CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 31, 2003
Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 4 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bill Ratliff

Joe Nixon

Ken Armbrister

Dan Gattis

Robert Duncan

Phil King

Chris Harris

Vilma Luna

On the part of the Senate

Jane Nelson

On the part of the House

Beverly Woolley

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 4

A BILL TO BE ENTITLED

AN ACT

relating to reform of certain procedures and remedies in civil actions.

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

ARTICLE 1. CLASS ACTIONS

SECTION 1.01. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 26 to read as follows:

CHAPTER 26. CLASS ACTIONS

SUBCHAPTER A. SUPREME COURT RULES

Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) The supreme court shall adopt rules to provide for the fair and efficient resolution of class actions.

(b) The supreme court shall adopt rules under this chapter on or before December 31, 2003.

Sec. 26.002. MANDATORY GUIDELINES. Rules adopted under Section 26.001 must comply with the mandatory guidelines established by this chapter.

Sec. 26.003. ATTORNEY'S FEES. (a) If an award of attorney's fees is available under applicable substantive law, the rules adopted under this chapter must provide that the trial court shall use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel. The rules may give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method by no more than four times based on

specified factors.

(b) Rules adopted under this chapter must provide that in a class action, if any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney's fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.

[Sections 26.004-26.050 reserved for expansion]

SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION. (a) Before hearing or deciding a motion to certify a class action, a trial court must hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The court's ruling must be reflected in a written order.

(b) If a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, a person may, as part of an appeal of the order certifying the class action, obtain appellate review of the order denying the plea to the jurisdiction.

(c) This section does not alter or abrogate a person's right to appeal or pursue an original proceeding in an appellate court in regard to a trial court's order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.

SECTION 1.02. Section 22.225, Government Code, is amended

by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(b) Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review [~~writ of error~~] is not allowed to [~~from~~] the supreme court, in the following civil cases:

(1) a case appealed from a county court or from a district court when, under the constitution, a county court would have had original or appellate jurisdiction of the case, with the exception of a probate matter or a case involving state revenue laws or the validity or construction of a statute;

(2) a case of a contested election other than a contested election for a state officer, with the exception of a case where the validity of a statute is questioned by the decision;

(3) an appeal from an interlocutory order appointing a receiver or trustee or from other interlocutory appeals that are allowed by law;

(4) an appeal from an order or judgment in a suit in which a temporary injunction has been granted or refused or when a motion to dissolve has been granted or overruled; and

(5) all other cases except the cases where appellate jurisdiction is given to the supreme court and is not made final in the courts of appeals.

(d) A petition for review [~~writ of error~~] is allowed to [~~from~~] the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) or (6) [~~51.014(6)~~], Civil Practice and Remedies Code.

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.03. Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I [~~1~~], Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a

defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code; [~~or~~]

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or

(10) grants relief sought by a motion under Section 74.351(l).

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), stays [~~shall have the effect of staying~~] the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), or (8) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay [~~of the commencement of trial~~] under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the

plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

SECTION 1.04. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.05. (a) The changes in law made by Section 1.02 of this Act to Section 22.225(d), Government Code, apply to any case in which a petition for review to the Supreme Court of Texas is filed on or after the effective date of this Act.

(b) The changes in law made by Section 1.03 of this Act to Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply to any case in which an appeal allowed by Section 51.014(a), Civil Practice and Remedies Code, as amended by this Act, is taken and the notice of appeal is filed on or after the effective date of this Act.

ARTICLE 2. SETTLEMENT

SECTION 2.01. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 42 to read as follows:

CHAPTER 42. SETTLEMENT

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages.

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

(3) "Defendant" means a person from whom a claimant seeks recovery on a claim, including a counterdefendant, cross-defendant, or third-party defendant.

(4) "Governmental unit" means the state, a unit of state government, or a political subdivision of this state.

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the case in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable fees for not more than two testifying expert witnesses; and

(C) reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with this chapter.

Sec. 42.002. APPLICABILITY AND EFFECT. (a) The settlement procedures provided in this chapter apply only to claims for monetary relief.

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court.

(c) This chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. If there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with this chapter; or

(2) offer to settle or compromise a claim to which this chapter does not apply.

(e) An offer to settle or compromise that is not made under this chapter or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.

Sec. 42.003. MAKING SETTLEMENT OFFER. A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

Sec. 42.004. AWARDING LITIGATION COSTS. (a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party.

(b) A judgment will be significantly less favorable to the rejecting party than is the settlement offer if:

(1) the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer; or

(2) the rejecting party is a defendant and the award will be more than 120 percent of the rejected offer.

(c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the settlement offer.

(d) The litigation costs that may be awarded under this chapter may not be greater than an amount computed by:

(1) determining the sum of:

(A) 50 percent of the economic damages to be awarded to the claimant in the judgment;

(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and

(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and

(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the

claim.

(e) If a claimant or defendant is entitled to recover fees and costs under another law, that claimant or defendant may not recover litigation costs in addition to the fees and costs recoverable under the other law.

(f) If a claimant or defendant is entitled to recover fees and costs under another law, the court must not include fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).

(g) If litigation costs are to be awarded against a claimant, those litigation costs shall be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) The supreme court shall promulgate rules implementing this chapter. The rules must be limited to settlement offers made under this chapter. The rules must be in effect on January 1, 2004.

(b) The rules promulgated by the supreme court must provide:

(1) the date by which a defendant or defendants must file the declaration required by Section 42.002(c);

(2) the date before which a party may not make a settlement offer;

(3) the date after which a party may not make a settlement offer; and

(4) procedures for:

(A) making an initial settlement offer;

(B) making successive settlement offers;

(C) withdrawing a settlement offer;

(D) accepting a settlement offer;

(E) rejecting a settlement offer; and

(F) modifying the deadline for making, withdrawing, accepting, or rejecting a settlement offer.

(c) The rules promulgated by the supreme court must address actions in which there are multiple parties and must provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made may declare the offer void.

(d) The rules promulgated by the supreme court may:

(1) designate other actions to which the settlement procedure of this chapter does not apply; and

(2) address other matters considered necessary by the supreme court to the implementation of this chapter.

SECTION 2.02. The changes in law provided by this article apply only to an action filed on or after January 1, 2004.

ARTICLE 3. VENUE; FORUM NON CONVENIENS

SECTION 3.01. Section 74.024(c), Government Code, is amended to read as follows:

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs; [~~and~~]

(9) standards for selection and management of nonjudicial personnel; and

(10) transfer of related cases for consolidated or coordinated pretrial proceedings.

SECTION 3.02. Chapter 74, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION. (a) The judicial panel on multidistrict litigation consists of five members designated from time to time by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or administrative judges.

(b) The concurrence of three panel members is necessary to any action by the panel.

Sec. 74.162. TRANSFER OF CASES BY PANEL. Notwithstanding any other law to the contrary, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to

any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will:

(1) be for the convenience of the parties and witnesses; and

(2) promote the just and efficient conduct of the actions.

Sec. 74.163. OPERATION; RULES. (a) The judicial panel on multidistrict litigation must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. The rules adopted by the supreme court must:

(1) allow the panel to transfer related civil actions for consolidated or coordinated pretrial proceedings;

(2) allow transfer of civil actions only on the panel's written finding that transfer is for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions;

(3) require the remand of transferred actions to the transferor court for trial on the merits; and

(4) provide for appellate review of certain or all panel orders by extraordinary writ.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.

Sec. 74.164. AUTHORITY TO PRESIDE. Notwithstanding any

other law to the contrary, a judge who is qualified and authorized by law to preside in the court to which an action is transferred under this subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.

SECTION 3.03. Section 15.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING PLAINTIFFS. (a) In a suit in which there is [~~where~~] more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, [~~is joined~~] each plaintiff must, independently of every [~~any~~] other plaintiff, establish proper venue. If a plaintiff cannot independently [~~Any person who is unable to~~] establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, must be transferred to a county of proper venue or dismissed, as is appropriate, [~~may not join or maintain venue for the suit as a plaintiff~~] unless that plaintiff [~~the person~~], independently of every [~~any~~] other plaintiff, establishes that:

(1) joinder of that plaintiff or intervention in the suit by that plaintiff is proper under the Texas Rules of Civil Procedure;

(2) maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;

(3) there is an essential need to have that plaintiff's

[~~the person's~~] claim tried in the county in which the suit is pending; and

(4) the county in which the suit is pending is a fair and convenient venue for that plaintiff [~~the person seeking to join in or maintain venue for the suit~~] and all [~~the~~] persons against whom the suit is brought.

(b) An interlocutory appeal may be taken of a trial court's determination under Subsection (a) that:

(1) a plaintiff did or did not independently establish proper venue; or

(2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4) [~~A person may not intervene or join in a pending suit as a plaintiff unless the person, independently of any other plaintiff:~~

[~~(1) establishes proper venue for the county in which the suit is pending; or~~

[~~(2) satisfies the requirements of Subdivisions (1) through (4) of Subsection (a)~~].

(c) An [~~Any person seeking intervention or joinder, who is unable to independently establish proper venue, or a party opposing intervention or joinder of such a person may contest the decision of the trial court allowing or denying intervention or joinder by taking an~~] interlocutory appeal permitted by Subsection (b) must be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. The appeal may be taken by a party that is affected by the

trial court's determination under Subsection (a). [~~The appeal must be perfected not later than the 20th day after the date the trial court signs the order denying or allowing the intervention or joinder.~~] The court of appeals shall:

(1) determine whether the trial court's order [~~joinder or intervention~~] is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard; and

(2) render judgment [~~its decision~~] not later than the 120th day after the date the appeal is perfected [~~by the complaining party~~].

(d) An interlocutory appeal under Subsection (b) has the effect of staying the commencement of trial in the trial court pending resolution of the appeal.

SECTION 3.04. Section 71.051(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court may consider whether [~~With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or 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 claim or action proves by a preponderance of the evidence that~~]:

(1) an alternate [~~alternative~~] forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

SECTION 3.05. Section 5A, Texas Probate Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.06. Section 5B, Texas Probate Code, is amended to read as follows:

Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to

his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.07. Section 607, Texas Probate Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.08. Section 281.056(a), Health and Safety Code, is amended to read as follows:

(a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

SECTION 3.09. Sections 71.051(a) and 71.052, Civil Practice and Remedies Code, are repealed.

ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES

SECTION 4.01. Section 33.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This [~~Except as provided by Subsections (b) and (c), this~~] chapter applies to:

(1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or

(2) any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

SECTION 4.02. Section 33.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.003. DETERMINATION OF PERCENTAGE OF RESPONSIBILITY. (a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been designated [~~joined~~] under Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

SECTION 4.03. The heading to Section 33.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.004. DESIGNATION [~~JOINDER~~] OF RESPONSIBLE THIRD PARTY [~~PARTIES~~].

SECTION 4.04. Section 33.004, Civil Practice and Remedies Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (f)-(l) to read as follows:

(a) A [~~Except as provided in Subsections (d) and (e), prior to the expiration of limitations on the claimant's claim for damages against the defendant and on timely motion made for that purpose, a~~] defendant may seek to designate a person as [~~join~~] a responsible third party by filing a motion for leave to designate that person as a responsible third party [~~who has not been sued by the claimant~~]. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Nothing in this section affects [~~shall affect~~] the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects [~~shall affect~~] the filing of cross-claims or counterclaims.

(e) If a person is designated under this section as a

responsible third party, a [~~A~~] claimant is not barred by limitations from seeking to [~~may~~] join that person [~~a responsible third party~~], even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person [~~the responsible third party~~] not later than 60 days after that person is designated as a responsible third party [~~a third party claim is filed under Subsection (d)~~].

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

(h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of

fault against the person:

(1) does not by itself impose liability on the person; and

(2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

(1) the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

(2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

(3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure.

(k) An unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground

that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, are amended to read as follows:

(1) "Claimant" means a person [~~party~~] seeking recovery of damages [~~pursuant to the provisions of Section 33.001~~], including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff [~~seeking recovery of damages~~]. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes:

(A) the person who was injured, was harmed, or died or whose property was damaged; and

(B) any person who is [~~both that other person and the party~~] seeking, has sought, or could seek recovery of damages for the injury, harm, or death of that person or for the damage to the property of that person [~~pursuant to the provisions of Section 33.001~~].

(2) "Defendant" includes any person [~~party~~] from whom, at the time of the submission of the case to the trier of fact, a claimant seeks recovery of damages [~~pursuant to the provisions of Section 33.001 at the time of the submission of the case to the trier of fact~~].

