

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 589 by Representative Abramson

CIVIL/PROCEDURE: Provides a comprehensive revision of the Code of Civil Procedure

Synopsis of Senate Amendments

1. Specifies that the pleadings, depositions, answers to interrogatories, and admissions and affidavits that the court considers in ruling on a motion for summary judgment be admitted for the purposes of the motion for summary judgment.
2. Provides that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for the purposes of the summary judgment unless it has been excluded in response to an objection.
3. Provides that a defendant shall not be entitled to a trial by jury when an individual petitioner stipulates that his cause of action is less than \$50,000 as a result of a compromise or dismissal of one or more claims or parties which occurs less than 90 days prior to trial.
4. Deletes qualification that the attorney upon whom notice of a post-judgment of interdiction proceeding is required to be served must be from the Mental Health Advocacy Service.

Digest of Bill as Finally Passed by Senate

Present law (C.C.P. Art. 966) provides the procedure by which a party may move for a summary judgment. Requires the court to render a decision only as to those issues raised in the motion under consideration.

Proposed law specifies that the pleadings, depositions, answers to interrogatories, and admissions and affidavits that the court considers in ruling on a motion for summary judgment be admitted for the purposes of the motion for summary judgment.

Proposed law clarifies present law by stating that summary judgment on a particular issue may be rendered in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.

Present law requires the court to consider only evidence admitted for the purposes of the motion for summary judgment in its ruling.

Proposed law retains present law and provides that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for the purposes of the summary judgment unless it has been excluded in response to an objection.

Present law (C.C.P. Art. 1732) provides that a trial by jury shall not be available in a suit where the amount of no individual petitioner's cause of action exceeds \$50,000 exclusive of interests and costs.

Proposed law provides that a party may retain the right to a trial by jury even if the petitioner has stipulated that the cause of action does not exceed \$50,000 when that party is entitled to trial by jury pursuant to present law and has complied with the procedural requirements for

asserting that right if the stipulation has occurred less than 60 days prior to trial. Proposed law further provides that a defendant shall not be entitled to a trial by jury when a petitioner stipulates that his cause of action is less than \$50,000 if the stipulation occurs more than 60 days before trial or when an individual petitioner stipulates that his cause of action is less than \$50,000 as a result of a compromise or dismissal of one or more claims or parties which occurs less than 90 days prior to trial.

Present law (C.C.P. Art. 1915) authorizes the court to render a final judgment when it does one of the following:

- (1) Dismisses the suit.
- (2) Grants a motion for judgment on the pleadings.
- (3) Grants a motion for summary judgment except when summary judgment does not dispose of the entire case.
- (4) Signs a judgment on the principal or incidental demand.
- (5) Signs a judgment on the issue of liability when the issues of liability and damages have been tried separately.
- (6) Imposes sanctions pursuant to various provisions of present law.

Present law further provides that a partial judgment or partial summary judgment that does not address all of the claims, demand, issues, or theories is not a final judgment unless the court specifically designates it as such after an express determination that there is no reason for delay. Provides that absent the required designation and determination, an order that does not adjudicate all claims or the rights of all parties does not terminate the action and is not a final judgment for purposes of an immediate appeal.

Proposed law retains present law except that it deletes the prohibition of terminating an action if a partial judgment or partial summary judgment does not adjudicate all claims or the rights of all parties.

Present law (C.C.P. Art. 4553) requires post-judgment proceedings relative to an interdiction to be conducted by the court and division or section that rendered the interdiction judgment unless there is good cause shown.

Proposed law retains present law and requires notice of the post-judgment proceeding to be served upon the attorney who was appointed for the interdict or on an attorney who was previously appointed for the interdict.

(Amends C.C.P. 966(E) and (F), 1732(1), and 1915(B); Adds C.C.P. Art. 966(G) and 4553(D))