

The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

Civil Justice Reform in the Texas Legislature

March 16, 2011 by [Vance Wittie](#)

The Texas Legislature is currently considering House Bill 274, containing several measures that could alter the landscape of civil litigation. HB274 would, if enacted:

- Require the Texas Supreme Court to adopt rules creating a motion-to-dismiss practice patterned on Rules 9 and 12 of the Federal Rules of Civil Procedure (Texas currently does not have a procedure that permits a dispositive motion for failure to state a claim)
- Permit a prevailing defendant to recover attorneys' fees and costs when the trier of fact finds that the plaintiff has engaged in an "abusive civil action," defined as an action that "a reasonable person would conclude is an abuse of the civil justice process." The provision allows for recovery from a claimant's attorney if the attorney has a financial interest in the case
- Provide for permissive interlocutory appeal of an order that involves a controlling question of law when an immediate appeal would materially advance the termination of litigation
- Permit claimants in cases with between \$10,000 and 100,000 to elect to proceed under expedited trial and discovery procedures
- Forbid courts from construing statutes as creating a cause of action in the absence of clear and unambiguous language

It remains to be seen whether these reforms will make progress in a legislative session that will necessarily focus on the state's budgetary woes.