(5) "Settling person" means a person who [~~at the time of submission~~] has, at any time, paid or promised to pay money or anything of monetary value to a claimant [~~at any time~~] in consideration of potential liability [~~pursuant to the provisions of Section 33.001~~] with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6) [~~(A)~~] "Responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these. [~~to whom all of the following apply:~~

[~~(i) the court in which the action was filed could exercise jurisdiction over the person;~~

[~~(ii) the person could have been, but was not, sued by the claimant; and~~

[~~(iii) the person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.~~

[~~(B)~~] The term "responsible third party" does not include a seller eligible for indemnity under Section 82.002[~~:~~

[~~(i) the claimant's employer, if the employer maintained workers' compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or~~

[~~(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor~~].

SECTION 4.06. Section 33.012, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility [~~credit equal to one of the following, as elected in accordance with Section 33.014:~~

[~~(1) the sum of the dollar amounts of all settlements, or~~

[~~(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:~~

[~~(A) 5 percent of those damages up to $200,000;~~

[~~(B) 10 percent of those damages from $200,001 to $400,000;~~

[~~(C) 15 percent of those damages from $400,001 to $500,000; and~~

[~~(D) 20 percent of those damages greater than $500,000~~].

(c) Notwithstanding Subsection (b), if the claimant in a

health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or

(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact. The court shall apply the credit in subsection (1) unless all defendants elect the credit in this subsection.

SECTION 4.07. Section 33.013, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection [~~Subsections~~] (b) [~~and (c)~~], a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (securing execution of document by deception);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted

or failed to act with specific intent to do harm. A defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

SECTION 4.08. Section 33.017, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY. Nothing in this chapter shall be construed to affect any rights of indemnity granted by [~~to a seller eligible for indemnity by Chapter 82, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or~~] any [~~other~~] statute, [~~nor shall it affect rights of indemnity granted~~] by contract, or by [~~at~~] common law. To the extent of any conflict between this chapter and any right to indemnification granted by [~~Section 82.002, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other~~] statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

SECTION 4.09. Section 417.001(b), Labor Code, is amended to read as follows:

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to

the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest [~~that paid or assumed by the insurance carrier to the employee or the legal beneficiary~~], the insurance carrier shall:

(1) reimburse itself and pay the costs from the amount recovered; and

(2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

SECTION 4.10. The following sections of the Civil Practice and Remedies Code are repealed:

(1) 33.002(b), (d), (e), (f), (g), and (h);

(2) 33.004(c) and (d);

(3) 33.011(7);

(4) 33.012(c);

(5) 33.013(c); and

(6) 33.014.

SECTION 4.11. Nothing in the changes to Chapter 33, Civil Practice and Remedies Code, made by this article allowing an employer covered by workers' compensation insurance to be

designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

SECTION 4.12. The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Section 16.012, Civil Practice and Remedies Code, is amended 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) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss of real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief. [~~"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 Subsections [~~Subsection~~] (c), (d), and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product [~~manufacturing equipment~~] before the end of 15 years after the date of the sale of the product [~~equipment~~] by the defendant.

(c) If a manufacturer or seller expressly warrants in writing [~~represents~~] that the product [~~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 product [~~equipment~~] before the end of the number of years warranted [~~represented~~] after the date of the sale of the product [~~equipment~~] by that seller.

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

(1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;

(2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and

(3) the symptoms of the claimant's disease did not,

before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) [~~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 the product [~~manufacturing equipment~~] may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of a product [~~manufacturing equipment~~].

(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101) or its exceptions are applicable.

SECTION 5.02. Chapter 82, Civil Practice and Remedies Code, is amended by adding Sections 82.003, 82.007, and 82.008 to read as follows:

Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product

and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect;

or

(7) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

Sec. 82.007. MEDICINES. (a) In a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

(1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or

(2) the warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.

(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that:

(1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

(3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as recommended, promoted, or advertised; and

(C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product;

(4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as prescribed; and

(C) the claimant's injury was causally related to the prescribed use of the product; or

(5) the defendant, before or after pre-market approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C. Section 201 and that conduct caused the warnings or instructions approved for the product by the

United States Food and Drug Administration to be inadequate.

Sec. 82.008. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

(c) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or

seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

(d) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

(e) This section does not extend to products covered by Section 82.007.

SECTION 5.03. As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

ARTICLE 6. INTEREST

SECTION 6.01. Section 304.003(c), Finance Code, is amended to read as follows:

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Federal Reserve Bank of New York on [~~auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before~~] the date of computation;

(2) five [~~10~~] percent a year if the prime rate as published by the Federal Reserve Bank of New York [~~auction rate~~] described by Subdivision (1) is less than five [~~10~~] percent; or

(3) 15 [~~20~~] percent a year if the prime rate as published by the Federal Reserve Bank of New York [~~auction rate~~] described by Subdivision (1) is more than 15 [~~20~~] percent.

SECTION 6.02. Subchapter B, Chapter 304, Finance Code, is amended by adding Section 304.1045 to read as follows:

Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may not be assessed or recovered on an award of future damages.

SECTION 6.03. Section 304.108, Finance Code, is repealed.

SECTION 6.04. The changes in law made by this article apply in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

ARTICLE 7. APPEAL BONDS

SECTION 7.01. Section 35.006, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 35.006. STAY. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be

taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement [~~satisfaction~~] of the judgment that is required in this state in accordance with Section 52.006.

SECTION 7.02. Chapter 52, Civil Practice and Remedies Code, is amended by adding Section 52.006 to read as follows:

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a) Subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of:

(1) the amount of compensatory damages awarded in the judgment;

(2) interest for the estimated duration of the appeal; and

(3) costs awarded in the judgment.

(b) Notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of:

(1) 50 percent of the judgment debtor's net worth; or

(2) $25 million.

(c) On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

(d) An appellate court may review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court may not modify the amount of security to exceed the amount allowed under this section.

(e) Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

SECTION 7.03. The following sections of the Civil Practice and Remedies Code are repealed:

(1) 52.002;

(2) 52.003; and

(3) 52.004.

SECTION 7.04. (a) The changes in law made in Section 7.01 of this article apply to any judgment filed in this state under Chapter 35, Civil Practice and Remedies Code, on or after the effective date of this Act.

(b) The changes in law made in Sections 7.02 and 7.03 of this article apply to any case in which a final judgment is signed on or after the effective date of this Act.

ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

SECTION 8.01. Sections 545.412(d) and 545.413(g), Transportation Code, are repealed.

ARTICLE 9. RESERVED

ARTICLE 10. HEALTH CARE

SECTION 10.01. Chapter 74, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 74. MEDICAL LIABILITY [~~GOOD SAMARITAN LAW: LIABILITY FOR EMERGENCY CARE~~]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 74.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified person, including any direct or indirect parent or subsidiary.

(2) "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person, whether through ownership of equity or securities, by contract, or otherwise.

(4) "Court" means any federal or state court.

(5) "Disclosure panel" means the Texas Medical Disclosure Panel.

(6) "Economic damages" has the meaning assigned by Section 41.001.

(7) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or that is unrelated to the original medical emergency.

(8) "Emergency medical services provider" means a licensed public or private provider to which Chapter 773, Health and Safety Code, applies.

(9) "Gross negligence" has the meaning assigned by Section 41.001.

(10) "Health care" means any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care institution" includes:

(A) an ambulatory surgical center;

(B) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(C) an emergency medical services provider;

(D) a health services district created under Chapter 287, Health and Safety Code;

(E) a home and community support services agency;

(F) a hospice;

(G) a hospital;

(H) a hospital system;

(I) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended;

(J) a nursing home; or

(K) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code.

(12)(A) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including:

(i) a registered nurse;

(ii) a dentist;

(iii) a podiatrist;

(iv) a pharmacist;

(v) a chiropractor;

(vi) an optometrist; or

(vii) a health care institution.

(B) The term includes:

(i) an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and

(ii) an employee, independent contractor, or agent of a health care provider or physician acting in the course and scope of the employment or contractual relationship.

(13) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

(14) "Home and community support services agency" means a licensed public or provider agency to which Chapter 142, Health and Safety Code, applies.

(15) "Hospice" means a hospice facility or activity to which Chapter 142, Health and Safety Code, applies.

(16) "Hospital" means a licensed public or private institution as defined in Chapter 241, Health and Safety Code, or licensed under Chapter 577, Health and Safety Code.

(17) "Hospital system" means a system of hospitals located in this state that are under the common governance or

control of a corporate parent.

(18) "Intermediate care facility for the mentally retarded" means a licensed public or private institution to which Chapter 252, Health and Safety Code, applies.

(19) "Medical care" means any act defined as practicing medicine under Section 151.002, Occupations Code, performed or furnished, or which should have been performed, by one licensed to practice medicine in this state for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(20) "Noneconomic damages" has the meaning assigned by Section 41.001.

(21) "Nursing home" means a licensed public or private institution to which Chapter 242, Health and Safety Code, applies.

(22) "Pharmacist" means one licensed under Chapter 551, Occupations Code, who, for the purposes of this chapter, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(23) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) by an individual physician or group of physicians;

(C) a partnership or limited liability partnership formed by a group of physicians;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code; or

(E) a company formed by a group of physicians under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(24) "Professional or administrative services" means those duties or services that a physician or health care provider is required to provide as a condition of maintaining the physician's or health care provider's license, accreditation status, or certification to participate in state or federal health care programs.

(25) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with the common law.

Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE. (a) In the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.

(b) Notwithstanding Subsection (a), in the event of a conflict between this chapter and Section 101.023, 102.003, or 108.002, those sections of this code control to the extent of the conflict.

(c) The district courts and statutory county courts in a county may not adopt local rules in conflict with this chapter.

Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. This chapter does not waive sovereign immunity from suit or from liability.

Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a) Notwithstanding any other law, Sections 17.41-17.63, Business & Commerce Code, do not apply to physicians or health care providers with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section does not apply to pharmacists.

[Sections 74.005-74.050 reserved for expansion]

SUBCHAPTER B. NOTICE AND PLEADINGS

Sec. 74.051. NOTICE. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim. The notice must be accompanied by the authorization form for release of protected health information as required under Section 74.052.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and Section 74.052 and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this chapter have been met.

(c) Notice given as provided in this chapter shall toll the

applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Section 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection.

(e) For the purposes of this section, and notwithstanding Chapter 159, Occupations Code, or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization in the form required by Section 74.052 signed by a parent, spouse, or adult child of the deceased or incompetent person.

Sec. 74.052. AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION. (a) Notice of a health care claim under Section 74.051 must be accompanied by a medical authorization in the form specified by this section. Failure to provide this authorization along with the notice of health care claim shall abate all further proceedings against the physician or health care provider receiving the notice until 60 days following receipt by the physician or health care provider of the required authorization.

(b) If the authorization required by this section is modified or revoked, the physician or health care provider to whom

the authorization has been given shall have the option to abate all further proceedings until 60 days following receipt of a replacement authorization that must comply with the form specified by this section.

(c) The medical authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164).

AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, _____(name of patient or authorized representative), hereby authorize _____(name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. To facilitate the investigation and evaluation of the health care claim described in the accompanying Notice of Health Care Claim; or

2. Defense of any litigation arising out of the claim made the basis of the accompanying Notice of Health Care Claim.

B. The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written and is specifically described as follows:

1. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) in connection with the injuries alleged to have been sustained in connection with the

claim asserted in the accompanying Notice of Health Care Claim. (Here list the name and current address of all treating physicians or health care providers). This authorization shall extend to any additional physicians or health care providers that may in the future evaluate, examine, or treat _____ (patient) for injuries alleged in connection with the claim made the basis of the attached Notice of Health Care Claim;

2. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) during a period commencing five years prior to the incident made the basis of the accompanying Notice of Health Care Claim. (Here list the name and current address of such physicians or health care providers, if applicable.)

C. Excluded Health Information - the following constitutes a list of physicians or health care providers possessing health care information concerning _____ (patient) to which this authorization does not apply because I contend that such health care information is not relevant to the damages being claimed or to the physical, mental, or emotional condition of _____ (patient) arising out of the claim made the basis of the accompanying Notice of Health Care Claim. (Here state "none" or list the name of each physician or health care provider to whom this authorization does not extend and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure.)

