES BY PREVAILING PARTY

SECTION 2. Sections 38.001, 38.002, and 38.006, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. The prevailing party with respect to a claim ~~[A person]~~ may recover reasonable attorney's fees from an individual, ~~[or]~~ corporation, or other legal entity ~~[in addition to the amount of a valid claim and costs,]~~ if the claim is for:

- (1) rendered services;
- (2) performed labor;
- (3) furnished material;
- (4) freight or express overcharges;
- (5) lost or damaged freight or express;
- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an oral or written contract.

1 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES.
2 Attorney's [~~To recover attorney's~~] fees may be recovered under this
3 subchapter if [~~chapter~~]:

4 (1) the person seeking to recover attorney's fees is
5 [~~claimant must be~~] represented by an attorney;

6 (2) the claimant presents [~~must present~~] the claim to
7 the opposing party or to a duly authorized agent of the opposing
8 party; and

9 (3) payment for the just amount owed is [~~must~~] not
10 [~~have been~~] tendered before the expiration of the 30th day after the
11 claim is presented.

12 Sec. 38.006. EXCEPTIONS. This subchapter [~~chapter~~] does
13 not apply to a contract issued by an insurer that is subject to the
14 provisions of:

- 15 (1) Title 11, Insurance Code;
16 (2) Chapter 541, Insurance Code;
17 (3) the Unfair Claim Settlement Practices Act
18 (Subchapter A, Chapter 542, Insurance Code); or
19 (4) Subchapter B, Chapter 542, Insurance Code.

20 SECTION 3. Chapter 38, Civil Practice and Remedies Code, is
21 amended by adding Subchapter B to read as follows:

22 SUBCHAPTER B. ELECTION REGARDING LITIGATION COSTS

23 Sec. 38.011. DEFINITIONS. In this subchapter:

24 (1) "Abusive civil action" means a civil action that a
25 reasonable person would conclude is an abuse of the civil justice
26 process.

27 (2) "Claim" means a request for monetary damages filed

1 in a civil action, other than a request for reimbursement of
2 attorney's fees or other costs of litigation in a civil action, if
3 the request is for:

4 (A) damages for alleged personal injury,
5 property damage, breach of contract, or death, regardless of the
6 legal theories or statutes on the basis of which recovery is sought;
7 or

8 (B) damages other than for alleged personal
9 injury, property damage, or death allegedly resulting from any
10 tortious conduct, regardless of the legal theories or statutes on
11 the basis of which recovery is sought.

12 (3) "Claimant" means a party who has asserted a claim,
13 including a plaintiff, counterclaimant, cross-claimant,
14 third-party plaintiff, or intervenor.

15 (4) "Defendant" means a party against whom a claim has
16 been made, including a defendant, counterdefendant,
17 cross-defendant, or third-party defendant.

18 (5) "Financial interest" means a financial interest
19 held by an attorney under an agreement between the attorney and a
20 claimant or defendant in which the amount or the payment of the fee
21 for the attorney's legal services is contingent wholly or partly on
22 the outcome of the civil action.

23 Sec. 38.012. APPLICABILITY. (a) This subchapter does not
24 apply to:

25 (1) a class action;

26 (2) a shareholder's derivative action;

27 (3) an action brought under the Family Code;

1 (4) an action to collect workers' compensation
2 benefits under Subtitle A, Title 5, Labor Code; or

3 (5) an action filed in a justice of the peace court.

4 (b) This subchapter does not apply to a civil action in
5 which the amount in controversy, including all requests for
6 damages, reimbursement of attorney's fees, and litigation costs, is
7 less than \$100,000 and the claimant has made an election to proceed
8 under Chapter 29A.

9 Sec. 38.013. ELECTION. (a) A defendant may elect to apply
10 the provisions of this subchapter to any civil action in which a
11 claimant has asserted a claim against the defendant.

