

BILL ANALYSIS

Senate Research Center

C.S.S.B. 294

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State Affairs

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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The doctrine of forum non conveniens allows courts to dismiss cases otherwise within their jurisdiction in order to allow the litigation to proceed in a more convenient forum. For Texas cases involving wrongful death, survival, or personal injury (occurring outside the state of Texas), Section 71.051, Civil Practice and Remedies Code, governs forum non conveniens analysis. Section 71.051(f) provides that a court may not dismiss a claim or action if an act or omission that was a proximate or producing cause of the injury or death occurred in the State of Texas.

This bill attempts to rectify the problem with Section 71.051(f) as applied in the Pomranky case. The plaintiff in the Pomranky case was a Michigan resident who had worked through his life at various factories, all located in Michigan. He filed suit in Texas alleging asbestos-related injuries against various property owners and manufacturers, all located in Michigan. He claimed that he was injured from asbestos located at the property where he worked and contained in the products with which he worked. Incidentally, all of the property at issue was located in Michigan and all of the products at issue were used in Michigan. Furthermore, the plaintiff, defendants, physicians, and other witnesses with knowledge of the case were located in Michigan. Continuing the case in Wharton County, Texas, would require the parties to travel across the country for court appearances.

Nonetheless, the judge presiding over the case denied the defendants' motion to dismiss the case for forum non conveniens. Because one of the defendants manufactured a glove in Wharton County that may have been a proximate or producing cause of the plaintiff's injury, the judge felt that he had no choice but to deny the motion. Section 71.051(f) required the case to remain in Texas.

As proposed, C.S.S.B. 294 modifies Sections 71.051 (b) and (f) to give judges more discretion in cases of forum non conveniens.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 71.051(b) and (f), Civil Practice and Remedies Code, as follows:

(b) Requires the court to consider whether, rather than authorizes, the court to consider certain criteria in determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens.

(5) Requires the balance of private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum to include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state.

(f) Requires a court which grants a motion to stay or dismiss an action under the doctrine of forum non conveniens to set forth specific findings of fact and conclusions law. Deletes text relating to prohibiting a court from allowing a stay or dismiss of a claim or

action, if a party opposing the motion alleges and makes a prima facie showing that an act or omission that was a proximate or producing cause of the injury or death occurred in this state.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.