D. The persons or class of persons to whom the health information of _____ (patient) will be disclosed or who will

make use of said information are:

1. Any and all physicians or health care providers providing care or treatment to _____ (patient);

2. Any liability insurance entity providing liability insurance coverage or defense to any physician or health care provider to whom Notice of Health Care Claim has been given with regard to the care and treatment of _____ (patient);

3. Any consulting or testifying experts employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on behalf of _____(name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of _____ (patient).

E. This authorization shall expire upon resolution of the claim asserted or at the conclusion of any litigation instituted in connection with the subject matter of the Notice of Health Care Claim accompanying this authorization, whichever occurs sooner.

F. I understand that, without exception, I have the right to revoke this authorization in writing. I further understand the consequence of any such revocation as set out in Section 74.052,

Civil Practice and Remedies Code.

G. I understand that the signing of this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. I understand that information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative

_____

Date

_____

Name of Patient/ Representative

_____

Description of Representative's Authority

_____

Sec. 74.053. PLEADINGS NOT TO STATE DAMAGE AMOUNT; SPECIAL EXCEPTION; EXCLUSION FROM SECTION. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

[Sections 74.054-74.100 reserved for expansion]

SUBCHAPTER C. INFORMED CONSENT

Sec. 74.101. THEORY OF RECOVERY. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The disclosure panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the disclosure panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the disclosure panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of

the panel as set forth in this chapter shall be exercised solely by the disclosure panel, and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The disclosure panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the disclosure panel shall be selected by the commissioner of health.

(d) At the expiration of the term of each member of the disclosure panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the disclosure panel present at each such meeting may be removed by the commissioner at the request of the disclosure panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the disclosure panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel, including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice chairman, and each such officer shall serve for a

term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be

published in the Texas Register.

Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the disclosure panel's list requiring disclosure, the physician or health care provider shall disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 74.105.

Sec. 74.105. MANNER OF DISCLOSURE. Consent to medical care that appears on the disclosure panel's list requiring disclosure shall be considered effective under this chapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the disclosure panel under Section 74.103.

Sec. 74.106. EFFECT OF DISCLOSURE. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 74.104 and failure to disclose based on inclusion of any medical care or

1 surgical procedure on the panel's list for which disclosure is not
2 required shall be admissible in evidence and shall create a
3 rebuttable presumption that the requirements of Sections 74.104 and
4 74.105 have been complied with and this presumption shall be
5 included in the charge to the jury; and
6 (2) failure to disclose the risks and hazards involved
7 in any medical care or surgical procedure required to be disclosed
8 under Sections 74.104 and 74.105 shall be admissible in evidence
9 and shall create a rebuttable presumption of a negligent failure to
10 conform to the duty of disclosure set forth in Sections 74.104 and
11 74.105, and this presumption shall be included in the charge to the
12 jury; but failure to disclose may be found not to be negligent if
13 there was an emergency or if for some other reason it was not
14 medically feasible to make a disclosure of the kind that would
15 otherwise have been negligence.
16 (b) If medical care or surgical procedure is rendered with
17 respect to which the disclosure panel has made no determination
18 either way regarding a duty of disclosure, the physician or health
19 care provider is under the duty otherwise imposed by law.
20 Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) The
21 disclosure panel shall develop and prepare written materials to
22 inform a patient or person authorized to consent for a patient of
23 the risks and hazards of a hysterectomy.
24 (b) The materials shall be available in English, Spanish,
25 and any other language the panel considers appropriate. The
26 information must be presented in a manner understandable to a
27 layperson.

(c) The materials must include:

(1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment;

(2) the name of the person providing and explaining the materials;

(3) a statement that the patient or person authorized to consent for the patient understands that the hysterectomy is permanent and nonreversible and that the patient will not be able to become pregnant or bear children if she undergoes a hysterectomy;

(4) a statement that the patient has the right to seek a consultation from a second physician;

(5) a statement that the patient or person authorized to consent for the patient has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina;

(6) a description of the risks and hazards involved in the performance of the procedure; and

(7) a written statement to be signed by the patient or person authorized to consent for the patient indicating that the materials have been provided and explained to the patient or person authorized to consent for the patient and that the patient or person authorized to consent for the patient understands the nature and

consequences of a hysterectomy.

(d) The physician or health care provider shall obtain informed consent under this section and Section 74.104 from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not reasonably possible. If obtaining informed consent is not reasonably possible, the physician or health care provider shall include in the patient's medical records a written statement signed by the physician certifying the nature of the emergency.

(e) The disclosure panel may not prescribe materials under this section without first consulting with the Texas State Board of Medical Examiners.

[Sections 74.108-74.150 reserved for expansion]

SUBCHAPTER D. EMERGENCY CARE

Sec. 74.151. LIABILITY FOR EMERGENCY CARE. (a) A person who in good faith administers emergency care, including using an automated external defibrillator, [~~at the scene of an emergency but not in a hospital or other health care facility or means of medical transport~~] is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

(b) This section does not apply to care administered:

(1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care

was administered for or in anticipation of remuneration; or

(2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.

[~~(c) If the scene of an emergency is in a hospital or other health care facility or means of medical transport, a person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent, provided that this subsection does not apply to care administered:~~

[~~(1) by a person who regularly administers care in a hospital emergency room unless such person is at the scene of the emergency for reasons wholly unrelated to the person's work in administering health care; or~~

[~~(2) by an admitting or attending physician of the patient or a treating physician associated by the admitting or attending physician of the patient in question.~~

[~~(d) For purposes of Subsections (b)(1) and (c)(1), a person who would ordinarily receive or be entitled to receive a salary, fee, or other remuneration for administering care under such circumstances to the patient in question shall be deemed to be acting for or in expectation of remuneration even if the person waives or elects not to charge or receive remuneration on the occasion in question.~~]

(e) This section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered.

Sec. 74.152 [~~74.002~~]. UNLICENSED MEDICAL PERSONNEL. Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of

a patient in a hospital emergency department, the court shall instruct the jury to consider, together with all other relevant matters:

(1) whether the person providing care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the presence or lack of a preexisting physician-patient relationship or health care provider-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the circumstances surrounding the delivery of the emergency medical care.

(b) The provisions of Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is related to an emergency caused in whole or in part by the negligence of the defendant.

[Sections 74.155-74.200 reserved for expansion]

SUBCHAPTER E. RES IPSA LOQUITUR

Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. The common law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of

this state as of August 29, 1977.

[Sections 74.202-74.250 reserved for expansion]

SUBCHAPTER F. STATUTE OF LIMITATIONS

Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to Subsection (b), no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided this section applies to all persons regardless of minority or other legal disability.

(b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.

[Sections 74.252-74.300 reserved for expansion]

SUBCHAPTER G. LIABILITY LIMITS

Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution, inclusive of all persons and entities for which

vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(b) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000.

(c) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.

Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES. (a) In the event that Section 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

(1) In an action on a health care liability claim where

final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(2) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000.

(3) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.

(b) Effective before September 1, 2005, Subsection (a) of

this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least $200,000 for each health care liability claim and at least $600,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $500,000 for each health care liability claim and at least $1.5 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(c) Effective September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved

residency program;

(2) at least $300,000 for each health care liability claim and at least $900,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $750,000 for each health care liability claim and at least $2.25 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(d) Effective September 1, 2007, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least $500,000 for each health care liability claim and at least $1 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least $1 million for each health care liability claim and at least $3 million in aggregate for all health care

liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(e) Evidence of financial responsibility may be established at the time of judgment by providing proof of:

(1) the purchase of a contract of insurance or other plan of insurance authorized by this state or federal law or regulation;

(2) the purchase of coverage from a trust organized and operating under Article 21.49-4, Insurance Code;

(3) the purchase of coverage or another plan of insurance provided by or through a risk retention group or purchasing group authorized under applicable laws of this state or under the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as amended, or the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any other contract or arrangement for transferring and distributing risk relating to legal liability for damages, including cost or defense, legal costs, fees, and other claims expenses; or

(4) the maintenance of financial reserves in or an irrevocable letter of credit from a federally insured financial institution that has its main office or a branch office in this state.

Sec. 74.303. LIMITATION ON DAMAGES. (a) In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages, including exemplary damages, shall be limited to an amount not to exceed

1 $500,000 for each claimant, regardless of the number of defendant
2 physicians or health care providers against whom the claim is
3 asserted or the number of separate causes of action on which the
4 claim is based.
5 (b) When there is an increase or decrease in the consumer
6 price index with respect to the amount of that index on August 29,
7 1977, the liability limit prescribed in Subsection (a) shall be
8 increased or decreased, as applicable, by a sum equal to the amount
9 of such limit multiplied by the percentage increase or decrease in
10 the consumer price index, as published by the Bureau of Labor
11 Statistics of the United States Department of Labor, that measures
12 the average changes in prices of goods and services purchased by
13 urban wage earners and clerical workers' families and single
14 workers living alone (CPI-W: Seasonally Adjusted U.S. City Average
15 - All Items), between August 29, 1977, and the time at which damages
16 subject to such limits are awarded by final judgment or settlement.
17 (c) Subsection (a) does not apply to the amount of damages
18 awarded on a health care liability claim for the expenses of
19 necessary medical, hospital, and custodial care received before
20 judgment or required in the future for treatment of the injury.
21 (d) The liability of any insurer under the common law theory
22 of recovery commonly known in Texas as the "Stowers Doctrine" shall
23 not exceed the liability of the insured.
24 (e) In any action on a health care liability claim that is
25 tried by a jury in any court in this state, the following shall be
26 included in the court's written instructions to the jurors:
27 (1) "Do not consider, discuss, nor speculate whether

or not liability, if any, on the part of any party is or is not subject to any limit under applicable law."

(2) "A finding of negligence may not be based solely on evidence of a bad result to the claimant in question, but a bad result may be considered by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence."

[Sections 74.304-74.350 reserved for expansion]

SUBCHAPTER H. PROCEDURAL PROVISIONS

Sec. 74.351. EXPERT REPORT. (a) In a health care liability claim, a claimant shall, not later than the 120th day after the date the claim was filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

(b) If, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected physician or health care provider, shall, subject to Subsection (c), enter an order that:

(1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by

the physician or health care provider; and

(2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.

(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, then the 30-day extension shall run from the date the plaintiff first received the notice.

[Subsections (d)-(h) reserved]

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

(j) Nothing in this section shall be construed to require the serving of an expert report regarding any issue other than an issue relating to liability or causation.

(k) Subject to Subsection (t), an expert report served under

this section:

(1) is not admissible in evidence by any party;

(2) shall not be used in a deposition, trial, or other proceeding; and

(3) shall not be referred to by any party during the course of the action for any purpose.

(1) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6).

[Subsections (m)-(q) reserved]

(r) In this section:

(1) "Affected parties" means the claimant and the physician or health care provider who are directly affected by an act or agreement required or permitted by this section and does not include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claim" means a health care liability claim.

[(3) reserved]

(4) "Defendant" means a physician or health care provider against whom a health care liability claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(5) "Expert" means:

(A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted

standards of medical care, an expert qualified to testify under the requirements of Section 74.401;

(B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of Section 74.402;

(C) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health care liability claim, a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence;

(D) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a dentist, a dentist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence; or

(E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a podiatrist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence.

(6) "Expert report" means a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the

manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

(s) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, including medical or hospital records or other documents or tangible things, related to the patient's health care through:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(t) If an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a), the restrictions imposed by Subsection (k) on use of the expert report by any party are waived.

(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a).

Sec. 74.352. DISCOVERY PROCEDURES. (a) In every health care liability claim the plaintiff shall within 45 days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the

1 defendant full and complete answers to the appropriate standard set
2 of interrogatories and full and complete responses to the
3 appropriate standard set of requests for production of documents
4 and things promulgated by the Health Care Liability Discovery
5 Panel.
6 (b) Every physician or health care provider who is a
7 defendant in a health care liability claim shall within 45 days
8 after the date on which an answer to the petition was due serve on
9 the plaintiff's attorney or, if the plaintiff is not represented by
10 an attorney, on the plaintiff full and complete answers to the
11 appropriate standard set of interrogatories and complete responses
12 to the standard set of requests for production of documents and
13 things promulgated by the Health Care Liability Discovery Panel.
14 (c) Except on motion and for good cause shown, no objection
15 may be asserted regarding any standard interrogatory or request for
16 production of documents and things, but no response shall be
17 required where a particular interrogatory or request is clearly
18 inapplicable under the circumstances of the case.
19 (d) Failure to file full and complete answers and responses
20 to standard interrogatories and requests for production of
21 documents and things in accordance with Subsections (a) and (b) or
22 the making of a groundless objection under Subsection (c) shall be
23 grounds for sanctions by the court in accordance with the Texas
24 Rules of Civil Procedure on motion of any party.
25 (e) The time limits imposed under Subsections (a) and (b)
26 may be extended by the court on the motion of a responding party for
27 good cause shown and shall be extended if agreed in writing between

the responding party and all opposing parties. In no event shall an extension be for a period of more than an additional 30 days.