12 (b) An election under this section must identify each
13 claimant against whom the election is made. An election may not be
14 made before the 60th day after the date the defendant filed an
15 answer to the claimant's civil action or within 60 days of the date
16 of trial. The election must be:

17 (1) in writing;

18 (2) signed by the attorneys of record of the
19 defendant;

20 (3) filed with the papers as part of the record; and

21 (4) served on all claimants against whom the election
22 is made.

23 (c) A deadline under this subchapter may be amended or
24 modified by agreement of the parties or by order of the court in a
25 discovery control plan as provided by Rule 190, Texas Rules of Civil
26 Procedure.

27 Sec. 38.014. REVOCATION OF ELECTION. (a) An election made

1 under Section 38.013 may be revoked wholly or partly by agreement of
2 the parties.

3 (b) A revocation under this section must identify the
4 claimants and defendants for whom the revocation is made. A
5 revocation may be made at any time before an award is made under
6 Section 38.016 based on the election. The revocation must be:

7 (1) in writing;

8 (2) signed by the attorneys of record of all parties to
9 whom the revocation applies; and

10 (3) filed as part of the record.

11 Sec. 38.015. DISMISSAL OR NONSUIT OF ACTION. If a claimant
12 against whom an election is made under Section 38.013 nonsuits or
13 voluntarily dismisses with prejudice the civil action for which the
14 election is made not later than the 15th day after the date the
15 claimant was served with the election, the election does not apply
16 to the nonsuited or dismissed civil action.

17 Sec. 38.016. AWARD OF LITIGATION COSTS. (a) If an election
18 is made under this subchapter, the prevailing party may recover the
19 prevailing party's litigation costs.

20 (b) The determination of which party is the prevailing party
21 is a question of law for the court.

22 (c) Litigation costs under this subchapter are costs
23 directly related to the civil action between the claimant and the
24 defendant. Litigation costs include:

25 (1) reasonable and necessary attorney's fees;

26 (2) reasonable and necessary travel expenses;

27 (3) reasonable fees for not more than two testifying

1 expert witnesses; and

2 (4) court costs.

3 (d) A fee agreement that results in a fee that is fixed or
4 contingent on results obtained or uncertainty of collection before
5 the legal services have been rendered may not be considered in the
6 determination of the amount of reasonable and necessary attorney's
7 fees.

8 Sec. 38.017. LIABILITY OF ATTORNEY. (a) This section
9 applies to a civil action if:

10 (1) a party is entitled to recover litigation costs
11 under Section 38.016;

12 (2) the election under Section 38.013 states that the
13 party making the election will seek litigation costs under this
14 section; and

15 (3) an attorney of record for the party against whom
16 litigation costs are recoverable has a financial interest in the
17 civil action.

18 (b) If the trier of fact determines that a civil action is an
19 abusive civil action, an attorney of record for the party against
20 whom litigation costs are recoverable is liable to the prevailing
21 party, jointly and severally, for the amount of the litigation
22 costs awarded.

23 (c) The determination of whether an attorney has a financial
24 interest in a civil action is a question of law for the court. An
25 attorney is not an attorney of record for the purposes of this
26 section if the attorney withdraws as attorney of record and
27 relinquishes any financial interest in the civil action more than

1 60 days before trial.

2 (d) The determination of whether a civil action is an
3 abusive civil action is a question of fact. In a case in which the
4 determination of whether a civil action is an abusive civil action
5 is submitted to a jury, the charge to the jury must ask whether the
6 civil action prosecuted by the claimant was an abusive civil
7 action. The following instruction must be included in the
8 charge: "You are instructed that an abusive civil action is a
9 civil action that a reasonable person would conclude is an abuse of
10 the civil justice process."

11 Sec. 38.018. APPLICABILITY OF OTHER LAW. (a) Except as
12 provided by Subsection (b), if an election is made under this
13 subchapter, this subchapter controls over any other law to the
14 extent the other law requires, authorizes, prohibits, or otherwise
15 governs the award of attorney's fees or other costs of litigation in
16 connection with the civil action.

