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## DIGEST

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Abramson

HB No. 589

**Abstract:** Provides for a comprehensive revision of the Code of Civil Procedure relative to submission of evidence for the purposes of a motion for summary judgment, procedures governing objections to submitted evidence, the effect of a partial summary judgment, and defendant's right to demand a jury trial when a plaintiff has stipulated to a cause of action less than \$50,000.

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 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.

Proposed law changes present law by giving the court discretion in rendering a decision only as to those issues raised in the motion under consideration.

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

Proposed law changes present law to allow the court to consider evidence submitted for the purposes of summary judgment and provides that a party can object to evidence submitted for the purposes of the motion for summary judgment through a memorandum in support or in a motion to strike that provides the specific grounds for the 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 has complied with the procedural requirements for asserting that right if the stipulation has occurred less than 90 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 90 days before trial.

Present law (C.C.P. Arts. 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.

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

### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Clarified that a motion for summary judgment may be rendered on a particular issue 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.
2. Added provisions allowing a party to retain his right to a trial by jury under Article 1732(1) if a petitioner stipulates less than 90 days prior to trial that his cause of action is less than \$50,000, but prohibits a defendant from obtaining a jury trial if the stipulation occurred more than 90 days prior to trial.