(f) If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action.

(g) If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses in accordance with the Texas Rules of Civil Procedure.

(h) Nothing in this section shall preclude any party from taking additional non-duplicative discovery of any other party. The standard sets of interrogatories provided for in this section shall not constitute, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.

[Sections 74.353-74.400 reserved for expansion]

SUBCHAPTER I. EXPERT WITNESSES

Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a

1 person may qualify as an expert witness on the issue of whether the
2 physician departed from accepted standards of medical care only if
3 the person is a physician who:
4 (1) is practicing medicine at the time such testimony
5 is given or was practicing medicine at the time the claim arose;
6 (2) has knowledge of accepted standards of medical
7 care for the diagnosis, care, or treatment of the illness, injury,
8 or condition involved in the claim; and
9 (3) is qualified on the basis of training or
10 experience to offer an expert opinion regarding those accepted
11 standards of medical care.
12 (b) For the purpose of this section, "practicing medicine"
13 or "medical practice" includes, but is not limited to, training
14 residents or students at an accredited school of medicine or
15 osteopathy or serving as a consulting physician to other physicians
16 who provide direct patient care, upon the request of such other
17 physicians.
18 (c) In determining whether a witness is qualified on the
19 basis of training or experience, the court shall consider whether,
20 at the time the claim arose or at the time the testimony is given,
21 the witness:
22 (1) is board certified or has other substantial
23 training or experience in an area of medical practice relevant to
24 the claim; and
25 (2) is actively practicing medicine in rendering
26 medical care services relevant to the claim.
27 (d) The court shall apply the criteria specified in

Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but may depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

(f) This section does not prevent a physician who is a

1 defendant from qualifying as an expert.

2 (g) In this subchapter, "physician" means a person who is:

3 (1) licensed to practice medicine in one or more

4 states in the United States; or

5 (2) a graduate of a medical school accredited by the

6 Liaison Committee on Medical Education or the American Osteopathic

7 Association only if testifying as a defendant and that testimony

8 relates to that defendant's standard of care, the alleged departure

9 from that standard of care, or the causal relationship between the

10 alleged departure from that standard of care and the injury, harm,

11 or damages claimed.

12 Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT

13 AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section,

14 "practicing health care" includes:

15 (1) training health care providers in the same field

16 as the defendant health care provider at an accredited educational

17 institution; or

18 (2) serving as a consulting health care provider and

19 being licensed, certified, or registered in the same field as the

20 defendant health care provider.

21 (b) In a suit involving a health care liability claim

22 against a health care provider, a person may qualify as an expert

23 witness on the issue of whether the health care provider departed

24 from accepted standards of care only if the person:

25 (1) is practicing health care in a field of practice

26 that involves the same type of care or treatment as that delivered

27 by the defendant health care provider, if the defendant health care

provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose;

(2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and

(2) is actively practicing health care in rendering health care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) This section does not prevent a health care provider who is a defendant, or an employee of the defendant health care provider, from qualifying as an expert.

(f) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by Subsections (b) and (c), in a suit involving a health care liability claim against a physician or health care provider, a person may qualify as an expert witness on the issue of the causal relationship

between the alleged departure from accepted standards of care and the injury, harm, or damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(b) In a suit involving a health care liability claim against a dentist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a dentist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(c) In a suit involving a health care liability claim against a podiatrist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a podiatrist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(d) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this

subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

[Sections 74.404-74.450 reserved for expansion]

SUBCHAPTER J. ARBITRATION AGREEMENTS

Sec. 74.451. ARBITRATION AGREEMENTS. (a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10-point boldface type clearly and conspicuously stating:

UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

(b) A violation of this section by a physician or professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and shall be subject to the

enforcement provisions and sanctions contained in that subtitle.

(c) A violation of this section by a health care provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Section 17.47, Business & Commerce Code, notwithstanding Section 74.004 or any other law.

(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.

[Sections 74.452-74.500 reserved for expansion]

SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

Sec. 74.501. DEFINITIONS. In this subchapter:

(1) "Future damages" means damages that are incurred after the date of judgment for:

(A) medical, health care, or custodial care services;

(B) physical pain and mental anguish, disfigurement, or physical impairment;

(C) loss of consortium, companionship, or society; or

(D) loss of earnings.

(2) "Future loss of earnings" means the following losses incurred after the date of the judgment:

(A) loss of income, wages, or earning capacity and other pecuniary losses; and

(B) loss of inheritance.

(3) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Sec. 74.502. SCOPE OF SUBCHAPTER. This subchapter applies only to an action on a health care liability claim against a physician or health care provider in which the present value of the award of future damages, as determined by the court, equals or exceeds $100,000.

Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court shall order that medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

(b) At the request of a defendant physician or health care provider or claimant, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump sum payment.

(c) The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for

the future damages.

(d) The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

(1) recipient of the payments;

(2) dollar amount of the payments;

(3) interval between payments; and

(4) number of payments or the period of time over which payments must be made.

Sec. 74.504. RELEASE. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the claimant.

Sec. 74.505. FINANCIAL RESPONSIBILITY. (a) As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

(b) The judgment must provide for payments to be funded by:

(1) an annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;

(2) an obligation of the United States;

(3) applicable and collectible liability insurance from one or more qualified insurers; or

(4) any other satisfactory form of funding approved by the court.

(c) On termination of periodic payments of future damages,

the court shall order the return of the security, or as much as remains, to the defendant.

Sec. 74.506. DEATH OF RECIPIENT. (a) On the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction.

(b) Periodic payments, other than future loss of earnings, terminate on the death of the recipient.

(c) If the recipient of periodic payments dies before all payments required by the judgment are paid, the court may modify the judgment to award and apportion the unpaid damages for future loss of earnings in an appropriate manner.

(d) Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant physician or health care provider to make further payments ends and any security given reverts to the defendant.

Sec. 74.507. AWARD OF ATTORNEY'S FEES. For purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, the court shall:

(1) place a total value on the payments based on the claimant's projected life expectancy; and

(2) reduce the amount in Subdivision (1) to present value.

SECTION 10.02. Section 84.003(1), Civil Practice and Remedies Code, is amended to read as follows:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, fire protection or prevention, emergency medical or hazardous material response services, or educational purposes, including [~~excluding~~] private primary or secondary schools if accredited by a member association of the Texas Private School Accreditation Commission but excluding fraternities, sororities, and secret societies, [~~alumni associations and related on-campus organizations,~~] or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies [~~alumni associations and related on-campus organizations~~], or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively

for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

(C) a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986 or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code; or

(D) a volunteer center, as that term is defined by Section 411.126, Government Code.

SECTION 10.03. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

<u>(6) "Hospital system" means a system of hospitals and other health care providers located in this state that are under the common governance or control of a corporate parent.</u>

SECTION 10.04. Section 84.003, Civil Practice and Remedies

Code, is amended by adding Subdivision (7) to read as follows:

(7) "Person responsible for the patient" means:

(A) the patient's parent, managing conservator, or guardian;

(B) the patient's grandparent;

(C) the patient's adult brother or sister;

(D) another adult who has actual care, control, and possession of the patient and has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient;

(E) an educational institution in which the patient is enrolled that has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient; or

(F) any other person with legal responsibility for the care of the patient.

SECTION 10.05. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.06. Chapter 84, Civil Practice and Remedies

Code, is amended by adding Section 84.0065 to read as follows:

Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a) Except as provided by Section 84.007, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of $500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:

(1) that the hospital is providing care that is not administered for or in expectation of compensation; and

(2) the limitations on the recovery of damages from the hospital in exchange for receiving the health care services.

(b) Subsection (a) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.07. Section 242.0372, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) An institution is not required to comply with this

section before September 1, 2005. This subsection expires September 2, 2005.

SECTION 10.08. Article 5.15-1, Insurance Code, is amended by adding Section 11 to read as follows:

Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer, as that term is defined by Section 82.001, Civil Practice and Remedies Code. A physician or health care provider shall be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

SECTION 10.09. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is repealed.

SECTION 10.10. Unless otherwise removed as provided by law, a member of the Texas Medical Disclosure Panel serving on the effective date of this Act continues to serve for the term to which the member was appointed.

SECTION 10.11. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1995 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased

inordinately in the same short period;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to the rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims, and defensive medicine has resulted in increasing cost to patients, private insurers, and Texas and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any

price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals; and

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, will have a positive effect on the rates charged by insurers for medical professional liability insurance.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and ensure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more

accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT

SECTION 11.01. Sections 108.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except in an action arising under the constitution or laws of the United States, a public servant [~~, other than a provider of health care as that term is defined in Section 108.002(c),~~] is not personally liable for damages in excess of $100,000 arising from personal injury, death, or deprivation of a right, privilege, or immunity if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of $100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

(b) Except in an action arising under the constitution or laws of the United States, a public servant [~~, other than a provider of health care as that term is defined in Section 108.002(c),~~] is not liable for damages in excess of $100,000 for property damage if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of $100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

SECTION 11.02. Chapter 261, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 11.03. Section 285.071, Health and Safety Code, is amended to read as follows:

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services [~~as a part of a rural health network as defined under 42 U.S.C. Section 1395i-4(g)~~] under contract with a hospital district that was created by general or special law [~~and that has a population under 50,000~~].

SECTION 11.04. Section 285.072, Health and Safety Code, is amended to read as follows:

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is [~~are~~], while performing services under the contract for the benefit of the hospital, an employee [~~employees~~] of the hospital district for the purposes of Chapters 101, [~~and~~] 102, and 108, Civil Practice and Remedies Code.

SECTION 11.05. Section 101.106, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 101.106. ELECTION OF REMEDIES. (a) The filing of a suit under this chapter against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter.

(b) The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents.

(c) The settlement of a claim arising under this chapter shall immediately and forever bar the claimant from any suit against or recovery from any employee of the same governmental unit regarding the same subject matter.

(d) A judgment against an employee of a governmental unit

shall immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit.

(e) If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit.

(f) If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed. [~~EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR JUDGMENT. A judgment in an action or a settlement of a claim under this chapter bars any action involving the same subject matter by the claimant against the employee of the governmental unit whose act or omission gave rise to the claim.~~]

SECTION 11.06. Section 108.001, Civil Practice and Remedies Code, is amended by adding Subdivision (3) to read as follows:

(3) "Public servant" includes a licensed physician who provides emergency or postemergency stabilization services to patients in a hospital owned or operated by a unit of local government.

SECTION 11.07. Section 108.002(c), Civil Practice and Remedies Code, is repealed.

ARTICLE 12. RESERVED

ARTICLE 13. DAMAGES

SECTION 13.01. The heading to Chapter 41, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 41. [~~EXEMPLARY~~] DAMAGES

SECTION 13.02. Section 41.001, Civil Practice and Remedies Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (8)-(13) to read as follows:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of [~~exemplary~~] damages. In a cause of action in which a party seeks recovery of [~~exemplary~~] damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of [~~exemplary~~] damages.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief [~~with respect to exemplary damages~~].

(4) "Economic damages" means compensatory damages <u>intended to compensate a claimant for actual economic or</u> [~~for~~] pecuniary loss; the term does not include exemplary damages or <u>noneconomic</u> damages [~~for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society~~].

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment <u>but not for compensatory purposes.</u>

Exemplary damages are neither economic nor noneconomic damages. "Exemplary damages" includes punitive damages.

(7) "Malice" means[~~:~~

[~~(A)~~] a specific intent by the defendant to cause substantial injury or harm to the claimant[~~; or~~

[~~(B) an act or omission:~~

[~~(i) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and~~

[~~(ii) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others~~].

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "Gross negligence" means an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an

extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

SECTION 13.03. Sections 41.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) This chapter applies to any action in which a claimant seeks [~~exemplary~~] damages relating to a cause of action.

