

# Client Alert

Houston Litigation Practice Group

June 2, 2011

## **Texas Loser Pay Bill Becomes Law** *Effective September 1, 2011*

On Monday, May 30, 2011, Texas Governor Rick Perry signed HB 274 into law. The passage of the bill comes after months of intense legislative debate and publicity. Although the bill originally proposed in the House contained a number of “loser-pay” provisions, the version that ultimately passed in both chambers contains only one true fee-shifting provision and implements instead a number of other procedural reforms.

- **New Motion to Dismiss Practice, With Fees to the Winner**

HB 274 directs the Texas Supreme Court to adopt new rules of civil procedure “to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence,” and that require trial courts to grant or deny motions to dismiss within 45 days of filing. The bill also provides for mandatory attorneys’ fees and costs to the prevailing party, including a plaintiff who successfully avoids dismissal. Texas has not before had a motion to dismiss practice like that in other states or under the Federal Rules, so this will be an altogether new procedure in Texas.

- **New Expedited Rules and Lower Discovery Costs for Cases Involving Less Than \$100,000**

HB 274 also directs the Texas Supreme Court to adopt rules that lower discovery costs and expedite the resolution of civil actions in which the amount in controversy is less than \$100,000 (including attorneys’ fees and all damages, including punitive damages). These new procedures will apply in district court, county court at law, and statutory probate courts.

- **Expansion of the Cap on Fees Recoverable By Party Whose Settlement Offer is Rejected**

Texas has a “settlement offer” statute that permits a party to make a written settlement offer that, if rejected, entitles the offering party to attorneys’ fees and certain litigation costs if the judgment rendered is significantly less favorable to the rejecting party. Before HB 274, recoverable fees and costs were capped at 50 percent of economic damages and 100 percent of non-economic and exemplary damages. HB 274 eliminates any distinction between economic and non-economic damages and expands the amount of recoverable attorneys’ fees and costs to the total amount that the claimant

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recovers. In other words, plaintiffs now risk having their entire jury award offset. There is no scenario, though, in which a plaintiff will have to pay the defendant's attorneys' fees out of pocket, as the prohibition on fee-shifting in the event of a take-nothing judgment remains in place.

## ▪ Other Provisions

There are two other changes in HB 274: one permitting more interlocutory appeals of controlling questions of law, and the other tightening a perceived loophole in defendants' designation of responsible third parties.

As to the first of these, a trial court may now permit an interlocutory appeal on a question of controlling law to the intermediate court of appeals, without consent of the parties or on the motion of only one party in the case. If the court of appeals accepts the appeal, the matter is treated as an accelerated appeal under existing appellate rules. The trial court has the authority to stay the proceedings pending appeal.

The change to a defendant's designation of a responsible third party is a narrow one. Currently, Texas law permits a defendant to designate a responsible third party even if that party's joinder would otherwise be barred by limitations. HB 274 changes this, so that limitations can bar a defendant from joining a responsible third party, but only if the defendant "failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure."

All in all, HB 274 makes some changes to the Texas civil litigation landscape, but not the sweeping ones originally proposed by the bill's proponents. The law applies only to civil actions filed on or after September 1, 2011, so the effect of the law on Texas civil litigants will unfold in the coming years. If you would like to view the full text of HB 274, go to [www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB274](http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB274).

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