



LEGISLATIVE UPDATE

May 9, 2011

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This afternoon the Texas House passed an amended version of the House Committee substitute CSHB 274 by a vote of 96-49. Even as amended, the bill is essentially the same as passed out of committee a few weeks ago. As the TADC has reported in our previous updates, the major provisions of the committee substitute included: (1) A revised offer of settlement procedure; (2) Mandatory Supreme Court rulemaking for a motion to dismiss for failure to state a claim (with discretionary cost-shifting) and expedited trial procedures for claims up to \$100,000; (3) No implied causes of action based on statutory construction; (4) An interlocutory appeal for a controlling question of law upon application of one of the parties and certification by the trial court, (with cost shifting to the unsuccessful appellant); and, (5) Recovery of attorney's fees and costs to the prevailing party in a breach of contract action (absent express contractual language).

During the floor debate on the bill, a few “cleanup” amendments were added, including: (1) Elimination of cost shifting to the unsuccessful appellant in an interlocutory appeal; (2) Repeal of Sec. 33.004(e), CPRC (identical to HB 1427 by Lewis, which TADC supported in House committee); (3) Award of costs and attorney's fees to a property owner in a property tax appeal; (4) Clarification that nothing in the bill applies to a case under the Family Code; and (5) Prohibition of a decision or ruling or enforcement of a contract provision invoking foreign law in a case arising under the Family Code, if such decision, ruling, or enforcement would violate a constitutionally protected right.

As you may be aware, the bill was declared an emergency by the Governor and passed without debate or amendment during the second reading by a vote of 89-12. Given the strong support HB 274 mustered on the House floor, we were very fortunate that TADC was invited to, and successfully worked with the House Committee and Subcommittee to address at least some of our concerns with the original bill.

Rest assured that, as the bill moves over to the Senate, we are continuing our efforts to address those provisions of the bill that remain of concern to us.

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