(b) This chapter establishes the maximum [~~exemplary~~] damages that may be awarded in an action subject to this chapter, including an action for which [~~exemplary~~] damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of [~~exemplary~~] damages for a particular claim.

SECTION 13.04. Section 41.003, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsections

(d) and (e) to read as follows:

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) gross negligence [~~wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B)~~].

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

SECTION 13.05. Section 41.004(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) [~~A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear~~

~~and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A).~~] Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

SECTION 13.06. Section 41.008, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of [~~exemplary~~] damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or

(2) $200,000.

(c) <u>This section</u> [~~Subsection (b)~~] does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); or

(15) Section 49.08 (intoxication manslaughter).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of this section [~~Subsections (a) and (b)~~] may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section [~~Subsection (b)~~] does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

SECTION 13.07. Section 41.010(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Subject to Section 41.008, the [~~The~~] determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

SECTION 13.08. Chapter 41, Civil Practice and Remedies Code, is amended by adding Section 41.0105 to read as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

SECTION 13.09. Chapter 18, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CERTAIN LOSSES

Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION. (a) Notwithstanding any other law, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law.

(b) If any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

ARTICLE 14. RESERVED

ARTICLE 15. SCHOOL EMPLOYEES

SECTION 15.01. Subchapter B, Chapter 22, Education Code, is

amended by amending Section 22.051 and adding Sections 22.0511, 22.0513, 22.0514, 22.0516, and 22.0517 to read as follows:

Sec. 22.051. DEFINITION. In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;

(5) a member of the board of trustees of an independent school district; and

(6) any other person employed by a school district whose employment requires certification and the exercise of discretion.

Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL EMPLOYEES~~]. (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or

negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law [~~this section, "professional employee" includes:~~

[~~(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;~~

[~~(2) a student in an education preparation program participating in a field experience or internship;~~

[~~(3) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and~~

[~~(4) any other person whose employment requires certification and the exercise of discretion~~].

Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th day before the date a person files a suit against a professional employee of a school district, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) A professional employee of a school district against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section.

(d) An abatement under Subsection (c) continues until the 90th day after the date that written notice is given to the professional employee of a school district as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in which a judicial proceeding is being brought against a professional employee of a school district may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. In an action against a professional employee of a school district involving an act that is incidental to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's

fees and court costs from the plaintiff if the employee is found immune from liability under this subchapter.

SECTION 15.02. Section 22.053(a), Education Code, is amended to read as follows:

(a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511 [~~22.051~~].

SECTION 15.03. Section 30.024(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.04. Section 30.055(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. Section 105.301(e), Education Code, is amended to read as follows:

(e) The academy is not subject to the provisions of this code, or to the rules of the Texas Education Agency, regulating public schools, except that:

(1) professional employees of the academy are entitled to the limited liability of an employee under Section 22.0511

[~~22.051~~] or 22.052;

(2) a student's attendance at the academy satisfies compulsory school attendance requirements; and

(3) for each student enrolled, the academy is entitled to allotments from the foundation school program under Chapter 42 as if the academy were a school district, except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District.

SECTION 15.06. The change in law made by this article applies only to a suit for damages or a school employee disciplinary proceeding involving conduct that occurs on or after the effective date of this Act. A suit for damages or a school employee disciplinary proceeding involving conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty

against an institution under Section 32.021 or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.02. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL

ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.03. The following laws are repealed:

(1) Sections 32.021(i) and (k), Human Resources Code; and

(2) Section 242.050, Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 17.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or

surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic corporation organized under the laws of this state; or

(B) a foreign corporation organized under laws other than the laws of this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or

another jurisdiction.

(4) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitations in Section 149.003 shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).

(b) The limitations in Section 149.003 shall not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;

(4) any obligations under the National Labor Relations

1 Act (29 U.S.C. Section 151 et seq.), as amended, or under any
2 collective bargaining agreement;
3 (5) a successor that, after a merger or consolidation,
4 continued in the business of mining asbestos or in the business of
5 selling or distributing asbestos fibers or in the business of
6 manufacturing, distributing, removing, or installing
7 asbestos-containing products which were the same or substantially
8 the same as those products previously manufactured, distributed,
9 removed, or installed by the transferor;
10 (6) a contractual obligation existing as of the
11 effective date of this chapter that was entered into with claimants
12 or potential claimants or their counsel and which resolves asbestos
13 claims or potential asbestos claims;
14 (7) any claim made against the estate of a debtor in a
15 bankruptcy proceeding commenced prior to April 1, 2003, under the
16 United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or
17 against such debtor, or against a bankruptcy trust established
18 under 11 U.S.C. Section 524(g) or similar provisions of the United
19 States Code in such a bankruptcy proceeding commenced prior to such
20 date; or
21 (8) a successor asbestos-related liability arising
22 from a claim brought under Chapter 95, a common law claim for
23 premises liability, or a cause of action for premises liability, as
24 applicable, but only if the successor owned or controlled the
25 premise or premises at issue after the merger or consolidation.
26 Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED
27 LIABILITIES. (a) Except as further limited in Subsection (b), the

cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in Subsection (a) for purposes of determining the limitation of liability of a corporation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the

transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

Sec. 149.005. ADJUSTMENT. (a) Except as provided in Subsections (b), (c), and (d), the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid

by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by Section 149.004(c).

Sec. 149.006. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 17.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all actions:

(1) commenced on or after the effective date of this Act; or

(2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

SECTION 18.01. Sections 84.004(a) and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer [~~who is serving as an officer, director, or trustee~~] of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the

volunteer was acting in the course and scope of the volunteer's [~~his~~] duties or functions, including as an officer, director, or trustee within the organization.

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) [~~the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;~~

[~~(2)~~] the volunteer commits the act or omission in the course of providing health care services to the patient;

(2) [~~(3)~~] the services provided are within the scope of the license of the volunteer; and

(3) [~~(4)~~] before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for [~~patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of~~] the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

SECTION 18.02. Section 84.007(a), Civil Practice and

Remedies Code, is amended to read as follows:

(a) This chapter does not apply to an act or omission that is intentional, wilfully [~~or wantonly~~] negligent, or done with conscious indifference or reckless disregard for the safety of others.

SECTION 18.03. The following provisions of the Civil Practice and Remedies Code are repealed:

(1) Section 84.003(4); and

(2) Section 84.004(b).

ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS

SECTION 19.01. (a) The legislature finds that:

(1) 80 percent of the area of this state is currently protected by volunteer fire departments;

(2) concern regarding personal liability arising out of services rendered by volunteer fire fighters on behalf of volunteer fire departments deters individuals from offering their services as volunteer fire fighters;

(3) the diminishing number of volunteer fire fighters leads to increased costs and less service to areas of this state that are served by volunteer fire departments; and

(4) it is in the public interest of the citizens of this state to encourage the continued level of service provided by volunteer fire departments.

(b) The purpose of this article is to reduce the exposure to liability of:

(1) a volunteer fire department while involved in or

providing an emergency response; and

(2) a volunteer fire fighter while acting as a member of a volunteer fire department.

SECTION 19.02. Chapter 78, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. In this subchapter:

(1) "Emergency response" means a response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

(2) "Volunteer fire department" means a nonprofit organization that is:

(A) operated by its members;

(B) exempt from the state sales tax under Section 151.310, Tax Code, or the state franchise tax under Section 171.083, Tax Code; and

(C) organized to provide an emergency response.

(3) "Volunteer fire fighter" means a member of a volunteer fire department.

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. This subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of:

(1) a volunteer fire department while involved in or providing an emergency response; or

(2) a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire

department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A volunteer fire department is:

(1) liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101; and

(2) entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A volunteer fire fighter is:

(1) liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable; and

(2) entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

ARTICLE 20. DESIGN PROFESSIONALS

SECTION 20.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 150 to read as follows:

CHAPTER 150. DESIGN PROFESSIONALS

Sec. 150.001. DEFINITION. In this chapter, "design professional" means a registered architect or licensed professional engineer.

Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an

affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered architect shall be licensed in this state and actively engaged in the practice of architecture or engineering.

(b) The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.

(c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.

(d) The plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) may result in dismissal with prejudice of the complaint against the defendant.

(e) This statute shall not be construed to extend any applicable period of limitation or repose.

ARTICLE 21. LIMITATIONS OF LIABILITY

SECTION 21.01. Section 75.002, Civil Practice and Remedies Code, is amended by adding Subsection (h) to read as follows:

(h) An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.

ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

SECTION 22.01. Section 311.041, Health and Safety Code, is amended to read as follows:

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, [~~and~~] responsibilities, and benefits that apply to [~~of nonprofit~~] hospitals for providing community benefits that include charity care.

SECTION 22.02. Subchapter D, Chapter 311, Health and Safety Code, is amended by adding Section 311.0456 to read as follows:

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section, "department" means the Texas Department of Health.

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital

system during the preceding fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a report based on its most recent completed and audited prior fiscal year to the department not later than April 30 of each year stating that the hospital or system is eligible for certification. The department must verify the information in the report not later than May 31 of the year in which the department receives the report by checking the information against the report filed by the hospital or system under Section 311.046. After the department has verified the information in the report, the department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on May 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or

system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

SECTION 22.03. The heading to Subchapter D, Chapter 311, Health and Safety Code, is amended to read as follows:

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE [~~DUTIES OF NONPROFIT HOSPITALS~~]

ARTICLE 23. ACCELERATED APPEAL; EFFECTIVE DATE; SEVERABILITY

SECTION 23.01. (a) The constitutionality and other validity under the state or federal constitution of all or any part of Article 10 of this Act may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, if it is alleged that all or any part of Article 10 of this Act affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.

(b) An appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Article 10 of this Act is constitutional or unconstitutional, or otherwise valid or invalid, under the state or

federal constitution is an accelerated appeal.

(c) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) A district court in Travis County may grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 of this Act.

(e) There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 this Act. The direct appeal is an accelerated appeal.

(f) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

(g) An appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 23.02. (a) All articles of this Act, other than Article 17, take effect September 1, 2003.

(b) Article 17 of this Act takes effect immediately if this

Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Article 17 of this Act takes effect September 1, 2003.

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

(d) Except as otherwise provided in this section or by a specific provision in an article, this Act applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act, including an action filed before that date in which a party is joined or designated after that date, is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.

