



TADC *e-Update*
The Texas Association of Defense Counsel, Inc.

LEGISLATIVE UPDATE

April 19, 2011

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Last Wednesday the House Judiciary and Civil Jurisprudence Committee favorably reported committee substitutes for HB 274 (the Governor's civil justice reform package), HB 2661 (offer of settlement), and HB 2031 (voluntary compensation fund). TADC worked closely with the committee chair, Rep. Jim Jackson (R-Dallas), members of the committee, and the bills' authors to address our concerns and achieve agreement on bills that could move forward in the legislative process. We believe that the result of this process is a reasonable and balanced approach that preserves access to the civil justice system and enhances voluntary settlement procedures for the benefit of all parties.

Briefly, the major components of the bills are as follows. **CSHB 274**:

1. Requires the SCOT to adopt rules providing for the early dismissal of claims (similar to a FRCP 12(b)(6) motion) and for an expedited trial process for claims of more than \$10,000 but not to exceed \$100,000;
2. Codifies the SCOT's holding that a statute may not be construed to create a cause of action unless it creates one by clear and unambiguous language;
3. Allows a party on its own motion (if the trial court certifies) or a trial court on its own initiative to permit an interlocutory appeal from an order involving a controlling question of law;
4. Provides that the prevailing party may recover reasonable attorney's fees from an individual, corporation, or other legal entity if the claim is for breach of an oral or written contract (current law allows a "person" to recover attorney's fees against an individual or corporation if the claim is for an oral or written contract); and
5. Adds reasonable deposition costs to the litigation costs that may be recovered under a Ch. 42 offer of settlement, provides that once a defendant invokes the Ch. 42 process that the declaring defendant and any party with a claim against that defendant may make a settlement offer to settle all

claims in an action between the parties, and clarifies that recoverable litigation costs are limited to those incurred after the date the rejecting party rejected the earliest offer that entitles the party to an award of costs.

CSHB 2661 contains the same changes to Chapter 42 that are reflected in CSHB 274, as described above. CSHB 2031 allows a potentially liable person to establish a voluntary compensation fund at any time. If the plan has an independent third party administrator, the administrator must be appointed by the MDL panel. Creation of the plan is not an admission of liability, nor is it admissible at trial. There is no abatement of trial or cost or fee shifting remaining in the bill.

Also last week, TADC registered in support of court reorganization legislation, [SB 1717](#) by Sen. Robert Duncan (R-Lubbock) and [HB 3445](#) by Rep. Jim Jackson (R-Dallas). You may recall that TADC has worked on this legislation in two prior sessions, particularly to resolve concerns involving the conversion of county courts at law to district courts (the present bill does not convert county courts, but establishes a uniform jurisdictional amount of \$200,000) and complex litigation (the present bill allows additional resources for district courts faced with certain complex matters, but does establish a separate jurisdiction for such matters). This bill is likely to pass the Senate this week.

Finally, anti-indemnity legislation was heard in the House Insurance Committee last week. [SB 361](#) by Sen. Duncan and [HB 2010](#) by Rep. John Smithee (R-Amarillo) limit broad form indemnity agreements. Both bills are pending in House Insurance.
