

By: Williams

S.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a voluntary compensation plan as an alternative to litigation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 160 to read as follows:

CHAPTER 160. VOLUNTARY COMPENSATION PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 160.001. DEFINITIONS. In this chapter:

(1) "Claim" means a claim for personal injury, death, or property damage caused by an event or product covered by this chapter.

(2) "Claimant" means a person making a claim.

(3) "Plan administrator" means an individual a claimant can contact to obtain information about or compensation from a voluntary compensation plan. There may be more than one plan administrator.

(4) "Plan creator" means a person who establishes a voluntary compensation plan under this chapter.

(5) "Potentially liable person" means a person who:
(A) may be responsible, in whole or in part, for damages arising out of personal injury, death, or property damage caused by an event covered by this chapter; or

(B) may be liable for a cause of action covered by

1 Chapter 82 for damages arising out of personal injury, death, or
2 property damage caused by a defective product covered by this
3 chapter.

4 (6) "Voluntary compensation plan" means a plan
5 established under this chapter to compensate a claimant for damages
6 arising out of personal injury, death, or property damage caused by
7 an event or product covered by this chapter.

8 Sec. 160.002. APPLICABILITY OF CHAPTER. This chapter
9 applies to:

10 (1) an event that caused:

11 (A) the death of two or more people;

12 (B) serious bodily injury to five or more people;

13 or

14 (C) damage to real property owned by five or more
15 people; and

16 (2) a product that may have caused:

17 (A) the death of two or more people;

18 (B) serious bodily injury to five or more people;

19 or

20 (C) damage to real property owned by five or more
21 people.

22 Sec. 160.003. ESTABLISHMENT OF PLAN. (a) A potentially
23 liable person, acting alone or with another potentially liable
24 person, may establish a voluntary compensation plan to compensate
25 an individual who sustained damages covered by this chapter.

26 (b) Except as provided by Section 160.005(d), a voluntary
27 compensation plan is established when the person establishing the

1 plan has published the notice required by Subchapter B.

2 (c) Except as provided by Section 160.004, a voluntary
3 compensation plan for damages caused by an event must be
4 established not later than the 90th day after the date the event
5 occurred.

6 Sec. 160.004. PETITION TO EXTEND TIME. (a) A person may
7 file a petition in district court to request an extension of time to
8 establish a voluntary compensation plan for an event.

9 (b) A petition for an extension of time under this section
10 must be filed in the county in which notice of the establishment of
11 a voluntary compensation plan must be published under Section
12 160.052.

13 (c) A copy of a petition filed under this section must be
14 served on a party to any pending case in which a plaintiff alleges
15 that the potentially liable person is liable for damages caused by
16 an event.

17 (d) Notice that a petition under this section was filed must
18 be published as provided by Subchapter B.

19 (e) A hearing on a petition filed under this section may not
20 be held before the 14th day after the date the notice is filed,
21 served, or published, whichever date is later.

22 (f) An interested person may intervene in a proceeding under
23 this section to support or oppose the petition. The court may not
24 consider any other issue at a hearing under this section.

25 (g) The court shall extend the deadline for establishing a
26 voluntary compensation plan under this chapter on a showing of good
27 cause.

1 (h) A court's decision under this section may be reviewed
2 by petition for writ of mandamus.

3 Sec. 160.005. ABATEMENT OF SUITS. (a) A defendant in an
4 action seeking damages arising out of personal injury, death, or
5 property damage caused by an event or product covered by this
6 chapter may file a plea in abatement instead of filing an answer to
7 the action if:

8 (1) the action was filed after the defendant
9 established a voluntary compensation plan with respect to the event
10 or product alleged to have caused the damages; or

11 (2) the action is for damages allegedly caused by an
12 event and the action was filed before the expiration of the period
13 prescribed by Section 160.003(c) or an extension period granted by
14 a court under Section 160.004.

15 (b) A court may impose an appropriate penalty authorized by
16 Chapter 10 for the signing of a frivolous pleading or motion against
17 a party who obtains an abatement under Subsection (a)(2) but does
18 not establish a voluntary compensation plan within the period
19 provided by this subchapter, including any extension period.

20 (c) If a defendant files a plea in abatement in accordance
21 with Subsection (a), the defendant is not required to file an answer
22 to the abated suit before the 21st day after the date the abatement
23 period expires as provided by Subsection (d).

24 (d) Unless extended for good cause, an abatement under this
25 section expires on the 90th day after the date the voluntary
26 compensation plan is established, as determined by the trial court
27 in which the plea in abatement is filed.

1 (e) A court's refusal to grant a plea in abatement under
2 this section and a court's decision regarding the date the
3 voluntary compensation plan was established may be reviewed by
4 petition for writ of mandamus.

5 [Sections 160.006-160.050 reserved for expansion]

6 SUBCHAPTER B. NOTICE AND PUBLICATION

7 Sec. 160.051. NOTICE REQUIRED; CONTENT. (a) Before a
8 voluntary compensation plan may be established, the person
9 establishing the plan must publish notice of intent to create a
10 plan.