SECTION 23.03. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

House Bill 4
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
ARTICLE 1. CLASS ACTIONS	ARTICLE 1. CLASS ACTIONS	
SECTION 1.01. Adds Chapter 26, Civil Practice and Remedies Code, Class Actions Involving Jurisdiction of State Agency, as follows:	SECTION 1.01. Adds Chapter 26, Civil Practice and Remedies Code, Class Actions, as follows:	Same as Senate version.
Sec. 26.001. Definitions. In this chapter: (1) "Agency statute" means a statute of this state administered or enforced by a state agency. (2) "Claimant" means a party seeking recovery of damages or other relief and includes a plaintiff, counterclaimant, cross-claimant, or third-party claimant. (3) "Contested case" has the meaning assigned by Section 2001.003, Government Code. (4) "Defendant" means a party from whom a claimant seeks recovery of damages or other relief. (5) "Rule" has the meaning assigned by Section 2001.003, Government Code. (6) "State agency" means a board, commission, department, office, or agency that: (A) is in the executive branch of state government; (B) is created by the constitution or a statute of this state; (C) has statewide jurisdiction; and (D) has rulemaking authority involving the subject matter of the disputed claim.	No equivalent provision. (*But see Sec. 26.051, State Agency with Exclusive or Primary jurisdiction, below.*)	Same as Senate version.
Sec. 26.002. Applicability. This chapter applies only to an action in which: (1) a claimant seeks recovery of damages or other relief on behalf of a class of claimants; and (2) a disputed claim in the action involves the interpretation, application, or violation of an agency statute or rule with respect to one or more defendants.	No equivalent provision. (*But see Sec. 26.051, State Agency with Exclusive or Primary jurisdiction, below.*)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	Subchapter B heading. Class Actions Involving Jurisdiction of State Agency.	Same as Senate version.
Sec. 26.003. Hearing. (a) On motion of a party, a court shall conduct a hearing to determine whether an action should be dismissed or abated under this chapter. (b) Notice of the hearing must be given to the named parties to the action on or before the 21st day before the date of the hearing.	Sec. 26.051. State Agency with Exclusive or Primary Jurisdiction. (a) Before hearing or deciding a motion to certify a class action, a trial court must hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The court's ruling must be reflected in a written order. (b) If a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, a person may, as part of an appeal of the order certifying the class action, obtain appellate review of the order denying the plea to the jurisdiction. (c) This section does not alter or abrogate a person's right to appeal or pursue an original proceeding in an appellate court in regard to a trial court's order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Sec. 26.004. Dismissal For Failure to Exhaust Administrative Remedies. (a) A court shall dismiss an action without prejudice if: (1) a state agency has the exclusive jurisdiction to determine an issue in dispute or grant an administrative remedy before the claimant can seek a judicial remedy; and (2) one or more class representatives failed to exhaust the state agency's administrative remedy. (b) The court's dismissal order must identify the state agency having exclusive jurisdiction and state the administrative remedy available to the claimant. (c) The limitations period applicable to an action dismissed under this section is suspended for members of the class or putative class with respect to the defendants named in the class action commenced in a court of this state for a period beginning on the date the dismissal order is signed and continuing while the class representatives diligently pursue the administrative remedy identified in the dismissal order.	(*See Sec. 26.051, State Agency with Exclusive or Primary Jurisdiction, above.*)	Same as Senate version.
Sec. 26.005. Abatement or Dismissal. (a) On motion of a party filed on or before the 30th day after the date the court signed the order certifying the action as a class action, a court shall abate or dismiss without prejudice an action if the court determines that: (1) an issue in dispute in the action involves a question of fact within the jurisdiction of a state agency to determine; (2) an issue in dispute in the action involves the application, interpretation, or violation of an agency statute or rule; (3) a state agency, if allowed to do so, could make	No equivalent provision. (*But see Sec. 26.051, State Agency with Exclusive or Primary jurisdiction, above.*)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
findings of fact and conclusions of law or issue orders that would aid the court in resolving the action; or (4) a state agency, through a contested case proceeding, could order all or part of the relief a claimant seeks. (b) The court's abatement or dismissal order must identify the state agency and state the agency statute or rule on which the order is based. (c) A court that abates an action under this section shall: (1) refer specific issues or claims within a state agency's jurisdiction to the agency for action; and (2) direct the state agency to report to the court periodically concerning the disposition of the matters referred to the agency. (d) The limitations period applicable to an action dismissed under this section is suspended for members of the class or putative class with respect to the defendants named in the class action commenced in a court of this state for a period beginning on the date the dismissal order is signed and continuing while the class representatives diligently pursue the administrative remedy identified in the dismissal order.		
Sec. 26.006. Abatement Period. (a) The order must provide that the abatement period is at least six months from the date the court signs the abatement order. (b) The court may extend the abatement period if the court determines that the state agency is proceeding diligently to resolve the matters the court referred to the agency. (c) The abatement period ends when: (1) the state agency takes such final action as the agency is authorized regarding the matters the court referred to the agency; or (2) the court	No equivalent provision. (*But see Sec. 26.051, State Agency with Exclusive or Primary jurisdiction, above.*)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
determines that the state agency is not proceeding diligently to resolve the matters the court referred to the agency.		
Sec. 26.007. Proceeding After Abatement; Dismissal. (a) After the abatement period ends, the court shall decide whether to dismiss the action, proceed with the action as an individual action, or proceed with the action as a class action. (b) A court shall dismiss an action if the court determines that: (1) the state agency granted all or a substantial part of the relief sought by the claimant and the class; or (2) the relief granted by the state agency is an adequate substitute for the relief sought in the action by the claimant and the class. (c) If the court does not dismiss the action, it shall determine whether to proceed with the action as a class action or as an individual action by considering or reconsidering the case in light of class certification criteria. In determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy, the court shall consider the availability of judicial review of the state agency's decision and of declaratory relief under Section 2001.038, Government Code, concerning the validity and applicability of agency rules. (d) Relief awarded to a claimant may be adequate even if the relief does not include exemplary damages, multiple damages, attorney's fees, or costs of court. (e) If a person seeks judicial review of a state agency's decision on an issue referred to the agency by the court, the court may transfer the action to a county of proper venue for the judicial review if the court determines that: (1) the	No equivalent provision. (*But see Sec. 26.051, State Agency with Exclusive or Primary jurisdiction, above.*)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
transfer is necessary to avoid the likelihood of conflicting or inconsistent judicial decisions affecting the parties to the action; (2) the transfer would promote judicial economy; (3) the transfer would not work a substantial injustice to the parties to the action; and (4) the balance of interests of the parties to the action predominates in favor of transferring the action. (f) If a person seeks declaratory relief under Section 2001.038, Government Code, concerning the validity or applicability of a state agency rule involved in a state agency's decision on a matter referred to the agency by the court, the court shall transfer the action to Travis County.		
SECTION 1.02. Adds Chapter 140, Civil Practice and Remedies Code, Attorney's Fees Awarded in Class Actions, as follows:	Subchapter A heading. SUPREME COURT RULES.	Same as Senate version.
No equivalent provision.	Sec. 26.001. Adoption of Rules by Supreme Court. (a) The supreme court shall adopt rules to provide for the fair and efficient resolution of class actions. (b) The supreme court shall adopt rules under this chapter on or before December 31, 2003.	Same as Senate version.
No equivalent provision.	Sec. 26.002. Mandatory Guidelines. Rules adopted under Section 26.001 must comply with the mandatory guidelines established by this chapter.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Sec. 140.001. Applicability. (a) Except as provided by Subsection (b), this chapter applies to an award of attorney's fees in a class action notwithstanding: (1) any agreement between the attorney or attorneys for the class and any member of the class; or (2) any other law or rule of court. (b) This chapter does not apply to fees payable to the attorney or attorneys by a named plaintiff client out of that client's funds, including the client's share of the common fund recovered for the class, under an agreement between the attorney or attorneys and the client.	No equivalent provision. (*But see Sec. 26.003, below*).	Same as Senate version.
Sec. 140.002. No Right To Fees Created. This chapter does not create a right to an award of attorney's fees.	No equivalent provision. (*But see Sec. 26.003, below*).	Same as Senate version.
Sec. 140.003. Award of Fees. If a court awards a fee in a class action to the attorney or attorneys for the class, the fee must be awarded out of a common fund or as measured by a common benefit recovered for the class, and the fee must be computed as provided by this chapter.	No equivalent provision. (*But see Sec. 26.003, below*).	Same as Senate version.
Sec. 140.004. Determination of Base Fee. (a) In any class action in which an award of attorney's fees is to be made, the court shall first determine the base fee as provided by this section. (b) The court shall find: (1) the number of hours that it considers to have been reasonably and necessarily expended by the attorney or attorneys for the class; and (2) the hourly rates it considers to be appropriate for the services provided by the attorney or attorneys for the class.	Sec. 26.003(a) If an award of attorney's fees is available under applicable substantive law, the rules adopted under this chapter must provide that the trial court shall use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel. The rules may give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method by no more than four times based on specified factors.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(c) The rates in Subsection (b)(2) must be based on and cannot exceed the rates customarily charged in the locality for similar legal services in nonclass litigation. (d) To compute the base fee, the court shall multiply the hours found in Subsection (b)(1) by the rates found in Subsection (b)(2).	Sec. 26.003(b) Rules adopted under this chapter must provide that in a class action, if any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney's fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.	
Sec. 140.005. Increase or Decrease of Base Fee. (a) Except as provided by Subsection (b), the court may increase or decrease the base fee determined under Section 140.004 by applying the following factors: (1) the novelty and difficulty of the issues involved in the action; (2) the skill required to properly perform the legal services performed by the attorney or attorneys for the class; (3) the amount of money involved in the action and the results obtained; (4) the time limitations imposed by the class or the circumstances; and (5) the experience, reputation, and ability of the attorney or attorneys performing services for the class.	(*See Sec. 26.003, above.*)	Same as Senate version.
(b) The total fees awarded by the court may not exceed the lesser of: (1) 25 percent of the amounts collected by class members out of the common fund or as measured by a common benefit recovered for the class; or (2) four times the base fee as determined under Section 140.004.	(*See Sec. 26.003, above.*)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Sec. 140.006. Actual Expenses and Costs. In addition to the fee determined by the court under this chapter, the court may award the attorney or attorneys representing the class all reasonable expenses and costs of litigation actually incurred by the attorney or attorneys on behalf of the class.	(*See Sec. 26.003(a), above.*)	Same as Senate version.
SECTION 1.03. Amends Subsections (b) and (d) of Sec. 22.225, Government Code, Effect of Judgment in Civil Cases, relating to a petition for review to the supreme court, and adds (e), clarifying what is meant by one court holding differently from another.	SECTION 1.02. Same as House version.	Same as Senate version.
SECTION 1.04. Amends Secs. 51.014(a), (b), and (c), Civil Practice and Remedies Code, relating to appeals from an interlocutory order. In Subsection (a)(9), provides that a person may appeal from an interlocutory order of a district court, court at law, or county court that denies all or a part of the relief sought by a motion *under Section 13.01(b), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).*	SECTION 1.03. Same as House version, except in Subsection (a)(9), provides that a person may appeal from an interlocutory order of a district court, county court at law, or county court that denies all or a part of the relief sought by a motion *under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351.* Makes conforming changes.	Same as Senate version.
SECTION 1.05. Adds Sec. 22.001(e), Government Code, relating to supreme court jurisdiction when one court holds differently from another.	SECTION 1.04. Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision. (*But see Article 21 for applicability provision.*)	SECTION 1.05. (a) The changes in law made by Section 1.02 of this Act to Section 22.225(d), Government Code, apply to any case in which a petition for review to the Supreme Court of Texas is filed on or after the effective date of this Act. (b) The changes in law made by Section 1.03 of this Act to Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply to any case in which an appeal allowed by Section 51.014(a), Civil Practice and Remedies Code, as amended by this Act, is taken and the notice of appeal is filed on or after the effective date of this Act.	Same as Senate version.
ARTICLE 2. SETTLEMENT	ARTICLE 2. SETTLEMENT	Same as Senate version.
SECTION 2.01. Adds Subtitle C, Title 2, Chapter 42, Civil Practice and Remedies Code, Settlement and Recovery of Litigation Costs, as follows:	SECTION 2.01. Adds Subtitle C, Title 2, Chapter 42, Civil Practice and Remedies Code, Settlement, as follows:	Same as Senate version.
Subchapter A heading. General Provisions.	No equivalent provision.	Same as Senate version.
Sec. 42.001. Definitions, as follows:	Sec. 42.001. Definitions, as follows:	Same as Senate version.
(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages *or to obtain other relief. The term does not include a request for an injunction or to recover litigation costs.*	(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages.	Same as Senate version.
(2)-(4) Define "Claimant," "Defendant," and "Governmental	Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Unit."		
(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related *to an action.* "Litigation costs" include: (A) reasonable *and necessary* attorney's fees; (B) court costs; (C) *reasonable and necessary deposition costs*; and (D) reasonable fees for not more than two expert witnesses.	(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related *to the case in which a settlement offer is made.* The term includes: (A) court costs; (B) reasonable fees for not more than two *testifying* expert witnesses; and (C) reasonable attorney's fees.	Same as Senate version.
(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance *with Section 42.051.*	(6) Same as House version, except refers to compliance *with this chapter.*	Same as Senate version.
Sec. 42.002. Applicability and Effect. (a) This chapter does not apply to: (1) an action in which a class has been certified; or (2) an action by or against a governmental unit. (b) Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action: (1) brought under the Family Code; (2) brought under Chapter 27, Property Code; (3) brought under the Texas Probate Code or Chapter 115, Property Code; (4) brought under the Tax Code; (5) brought on behalf of a minor or person of unsound mind; (6) to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; (7) brought under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 et seq.), as amended;	Sec. 42.002. Applicability and Effect. (a) The settlement procedures provided in this chapter apply only to claims for monetary relief. (b) This chapter does not apply to: (1) a class action; (2) a shareholder's derivative action; (3) an action brought by or against a governmental unit; (4) an action brought under the Family Code; or (5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code.	Same as Senate version with marked changes: Sec. 42.002. Applicability and Effect. (a) The settlement procedures provided in this chapter apply only to claims for monetary relief. (b) This chapter does not apply to: (1) a class action; (2) a shareholder's derivative action; (3) an action brought by or against a governmental unit; (4) an action brought under the Family Code; or (5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or (6) an action filed in a justice of the peace court.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(8) brought under the Jones Act (46 U.S.C. Section 688), as amended; (9) brought in small claims court or justice court; (10) brought by a homeowners association to enforce deed restrictions or to collect delinquent fees, dues, or assessments; (11) brought under the Federal Employers' Liability Act (45 U.S.C. Section 51 et seq.), as amended; (12) brought under the Safety Appliance Acts (49 U.S.C. Sections 20102, 20301, 20302, 20304, 21302, and 21304), as amended; or (13) brought under the Locomotive Inspection Act (49 U.S.C. Sections 20102, 20701-20703, 21302, and 21304), as amended.		
(c) This chapter does not limit or affect the ability of any person to: (1) make an offer to settle or compromise a claim that does not comply with this chapter; or (2) offer to settle or compromise a claim to which this chapter does not apply.	(d) Same as House version.	Same as Senate version.
(d) An offer to settle or compromise that *does not comply with Section 42.051* or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.	(e) Same as House version, except refers to an offer to settle or compromise *that is not made under this chapter.*	Same as Senate version.
(e) This chapter does not apply to an action: (1) on a contract that specifies remedies for breach, including specific performance, liquidated damages, or attorney's fees; (2) on a negotiable instrument; or (3) for a debt, including an action	No equivalent provision.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
on a sworn account or for services rendered.		
Sec. 42.003. Modification of Time Limits. A court may modify the time limits specified in this chapter by order resulting from a pretrial conference conducted under Rule 166, Texas Rules of Civil Procedure.	No equivalent provision. (*But see Sec. 42.005(b), below*)	Same as Senate version.
Sec. 42.004. Service. When this chapter requires a writing to be served on another party, service is adequate if it is performed in a manner described in Rule 21a, Texas Rules of Civil Procedure.	No equivalent provision.	Same as Senate version.
Sec. 42.005. Applicability of Chapter in Relation to Certain Criminal Behavior. Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action arising from conduct of the defendant described in any of the following sections of the Penal Code: (1) Section 49.04 (driving while intoxicated); (2) Section 49.05 (flying while intoxicated); (3) Section 49.06 (boating while intoxicated); (4) Section 49.065 (assembling or operating an amusement ride while intoxicated); (5) Section 49.07 (intoxication assault); or (6) Section 49.08 (intoxication manslaughter).	No equivalent provision.	Same as Senate version.
Sec. 42.006. Additional Applicability Provision; Certain Criminal Behavior. Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action in which the defendant is a person who has engaged in conduct described as a felony in	No equivalent provision.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
the following Penal Code provisions if the conduct was committed knowingly or intentionally, as defined by Sections 6.03(a) and (b), Penal Code: (1) Section 19.02 (murder); (2) Section 19.03 (capital murder); (3) Section 20.03 (kidnapping); (4) Section 20.04 (aggravated kidnapping); (5) Section 22.02 (aggravated assault); (6) Section 22.011 (sexual assault); (7) Section 22.021 (aggravated sexual assault); (8) Section 22.04 (injury to a child, elderly individual, or disabled individual); (9) Section 32.21 (forgery); (10) Section 32.43 (commercial bribery); (11) Section 32.45 (misapplication of fiduciary property or property of financial institution); (12) Section 32.46 (securing execution of a document by deception); (13) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or (14) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher.		
Sec. 42.007. Applicability of Chapter: Nonmonetary Terms. Notwithstanding any other provision of this chapter, if a monetary settlement offer is made conditioned on terms other than monetary relief pled by the party to whom the settlement offer was made and recoverable by that party in law or in equity, other than the requirement for a release and indemnity of claim by and through the claimant, then this chapter does not apply unless the defendant succeeds in obtaining those other terms in the judgment.	No equivalent provision.	Same as Senate version.
[Sections 42.008-42.050 reserved for expansion]	No equivalent provision.	Same as Senate version.

