

September 1, 2011

Dear Litigation Section Members,

We are writing to provide additional information about [Texas House Bill 274](#).

**HB 274**, loosely called "Loser Pays", takes effect on September 1, 2011. This statute requires the Texas Supreme Court to promulgate two procedural rules – one that would permit trial courts to enter early dismissals of meritless law suits, and the other that would expedite trials for claims of less than \$100,000.

**"Working Group" Proposals.** Representatives of ABOTA, TADC, and TTLA have formed a working group which has provided suggested language to the Texas Supreme Court Rules Advisory Committee on both issues, as well as a letter to Justice Nathan Hecht (as the Court's liaison to the advisory committee) regarding the expedited trial rule:

[Proposed Language - Motion to Dismiss](#) - **\*Corrected\***

[Proposed Language - Expedited Trial](#)

[Letter to Justice Hecht re Expedited Trial](#)

Any thoughtful comments or suggestions you may have to these proposals may be sent to the Texas Supreme Court Rules Attorney, [Marisa Secco](#).

**The New Statute.** In addition to these new rules, the statute enacts several new features. First, it requires Texas courts to order attorney's fees and costs be paid by the "losing" party to the "prevailing" party under certain circumstances. Expressly, in reference to the early dismissal rule, the trial court, if granting such a dismissal, is required to award costs and reasonable, necessary attorneys' fees (except against any governmental entity).

The statute also changed the agreed appeal of a controlling legal question, to an appeal on a party's or court's own motion. An agreement between the parties is no longer necessary. But the appellate court has discretion to accept the appeal. If it does, then the appellate rules governing accelerated appeals apply. The start date for determining when the notice of appeal should be filed is the date the court of appeals accepts the appeal. Notably, unless the trial court or appellate court stay's the underlying proceeding, it is not stayed.

Further, this new statute changes Texas's "offer of settlement" rule. It expands the definition of recoverable litigation costs to include reasonable deposition costs. And it changes the limits on a prevailing party's costs and attorney fees recovery. For example, recoverable costs and attorneys' fees could equal, but cannot exceed, the amount of actual recovery, not including the cost and fee claim.

One other change enacted by HB 274 requires a defendant to have timely notified the plaintiff of the identity of any responsible 3rd party or, to the extent an applicable statute of limitation applies, the responsible 3rd party may not be designated.

On balance, and depending on the final version of the two rules to be enacted by the Texas Supreme Court, this legislation appears to provide reasonable tweaks to Texas litigation practice. But they are changes that are important to know.

[Craig Enoch](#), Chair  
2011 Legislative Committee  
Litigation Section, State Bar of Texas

---

*This Legislative Snapshot (LS Snap) is provided to Litigation Section members to keep you informed of legislative matters affecting litigation and the civil justice system in the State of Texas.*