17 (b) This subchapter does not govern the recovery of
18 litigation costs incurred in connection with a claim asserted
19 under:

20 (1) Subchapter E, Chapter 17, Business & Commerce
21 Code; or

22 (2) Chapter 541, Insurance Code.

23 SECTION 4. Section 51.014, Civil Practice and Remedies
24 Code, is amended by amending Subsections (d) and (e) and adding
25 Subsections (f) and (g) to read as follows:

26 (d) A person may appeal from an interlocutory order of a
27 district court, county court at law, or county court that is ~~may~~

1 ~~issue a written order for interlocutory appeal in a civil action]~~
2 not otherwise appealable [~~under this section~~] if:

3 (1) [~~the parties agree that~~] the order to be appealed
4 involves a controlling question of law as to which there is a
5 substantial ground for difference of opinion;

6 (2) an immediate appeal from the order may materially
7 advance the ultimate termination of the litigation; and

8 (3) the court of appeals accepts the interlocutory
9 appeal as provided by Subsection (f) [~~the parties agree to the~~
10 ~~order~~].

11 (e) An appeal under Subsection (d) does not stay proceedings
12 in the trial court unless the parties agree to a stay or [~~and~~] the
13 trial court or appellate court [~~, the court of appeals, or a judge of~~
14 ~~the court of appeals~~] orders a stay of the proceedings pending
15 appeal.

16 (f) An appellate court may, in its discretion, accept an
17 appeal permitted by Subsection (d) if the appealing party, not
18 later than the 15th day after the date the trial court signs the
19 order to be appealed, files in the court of appeals an application
20 for interlocutory appeal. The application must state the reasons
21 why an appeal is warranted under Subsection (d). If the court of
22 appeals accepts the appeal, the appeal is governed by the
23 procedures set forth in the Texas Rules of Appellate Procedure for
24 pursuing an accelerated appeal. The date the court of appeals
25 enters the order accepting the appeal starts the time for filing the
26 notice of appeal.

27 (g) If a party pursues an appeal under this section, the

1 trial court must state whether the trial court believes that an
2 appeal is warranted under Subsection (d).

3 SECTION 5. Subtitle B, Title 2, Civil Practice and Remedies
4 Code, is amended by adding Chapters 29 and 29A to read as follows:

5 CHAPTER 29. EARLY DISMISSAL OF ACTIONS

6 Sec. 29.001. POLICY. It is the policy of this state that
7 all civil actions be disposed of fairly, promptly, and with the
8 least possible expense to the litigants and to the state.

9 Sec. 29.002. ADOPTION OF RULES BY SUPREME COURT. (a) The
10 supreme court shall adopt rules to provide for the fair and early
11 dismissal of non-meritorious cases.

12 (b) The supreme court shall model the rules after Rules 9
13 and 12, Federal Rules of Civil Procedure, to the extent possible.

14 (c) The supreme court shall adopt rules under this chapter
15 not later than December 31, 2011. This subsection expires
16 September 1, 2012.

17 CHAPTER 29A. EXPEDITED CIVIL ACTIONS

18 Sec. 29A.001. DEFINITIONS. In this chapter:

19 (1) "Claim" means a request, including a counterclaim,
20 cross-claim, or third-party claim, to recover monetary damages.

21 (2) "Claimant" means a party, including a plaintiff,
22 counterclaimant, cross-claimant, third-party plaintiff, or
23 intervenor, seeking recovery of damages and, in an action for
24 recovery of damages for injury to another person, damage to
25 property of another person, death of another person, or harm to
26 another person, includes both the other person and the party
27 seeking recovery of damages.

1 (3) "Damages" means all claims under common law or
2 statutory and equitable causes of action for actual damages,
3 including economic and noneconomic damages, and additional
4 damages, including knowing damages, punitive damages, treble
5 damages, penalties, prejudgment interest, postjudgment interest,
6 attorney's fees, litigation costs, costs of court, and all other
7 damages of any kind.