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Subchapter B heading. Awarding Litigation Costs.	No equivalent provision.	Same as Senate version.
Sec. 42.051. Settlement Offer. (a) A defendant or a group of defendants may serve on a claimant a settlement offer to settle all claims in the action between that defendant or those defendants and the claimant.	Sec. 42.002(c) This chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. If there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.	Same as Senate version.
Sec. 42.051(b) The settlement offer must: (1) be in writing; (2) state that it is a settlement offer under this chapter; (3) state the terms by which the claims may be settled; (4) state a deadline by which the settlement offer must be accepted; and (5) be served *on the claimant* to whom the settlement offer is made.	Sec. 42.003. Making Settlement Offer. Same as House version, except must be served *on all parties* to whom the settlement offer is made.	Same as Senate version.
No equivalent provision.	Sec. 42.005. Supreme Court to Make Rules, as follows:	Same as Senate version.
No equivalent provision.	(a) The supreme court shall promulgate rules implementing this chapter. The rules must be limited to settlement offers made under this chapter. The rules must be in effect on January 1, 2004. (c) The rules promulgated by the supreme court must address actions in which there are multiple parties and must provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made may declare the offer void.	Same as Senate version.

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	(d) The rules promulgated by the supreme court may: (1) designate other actions to which the settlement procedure of this chapter does not apply; and (2) address other matters considered necessary by the supreme court to the implementation of this chapter.	
(c) A defendant or group of defendants may not make a settlement offer under this section before the 90th day after the later of: (1) the date any of the offering defendants filed a responsive pleading; or (2) the date any of the offering defendants otherwise appeared in the action. (d) A defendant or group of defendants may not make a settlement offer under this section after the 30th day before the date set for trial.	(b) The rules promulgated by the supreme court must provide: (1) the date by which a defendant or defendants must file the declaration required by Section 42.002(c); (2) the date before which a party may not make a settlement offer; (3) the date after which a party may not make a settlement offer; and (4) procedures for: (A) making an initial settlement offer; (B) making successive settlement offers; (C) withdrawing a settlement offer; (D) accepting a settlement offer; (E) rejecting a settlement offer; and (F) modifying the deadline for making, withdrawing, accepting, or rejecting a settlement offer.	Same as Senate version.

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(e) The parties are not required to file a settlement offer with the court.	No equivalent provision.	Same as Senate version.
Sec. 42.052. Acceptance of Settlement Offer. (a) A claimant may accept a settlement offer made under this chapter on or before 5 p.m. on the 30th day after the date the claimant received the settlement offer or before the deadline stated in the settlement offer, whichever is later.	(See Sec. 42.005(b), above.)	Same as Senate version.
(b) Acceptance of a settlement offer must be: (1) in writing; and (2) served on the defendant or defendants who made the settlement offer.	No equivalent provision.	Same as Senate version.
Sec. 42.053. Withdrawing Settlement Offer. (a) A defendant or group of defendants may withdraw a settlement offer by serving a written withdrawal on the claimant to whom the settlement offer was made before the claimant accepts the settlement offer. A claimant may not accept a settlement offer after it is withdrawn.	(*See Sec. 42.005(b), above.*) No equivalent provision.	Same as Senate version.
(b) If a settlement offer is withdrawn, the defendant or group of defendants that made the settlement offer is not entitled to recover litigation costs under this chapter.		

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Sec. 42.054. Rejection of Settlement Offer. For purposes of this chapter, a settlement offer is rejected if: (1) the claimant to whom the settlement offer was made rejects the settlement offer by serving a written rejection on any defendant making the settlement offer; or (2) the settlement offer is not withdrawn and is not accepted before the deadline for accepting the offer.	(See Sec. 42.005(b), above.)	Same as Senate version.
Sec. 42.055. Award of Litigation Costs, as follows:	Sec. 42.004. Awarding Litigation Costs, as follows:	Same as Senate version.
(a) Any defendant who makes a settlement offer under this chapter to a claimant seeking monetary relief shall recover litigation costs from the claimant if: (1) the settlement offer is rejected; (2) the amount of monetary relief to be awarded in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer; and (3) the difference between the amount of monetary relief to be awarded to the claimant in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, and the amount of the settlement offer is equal to or greater than 10 percent of the amount of the settlement offer.	(a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party. (b) A judgment will be significantly less favorable to the rejecting party than is the settlement offer if: (1) the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer; or (2) the rejecting party is a defendant and the award will be more than 120 percent of the rejected offer.	Same as Senate version.

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(b) Any defendant who makes a settlement offer to a claimant seeking nonmonetary relief, other than injunctive relief, may recover litigation costs from the claimant if: (1) the settlement offer is rejected; and (2) the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer.		
(c) Litigation costs awarded to a defendant under this section include only those litigation costs incurred by the defendant who made a settlement offer after the rejection of the earliest settlement offer that entitles the defendant to an award of litigation costs under this section.	(c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the settlement offer.	Same as Senate version.
(d) Litigation costs awarded under this section shall: (1) be awarded in the judgment; and (2) offset the claimant's recovery against the offering defendant.	(g) If litigation costs are to be awarded against a claimant, those litigation costs shall be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.	Same as Senate version.
(e) The court shall determine the amount of litigation costs awarded based on written or oral evidence presented to the court. In jury trials: (1) the evidence must be presented outside the presence of the jury; and (2) the presentation of evidence may be made after the jury has reached its verdict.	No equivalent provision.	Same as Senate version.
(f) The trial judge who presided over the trial of the case shall act as the finder of fact in regard to the award of	No equivalent provision.	Same as Senate version.

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litigation costs under this section. If that judge is unable to do so, the local presiding judge shall appoint another judge to hear and determine all issues related to the award.		
(g) An award of litigation costs under this section may be reviewed on appeal from a final judgment for abuse of discretion.	No equivalent provision.	Same as Senate version.
Sec. 42.056. Limitation on Litigation Costs, as follows:	Sec. 42.004. Awarding Litigation Costs, continued:	Same as Senate version.
(a) The amount of litigation costs awarded under this chapter shall not exceed the claimant's total recovery, less any statutory liens, in connection with the transactions or occurrences giving rise to the claim.	(d) The litigation costs that may be awarded under this chapter may not be greater than an amount computed by: (1) determining the sum of: (A) 50 percent of the economic damages to be awarded to the claimant in the judgment; (B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and (C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and (2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.	Same as Senate version.
(b) The claimant's total recovery under this section does not include the proceeds of an insurance policy paid to the claimant as a beneficiary of the policy, unless the proceeds are the subject of the litigation.	No equivalent provision.	Same as Senate version.
(c) The claimant's total recovery under this section includes: (1) the amount of any monetary relief awarded to the claimant	No equivalent provision.	Same as Senate version.

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in the judgment; and (2) the amount of any money paid or to be paid to the claimant by any person in consideration of actual or potential liability in connection with the transactions or occurrences giving rise to the claim.		
(d) If litigation costs are awarded against a claimant under this chapter, the claimant shall not be awarded any attorney's fees, expenses, or costs to which the claimant would otherwise be entitled under any other law that were incurred by the claimant after the claimant's rejection of the earliest settlement offer that entitles the defendant or group of defendants to an award of litigation costs under this section.	(e) If a claimant or defendant is entitled to recover fees and costs under another law, that claimant or defendant may not recover litigation costs in addition to the fees and costs recoverable under the other law. (f) If a claimant or defendant is entitled to recover fees and costs under another law, the court must not include fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).	Same as Senate version.
Sec. 42.057. Admissibility of Evidence. (a) This chapter does not affect the admissibility or inadmissibility of evidence as provided in the Texas Rules of Evidence. (b) The provisions of this chapter may not be made known to the jury through any means, including voir dire, introduction into evidence, instruction, or argument.	No equivalent provision.	Same as Senate version.
No equivalent provision. *(But see Article 21 for applicability provision).*	SECTION 2.02. The changes in law provided by this article apply only to an action filed on or after January 1, 2004.	Same as Senate version.

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ARTICLE 3. VENUE; FORUM NON CONVENIENS	ARTICLE 3. VENUE; FORUM NON CONVENIENS	
SECTION 3.01. Adds Subchapter F, Consolidation of Multidistrict Litigation for Pretrial Proceedings, to Chapter 15, Civil Practice and Remedies Code, as follows:	No equivalent provision.	Same as Senate version.
Sec. 15.151. Purpose. The purpose of this subchapter is to facilitate the just and efficient resolution of litigation in the courts of this state. To accomplish this purpose, this subchapter shall be construed in harmony with federal judicial interpretation of comparable federal multidistrict litigation statutes to the extent consistent with this purpose.	No equivalent provision.	Same as Senate version.
Sec. 15.152. Definitions. In this subchapter: (1) "Panel" means the judicial panel on multidistrict litigation authorized by Subchapter H, Chapter 74, Government Code. (2) "Related" means that cases involve common material issues of fact.	No equivalent provision.	Same as Senate version.
Sec. 15.153. Applicability. (a) This subchapter applies to any civil action, including any class action, that is one of multiple related cases pending in the district courts of this state. (b) This subchapter does not apply to any action in which this state is a complainant arising under the antitrust laws.	No equivalent provision.	Same as Senate version.
Sec. 15.154. Transfer for Coordinated or Consolidated	SECTION 3.01. Amends Sec. 74.024(c)(10), Government	Same as Senate version.

