

CHAPTER 4

S.B. No. 2

AN ACT

relating to the application of the doctrine of forum non conveniens to certain actions.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 71, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. FORUM NON CONVENIENS

Sec. 71.051. *FORUM NON CONVENIENS.* (a) *With respect to a claimant who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice an action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the action in whole or in part on any conditions that may be just.*

(b) *With respect to a claimant who is a legal resident of the United States, on written motion of a party, an action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the action proves by a preponderance of the evidence that:*

(1) *a forum outside this state is a more appropriate forum that:*

(A) *offers a remedy for the causes of action brought by a party to which this section applies;*

(B) *as a result of the submission of the parties or otherwise, can exercise jurisdiction over all parties and claims properly joined in the action by the claimant; and*

(C) *would provide a place of trial that is fair, reasonable, and convenient to the parties;*

(2) *maintenance of the action in the courts of this state would work a substantial injustice to the moving party and the balance of the private interests of all the parties and the public interest of the state predominates in favor of the action being brought in the other forum; and*

(3) *the stay or dismissal would not, in reasonable probability, result in unreasonable duplication or proliferation of litigation.*

(c) *No stay or dismissal shall be granted under Subsection (b) until all properly joined defendants file with the clerk of the court a written stipulation that each defendant will:*

(1) *submit to the personal jurisdiction of the courts of the other forum; and*

(2) *wave any defense based on the statute of limitations applicable in the other forum with respect to all causes of action brought by a party to which this section applies.*

(d) *The court may, on motion and notice to the parties, modify an order granting a stay or dismissal under this section and take any further action in the proceeding as the interests of justice may require. If the moving party violates a stipulation required by Subsection (c), the court shall withdraw the order staying or dismissing the action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for the purposes of this subsection.*

(e) *A request for stay or dismissal under this section is timely if it is filed not later than the time required for filing a motion to transfer venue of the action. Otherwise, any objection under this section to the court's exercise of jurisdiction is waived. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.*

(f) *A court may not stay or dismiss an action pursuant to Subsection (b):*

(1) *if a claimant in the action who is properly joined is a legal resident of this state;*

(2) *if a party opposing the motion under Subsection (b) 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. Notwithstanding Subsection (h), said prima facie showing need not be made by a preponderance of the evidence and shall be deemed to be satisfied if said party produces credible evidence in support of the pleading, which evidence need not*

(1) the product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community; and

(2) the product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter, as identified in Comment i to Section 402A of the Restatement (Second) of Torts.

(b) For purposes of this section, the term "products liability action" does not include an action based on manufacturing defect or breach of an express warranty.

Sec. 82.005. DESIGN DEFECTS. (a) In a products liability action in which a claimant alleges a design defect, the burden is on the claimant to prove by a preponderance of the evidence that:

(1) there was a safer alternative design; and

(2) the defect was a producing cause of the personal injury, property damage, or death for which the claimant seeks recovery.

(b) In this section, "safer alternative design" means a product design other than the one actually used that in reasonable probability:

(1) would have prevented or significantly reduced the risk of the claimant's personal injury, property damage, or death without substantially impairing the product's utility; and

(2) was economically and technologically feasible at the time the product left the control of the manufacturer or seller by the application of existing or reasonably achievable scientific knowledge.

(c) This section does not supersede or modify any statute, regulation, or other law of this state or of the United States that relates to liability for, or to relief in the form of, abatement of nuisance, civil penalties, cleanup costs, cost recovery, an injunction, or restitution that arises from contamination or pollution of the environment.

(d) This section does not apply to:

(1) a cause of action based on a toxic or environmental tort as defined by Sections 33.013(c)(2) and (3); or

(2) a drug or device, as those terms are defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321).

(e) This section is not declarative, by implication or otherwise, of the common law with respect to any product and shall not be construed to restrict the courts of this state in developing the common law with respect to any product which is not subject to this section.

Sec. 82.006. FIREARMS AND AMMUNITION. (a) In a products liability action brought against a manufacturer or seller of a firearm or ammunition that alleges a design defect in the firearm or ammunition, the burden is on the claimant to prove, in addition to any other elements that the claimant must prove, that:

(1) the actual design of the firearm or ammunition was defective, causing the firearm or ammunition not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and

(2) the defective design was a producing cause of the personal injury, property damage, or death.

(b) The claimant may not prove the existence of the defective design by a comparison or weighing of the benefits of the firearm or ammunition against the risk of personal injury, property damage, or death posed by its potential to cause such injury, damage, or death when discharged.

SECTION 2. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.012 to read as follows:

Sec. 16.012. PRODUCTS LIABILITY: MANUFACTURING EQUIPMENT. (a) In this section:

(1) "Claimant," "products liability action," "seller," and "manufacturer" have the meanings assigned by Section 82.001.

(2) "Manufacturing equipment" means equipment and machinery used in the manufacturing, processing, or fabrication of tangible personal property but does not include agricultural equipment or machinery.

(b) Except as provided by Subsection (c), a claimant must commence a products liability action against a manufacturer or seller of manufacturing equipment before the end of 15 years after the date of the sale of the equipment by the defendant.

(c) If a manufacturer or seller expressly represents that the manufacturing equipment has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the equipment before the end of the number of years represented after the date of the sale of the equipment by that seller.

(d) This section does not reduce a limitations period that applies to a products liability action involving manufacturing equipment that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving manufacturing equipment may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of manufacturing equipment.

SECTION 3. (a) Sections 82.002 through 82.004, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action commenced on or after the effective date of this Act. A cause of action commenced before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

(b) Sections 16.012, 82.005, and 82.006, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

(c) Section 82.001, Civil Practice and Remedies Code, as added by this Act, takes effect on the effective date of this Act.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on January 28, 1993, by a viva-voce vote; Senate concurred in House amendments on February 24, 1993, by a viva-voce vote; passed the House, with amendments, on February 23, 1993, by a non-record vote.

Approved March 4, 1993.

Effective Sept. 1, 1993.