8 (4) "Defendant" means a party, including a
9 counterdefendant, cross-defendant, or third-party defendant, from
10 whom a claimant seeks damages.

11 Sec. 29A.002. APPLICABILITY. (a) This chapter applies to
12 any party who is a claimant or defendant, including:

- 13 (1) a county;
- 14 (2) a municipality;
- 15 (3) a public school district;
- 16 (4) a public junior college district;
- 17 (5) a charitable organization;
- 18 (6) a nonprofit organization;
- 19 (7) a hospital district;
- 20 (8) a hospital authority;
- 21 (9) any other political subdivision of the state; and
- 22 (10) the State of Texas.

23 (b) This chapter does not apply to any civil action
24 primarily governed by the Family Code.

25 (c) In an action to which this chapter applies, the
26 provisions of this chapter prevail over all other law to the extent
27 of any conflict.

1 (d) This chapter does not waive sovereign immunity or
2 governmental immunity of any claimant or defendant.

3 Sec. 29A.003. CLAIMANT TO MAKE ELECTION. (a) This chapter
4 applies only in a civil action in which:

5 (1) the total amount of damages the claimant seeks to
6 recover for all claims is not less than \$10,000 and not more than
7 \$100,000; and

8 (2) the claimant files and serves a written election
9 under this chapter.

10 (b) An election must be made at the time the electing
11 claimant first files a claim in the action.

12 (c) Notwithstanding Subsection (b), and on the agreement of
13 all parties, a claimant may make an election not later than the 60th
14 day after the date the last defendant has filed an answer.

15 (d) An election made by a claimant under this section is
16 binding on all parties to the expedited civil action unless a
17 defendant files a claim more than 60 days before trial and in that
18 claim makes a good faith claim that the recovery of monetary damages
19 might be in excess of \$100,000.

20 Sec. 29A.004. RULES. (a) The supreme court shall adopt
21 rules to implement this chapter. The rules shall promote the
22 prompt, efficient, and cost-effective resolution of an expedited
23 civil action, including the discovery between the parties.

24 (b) The supreme court shall adopt rules as required by this
25 section not later than January 1, 2012. This subsection expires
26 September 1, 2012.

27 Sec. 29A.005. CONFLICT OF LAWS. In the event of a conflict

1 between this chapter and Chapter 74, Chapter 74 prevails.

2 SECTION 6. Section 22.225(d), Government Code, is amended
3 to read as follows:

4 (d) A petition for review is allowed to the supreme court
5 for an appeal from an interlocutory order described by Section
6 51.014(a)(3), (6), or (11) or (d), Civil Practice and Remedies
7 Code.

8 SECTION 7. Subchapter C, Chapter 311, Government Code, is
9 amended by adding Section 311.035 to read as follows:

10 Sec. 311.035. NO IMPLIED CAUSE OF ACTION. A statute may not
11 be construed to create a cause of action unless a cause of action is
12 created by clear and unambiguous language in the statute.

13 SECTION 8. Subchapter B, Chapter 312, Government Code, is
14 amended by adding Section 312.017 to read as follows:

15 Sec. 312.017. NO IMPLIED CAUSE OF ACTION. A statute may not
16 be construed to create a cause of action unless a cause of action is
17 created by clear and unambiguous language in the statute.

18 SECTION 9. This Act applies only to a civil action filed on
19 or after the effective date of this Act. An action filed before the
20 effective date of this Act, including an action filed before that
21 date on which a party is joined or designated after that date, is
22 governed by the law in effect immediately before the effective date
23 of this Act, and that law is continued in effect for that purpose.

24 SECTION 10. If any provision of this Act or its application
25 to any person or circumstance is held invalid, the invalidity does
26 not affect other provisions or applications of this Act that can be
27 given effect without the invalid provision or application, and to

1 this end the provisions of this Act are severable.

2 SECTION 11. This Act takes effect September 1, 2011.