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Pretrial Proceedings. The panel may transfer any case to which this subchapter applies to any district court for the purpose of allowing coordinated or consolidated pretrial proceedings in related cases.	Code, to authorize the supreme court to consider the adoption of rules relating to the transfer of related cases for consolidated or coordinated pretrial proceedings.	
Sec. 15.155. Initiation of Transfer Proceedings. (a) Proceedings to transfer a case under this subchapter may be initiated by: (1) the panel on its own initiative; or (2) a motion filed with the panel by a party in a case to which this subchapter applies. (b) A motion filed under Subsection (a)(2) must state: (1) the number and style of the case that is the subject of the motion; (2) the number and style of the related case or cases with which coordinated or consolidated pretrial proceedings are sought, and the court and county in which the related case or cases are pending; (3) the material questions of fact common to the cases; (4) the reasons why coordinated or consolidated pretrial proceedings would promote the just and efficient conduct of the cases; and (5) whether the parties to the case that is the subject of the motion agree to the motion. (c) A copy of the motion shall be filed by the movant in each case identified in Subsections (b)(1) and (2).	No equivalent provision.	Same as Senate version.
Sec. 15.156. Determination of Transfer. (a) After notice to all parties in all related cases that may be subject to coordinated or consolidated pretrial proceedings, and a hearing, the panel shall order the transfer of any or all related cases to one or more district courts for coordinated or	Sec. 74.162. Transfer of Cases by Panel. Notwithstanding any other law to the contrary, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate	Same as Senate version.

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consolidated pretrial proceedings if it determines that transfer: (1) is for the convenience of parties and witnesses; and (2) will promote the just and efficient conduct of the actions. (b) Any party to any case that would be affected by the proceedings under this subchapter may appear at the hearing and offer evidence on the propriety of coordinated or consolidated pretrial proceedings in the related cases. (c) The panel's order directing or denying transfer must be supported by findings of fact and conclusions of law.	courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will: (1) be for the convenience of the parties and witnesses; and (2) promote the just and efficient conduct of the actions.	
Sec. 15.157. Filing of Panel Orders. (a) Any order of the panel shall be filed by the panel in the district court in which the transfer hearing is to be or has been held. (b) A copy of an order directing or denying transfer of related cases shall be sent by the panel to both the transferee and transferor courts. (c) An order directing the transfer of related cases for coordinated or consolidated pretrial proceedings is effective when filed in the district court in which the transfer hearing was held.	No equivalent provision.	Same as Senate version.
Sec. 15.158. Review of Panel Orders. (a) Review of an order of the panel is by extraordinary writ. (b) A petition for an extraordinary writ to review an order of	No equivalent provision.	Same as Senate version.

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the panel in regard to setting a transfer hearing, or to review any other order of the panel made before the order either directing or denying transfer is made, must be filed in the court of appeals having jurisdiction over the district in which the transfer hearing is to be or has been held.		Same as Senate version.
(c) A petition for an extraordinary writ to review an order directing the transfer of one or more related cases, or to review any order made after the transfer order is made, must be filed in the court of appeals having jurisdiction over the transferee district.		
(d) An order of the panel denying a motion to transfer for coordinated or consolidated pretrial proceedings may not be appealed or reviewed.		
Sec. 15.159. Assignment. (a) On request of the panel, a district judge may be assigned to preside in the transferee district over coordinated or consolidated pretrial proceedings being conducted pursuant to this subchapter.	Sec. 74.164. Authority to Preside. Notwithstanding any other law to the contrary, a judge who is qualified and authorized by law to preside in the court to which an action is transferred under this subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.	Same as Senate version.
(b) The assignment may be made by the chief justice of the supreme court or by the presiding judge of the administrative judicial region in which the transferee court sits, in accordance with Subchapter C, Chapter 74, Government Code.		
Sec. 15.160. Conduct of Proceedings. (a) The coordinated or consolidated pretrial proceedings shall be conducted by the	No equivalent provision.	Same as Senate version.

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judge or judges to whom the cases are assigned by the panel.		
(b) When conducting pretrial proceedings in cases coordinated or consolidated for pretrial proceedings, the judge or judges to whom the cases are assigned, the members of the panel, and other district judges designated when needed by the panel may exercise the powers of a district judge in any district, including deciding motions to transfer venue and motions for summary judgment.		
(c) The judge or judges to whom the cases are assigned shall give priority to the pretrial proceedings in cases coordinated or consolidated under this subchapter over all other matters pending before them.		
Sec. 15.161. Remand. A court to which a case is transferred under this subchapter shall remand the transferred case, at or before the conclusion of pretrial proceedings, to the district court from which it was transferred unless it has been terminated, except that the court may separate any claim, cross-claim, counterclaim, or third-party claim and remand the separated claim before the remainder of the case is remanded.	No equivalent provision.	Same as Senate version.
SECTION 3.02. Adds Subchapter H, Judicial Panel on Multidistrict Litigation, to Chapter 74, Government Code, as follows:	SECTION 3.02. Adds Subchapter H, Judicial Panel on Multidistrict Litigation, to Chapter 74, Government Code, as follows:	Same as Senate version.
Sec. 74.161. Judicial Panel. (a) The judicial panel on	Sec. 74.161. Judicial Panel. (a) Similar to House version.	Same as Senate version.

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multidistrict litigation consists of *seven justices of the courts of appeals* designated from time to time by the chief justice of the supreme court. *Two panel members may not be from the same court of appeals district.*	Requires that the panel consists of *five members* designated by the chief justice of the supreme court. *The members of the panel must be active court of appeals justices or administrative judges.*	
(b) The concurrence of *four* members shall be necessary to any action by the panel.	(b) Concurrence requires *three* panel members.	
Sec. 74.162. Operation; Rules, as follows:	Sec. 74.163. Operation; Rules, as follows:	Same as Senate version.
(a) The judicial panel on multidistrict litigation shall operate subject to rules of *administration for multidistrict litigation* practice *and procedure* adopted by the supreme court under Section 74.024.	(a) The judicial panel on multidistrict litigation must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. The rules adopted by the supreme court must: (1) allow the panel to transfer related civil actions for consolidated or coordinated pretrial proceedings; (2) allow transfer of civil actions only on the panel's written finding that transfer is for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions; (3) require the remand of transferred actions to the transferor court for trial on the merits; and (4) provide for appellate review of certain or all panel orders by extraordinary writ.	
(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with Subchapter F, Chapter 15, Civil Practice and Remedies Code, and the rules of administration for multidistrict litigation practice and procedure, as adopted by the supreme court.	(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.	

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SECTION 3.03. Amends Sec. 15.003, Civil Practice and Remedies Code, Multiple Plaintiffs and Intervening Plaintiffs.	SECTION 3.03. Same as House version.	Same as Senate version.
SECTION 3.04. Amends Sec. 71.051(a) and adds (j), Civil Practice and Remedies Code. (a) If a court of this state, on written motion of a party, finds that *in the interest of justice* a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action *on any conditions that may be just.*	SECTION 3.04. Amends Sec. 71.051(b), Civil Practice and Remedies Code. Similar to House version. (b) Adds *for the convenience of the parties* after *in the interest of justice*. Replaces on any conditions that may be just with criteria: In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court may consider whether: (1) an alternate forum exists in which the claim or action may be tried; (2) the alternate forum provides an adequate remedy; (3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party; (4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim; (5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and (6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.	Same as Senate version.
(j) This section does not affect the application of the common law doctrine of forum non conveniens to actions other than actions for personal injury or wrongful death.	No equivalent provision.	Same as Senate version.
SECTION 3.05. Amends Sec. 23.101(a), Government Code. (a) The trial courts of this state shall regularly and frequently	No equivalent provision.	Same as Senate version.

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set hearings and trials of pending matters, giving preference to hearings and trials of the following: multidistrict litigation.		
No equivalent provision.	SECTION 3.05. Adds Sec. 5A(f), Texas Probate Code. (f) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.	Same as Senate version.
No equivalent provision.	SECTION 3.06. Adds Sec. 5B(b), Texas Probate Code. (b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.	Same as Senate version.
No equivalent provision.	SECTION 3.07. Adds Sec. 607(e), Texas Probate Code. (e) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.	Same as Senate version.
No equivalent provision.	SECTION 3.08. Amends Sec. 281.056(a), Health and Safety Code, to provide that a health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.	Same as Senate version.

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SECTION 3.06. Repeals Secs. 71.051(b), (c), (d), (e), (f), (g), and (h); and 71.052, Civil Practice and Remedies Code.	SECTION 3.09. Repeals Secs. 71.051(a) and 71.052, Civil Practice and Remedies Code.	Same as Senate version.
ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES	ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES	
SECTION 4.01. Amends Sec. 33.002(a), Civil Practice and Remedies Code, relating to the applicability of Chapter 33, Proportionate Responsibility.	SECTION 4.01. Same as House version.	Same as Senate version.
SECTION 4.02. Amends Sec. 33.003, Civil Practice and Remedies Code, Determination of Percentage of Responsibility. (a) Requires trier of fact to determine percentage of responsibility. (b) Specifies that this section *does not require* a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.	SECTION 4.02. Same as House version, except Subsection (b) specifies that this section *does not allow* a submission to the jury without sufficient evidence to support submission.	Same as Senate version.
SECTION 4.03. Amends heading to Sec. 33.004, Civil Practice and Remedies Code, Designation of Responsible Third Party.	SECTION 4.03. Same as House version.	Same as Senate version.
SECTION 4.04. Amends Secs. 33.004(a) and (b) and adds (f)-(j), Civil Practice and Remedies Code, as follows:	SECTION 4.04. Amends Secs. 33.004(a), (b), and (e) and adds (f)-(l), Civil Practice and Remedies Code, as follows:	Same as Senate version.
(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date	(a), (b), (f), (h), and (j) same as House version, except (j) is redesignated as (i).	Same as Senate version. Same as Senate version.

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unless the court finds good cause to allow the motion to be filed at a later date. (b) Nothing in this section affects the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects the filing of cross-claims or counterclaims. (f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served. (h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party. (j) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person: (1) does not by itself impose liability on the person; and (2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.		
No equivalent provision.	(e) If a person is designated under this section as a responsible third party, a claimant is not barred by limitations from seeking to join that person, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person not later than 60 days after that person is designated as a responsible third party.	Same as Senate version.

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(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes: (1) the defendant did not plead sufficient facts concerning the alleged *liability of the responsible person* to satisfy the pleading *requirements* of the Texas Rules of Civil Procedure; and (2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged liability of the responsible person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.	(g) Same as House version, except refers to the alleged *responsibility of the person* to satisfy the pleading *requirement*.	Same as Senate version.
(i) For a person whose identity is not known, the court shall grant a motion for leave to designate that person as a responsible third party if the court determines that the motion otherwise should be granted under Subsection (f) or (g) and the defendant has stated in the motion all known identifying characteristics of the person. In that circumstance, the person will be denominated as "Jane Doe" or "John Doe" until the person's identity is known.	(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if: (1) the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal; (2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and (3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure. (k) An unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known. (l) After adequate time for discovery, a party may move to	Same as Senate version.

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	strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.	
SECTION 4.05. Amends Secs. 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, Definitions.	SECTION 4.05. Same as House version.	Same as Senate version.
No equivalent provision.	SECTION 4.06. Amends Sec. 33.012(b), Civil Practice and Remedies Code. (b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility.	Same as Senate version, with a new subsection (c): (c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant: (1) the sum of the dollar amounts of all settlements; or (2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact. The court shall apply the credit in subsection (1) unless all defendants elect the credit in this subsection.
SECTION 4.06. Amends Secs. 33.013(a) and (b) and adds (e) and (f), Civil Practice and Remedies Code, relating to the amount of liability when certain conduct described in the	SECTION 4.07. Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Penal Code is involved.		
SECTION 4.07. Amends Sec. 33.017, Civil Practice and Remedies Code, