

SUBJECT: Requiring intervenors in civil suits to pay attorney's fees and costs

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Gray, Hilbert, Dutton, Goodman, Nixon, Roman, Zbranek

0 nays

2 absent — Alvarado, Bosse

WITNESSES: For — None

Against — Tony Koriath, Texas Municipal League Intergovernmental Risk Pool

BACKGROUND : A person or entity can intervene in a civil lawsuit already in progress by filing the required pleadings. All rules of procedure also apply to the intervenor. A judge may not prevent a person from intervening in a suit, but with sufficient cause and upon motion of a party to the suit, may strike the pleadings of the intervenor.

DIGEST: HB 1745 would require a court to order an intervenor in a civil suit to pay the attorney's fees and costs of the other parties in the suit if:

- the other parties had agreed to a settlement of all claims;
- the proposed settlement did not take effect because the intervenor refused to agree to it; and
- the result obtained by the intervenor at trial or under a subsequent settlement were less favorable than the result the intervenor would have obtained under the original settlement.

The fees awarded would include all attorney's fees and costs incurred from the date the other parties agreed on the proposed settlement to the date on which a subsequent settlement was agreed upon or a judgment rendered.

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HB 1745 would take effect September 1, 1997 and apply to all civil suits commenced on or after that date.

SUPPORTERS
SAY:

HB 1745 would establish new accountability for intervenors in civil suits. Under current law, an intervenor can prevent a settlement already agreed to by all other parties, thus requiring them to continue the case. The intervenor wastes the time of the court and the other parties if the settlement proposed is actually more favorable to the intervenor than the final outcome. This bill would require intervenors to more carefully examine whether they would be better off by accepting a proposed settlement.

HB 1745 would encourage intervenors to take an objective look at the strength of their case when a proposed settlement offer is acceptable to all other parties in the case. The settlement offers that are proposed will be fair to both sides in the case because both the original plaintiff and defendant will have had to agree to the proposed settlement. This legislation would not force intervenors into accepting a settlement but only require them to examine the case realistically and determine if time and money could be saved by agreeing to a settlement already on the table.

Intervenors are different from other parties because they have joined a suit already in progress. If they wish to have total control over a suit, they can file a suit on their own. When they intervene, they attach some measure of their future in the case to the decisions of the parties who originally began the case. If the original parties decide that the case should be settled, intervenors should also agree unless the settlement is clearly unfavorable to them. In such case, they would stand a good chance of securing a more advantageous settlement, which would render inapplicable the terms of this bill.

OPPONENTS
SAY:

Once they have joined a suit, intervenors should be treated the same as the original parties in the suit. HB 1745 would make a distinction among the parties to a suit based on whether they were allowed to join in the original plaintiff's complaint or were forced to file their own set of pleadings after the suit has commenced. There are two options when unrelated plaintiffs wish to sue the same defendant over the same occurrence. They can file suit together as co-plaintiffs, or one can file suit and the other intervene once the suit commences. For purposes of law and procedure, the plaintiffs should

be treated the same regardless of the method they choose to commence the suit. However, under this bill, a co-plaintiff could refuse to agree to a settlement offer and not incur any penalty while an intervenor in the same situation could be forced to pay expensive attorney's fees and costs.

HB 1745 would remove a court's discretion to award costs and fees. Courts should be allowed to take the facts of a particular case into consideration when awarding what could be very expensive costs and fees.

OTHER
OPPONENTS
SAY:

In many cases, intervention is a statutory right. Many statutory intervenors are governmental units, especially local governments. HB 1745 should at least provide an exception for parties who are allowed to intervene as a matter of right and make clear that a governmental entity should not be liable for the other parties' attorney's fees if it decided not to accept a proposed settlement.