11 (b) A notice under this section must include:

12 (1) the name of the person establishing the voluntary
13 compensation plan;

14 (2) the name, address, telephone number, and e-mail
15 address of the plan administrator;

16 (3) the kind or class of claimants who may be eligible
17 to receive compensation from the plan;

18 (4) the deadline by which claims must be filed with the
19 plan administrator;

20 (5) the criteria the plan administrator will use to
21 determine whether a claim is legitimate;

22 (6) the formula, method, or information the plan
23 administrator will use to determine the amount that will be paid to
24 a claimant for a legitimate claim;

25 (7) a schedule showing the dates and methods by which
26 legitimate claims will be paid;

27 (8) a statement of the extent to which accepting a

1 payment from the plan bars an action against the plan creator or
2 others; and

3 (9) any other information necessary for a claimant to
4 obtain information about or request compensation from the plan.

5 Sec. 160.052. PUBLICATION OF NOTICE. (a) A notice under
6 Section 160.051 must be published in a newspaper of record in the
7 county in which the person establishing the voluntary compensation
8 plan has the person's principal office or the person's principal
9 place of business in this state.

10 (b) If a voluntary compensation plan is established to pay
11 for damages caused by an event covered by this chapter and that
12 occurred in this state, notice must also be published in a newspaper
13 in the county in which the event occurred.

14 (c) A notice published under this section must:

15 (1) state that the plan creator has established a
16 voluntary compensation plan for a specified event or product;

17 (2) contain the information required by Section
18 160.051; and

19 (3) be at least 25 square inches in size.

20 (d) Notice of the establishment of a voluntary compensation
21 plan must also be posted on the home page of the Internet website of
22 the person establishing the plan. The notice on the website must
23 state that the plan creator has established a plan for a specified
24 event or product, contain the information required by Section
25 160.051, and provide a link to a website a potential claimant can
26 use to contact the plan administrator. The notice must remain
27 posted on the home page of the website until the plan is

1 discontinued.

2 Sec. 160.053. NOTIFICATION TO POTENTIAL CLAIMANT. In
3 addition to the publication requirements of this subchapter, a plan
4 creator must use the best method reasonably available under the
5 circumstances to notify known potential claimants of the voluntary
6 compensation plan's establishment.

7 Sec. 160.054. REASONABLE ESTIMATE OF COMPENSATION. (a) On
8 the request of a potential claimant, a plan administrator must
9 provide a potential claimant a reasonably accurate statement of the
10 compensation the claimant would receive under the voluntary
11 compensation plan.

12 (b) A plan administrator may comply with Subsection (a) by
13 making available to a potential claimant a program or other method
14 that the potential claimant may use to determine a reasonable
15 estimate of the compensation the potential claimant would receive
16 under the voluntary compensation plan.

17 Sec. 160.055. AMENDMENT OF PLAN. A voluntary compensation
18 plan may be amended at any time. Any amendment to a plan must be
19 published in the same manner as required for the establishment of
20 the plan.

21 [Sections 160.056-160.100 reserved for expansion]

22 SUBCHAPTER C. PLAN AS SETTLEMENT OFFER

23 Sec. 160.101. APPLICATION OF CERTAIN COST-SHIFTING
24 PROVISIONS. (a) Not later than the 60th day after the date an
25 abatement period expires as provided by Section 160.005, a plan
26 creator who has been named as a defendant in an action seeking
27 damages caused by an event or a product covered by this chapter may

1 apply the settlement provisions of Section 42.004 to the action by
2 filing with the court a document prepared by the plan administrator
3 stating the gross amount of money that would have been paid to the
4 claimant under the voluntary compensation plan as of the date the
5 abatement period ended.

6 (b) Unless a plan administrator has rejected the claim, a
7 filing under this section is a settlement offer for the purposes of
8 Section 42.004.

9 (c) A filing under this section is not a declaration
10 required by Section 42.002 that the settlement procedure allowed by
11 Chapter 42 is available in the action.

12 Sec. 160.102. DETERMINATION OF SIGNIFICANTLY LESS
13 FAVORABLE JUDGMENT. For the purposes of applying Section 42.004
14 under this subchapter:

15 (1) the award is the gross recovery under the judgment
16 minus the claimant's attorney's fees under the contract between the
17 claimant and the claimant's attorney at the time the claimant was
18 notified of or became aware of the existence of the voluntary
19 compensation plan; and

20 (2) the rejected settlement offer is the gross
21 compensation the claimant would have received under the voluntary
22 compensation plan minus the amount the claimant would have paid in
23 attorney's fees if the claimant had accepted compensation from the
24 plan.

25 [Sections 160.103-160.150 reserved for expansion]

26 SUBCHAPTER D. LEGAL EFFECT OF PLAN

27 Sec. 160.151. NOT ADMISSION OF LIABILITY. Establishing,

1 attempting to establish, or planning with respect to establishing a
2 voluntary compensation plan under this chapter is not an admission
3 of liability by any person.

4 Sec. 160.152. NOT ADMISSIBLE. Except as provided by this
5 chapter, evidence that a person established, attempted to
6 establish, planned with respect to establishing, or sought
7 information or compensation from a voluntary compensation plan is
8 not admissible in any civil, criminal, or administrative proceeding
9 to determine:

- 10 (1) liability arising from an event or product; or
- 11 (2) damages:
 - 12 (A) caused by a product; or
 - 13 (B) that are the result of an event.

14 Sec. 160.153. NOT SUBJECT TO DISCOVERY OR DISCLOSURE. A
15 plan creator's consideration of or planning with respect to
16 establishing a voluntary compensation plan is privileged from
17 discovery or disclosure in any civil, criminal, or administrative
18 proceeding to determine:

- 19 (1) liability arising from an event or product; or
- 20 (2) damages:
 - 21 (A) caused by a product; or
 - 22 (B) that are the result of an event.

23 Sec. 160.154. NO DUTY OR CAUSE OF ACTION. (a)
24 Establishing, attempting to establish, or planning with respect to
25 establishing a voluntary compensation plan does not create a duty
26 owed by the plan administrator or plan creator.

27 (b) Establishing, attempting to establish, or planning with

1 respect to establishing a voluntary compensation plan does not give
2 rise to a cause of action against a plan administrator or plan
3 creator:

4 (1) for a breach of a duty of good faith and fair
5 dealing;

6 (2) under the Deceptive Trade Practices-Consumer
7 Protection Act (Subchapter E, Chapter 17, Business & Commerce
8 Code); or

9 (3) for a breach of any other common law or statutory
10 duty.

11 (c) Establishing a voluntary compensation plan does not
12 create an obligation for the plan administrator or plan creator to
13 negotiate the terms or conditions of payment from the plan or for
14 the settlement of litigation or threatened litigation.

15 [Sections 160.155-160.200 reserved for expansion]

16 SUBCHAPTER E. DUTY OF ATTORNEY OR PLAN ADMINISTRATOR

17 Sec. 160.201. ACTION SUBJECT TO ABATEMENT. If a voluntary
18 compensation plan has been established and an action is filed that
19 the plan creator has a right to abate under Section 160.005, an
20 attorney representing a claimant or potential claimant must, not
21 later than the 15th day after the date the attorney learns of the
22 existence of the plan, inform the claimant or potential claimant in
23 writing:

24 (1) of the existence of the plan;

25 (2) of the name, address, telephone number, and e-mail
26 address of the plan administrator;

27 (3) that the claimant or potential claimant may

1 contact the plan administrator directly and without the attorney's
2 participation;

3 (4) that if the claimant or potential claimant seeks
4 compensation from the plan without the assistance of the attorney,
5 the claimant or potential claimant will not owe the attorney any fee
6 for services in connection with that claim for compensation; and

7 (5) that if the claimant or potential claimant seeks
8 compensation from the plan with the assistance of the attorney, it
9 is unlawful for the attorney to receive or contract to receive a fee
10 in excess of five percent of the amount received by a claimant or
11 potential claimant from the plan.

12 Sec. 160.202. NO RIGHT TO ABATEMENT. If a voluntary
13 compensation plan has been established and an action is filed that
14 the plan creator has a right to abate under Section 160.005, an
15 attorney representing a claimant in that action must, not later
16 than the 15th day after the date the attorney learns of the
17 existence of the plan, inform the claimant or potential claimant in
18 writing:

19 (1) of the existence of the plan;

20 (2) of the name, address, telephone number, and e-mail
21 address of the plan administrator;

22 (3) that the claimant or potential claimant may
23 contact the plan administrator directly and without the attorney's
24 participation; and

25 (4) of the fee the attorney will charge to the claimant
26 or potential claimant if the claimant or potential claimant elects
27 to accept payment from the plan instead of pursuing litigation.

1 Sec. 160.203. PROHIBITED CONTACT. (a) A plan creator or
2 plan administrator may not initiate the first contact with a
3 claimant or potential claimant except to provide notice of the
4 establishment of a voluntary compensation plan as provided by
5 Subchapter B.

6 (b) A plan creator or plan administrator may not initiate
7 contact with a claimant or potential claimant for the purpose of
8 encouraging or attempting to induce the claimant or potential
9 claimant to accept compensation under the voluntary compensation
10 plan.

11 SECTION 2. The changes in law made by this Act apply only to
12 a cause of action that accrues on or after the effective date of
13 this Act. A cause of action that accrues before the effective date
14 of this Act is governed by the law in effect immediately before the
15 effective date of this Act, and that law is continued in effect for
16 that purpose.

17 SECTION 3. This Act takes effect September 1, 2011.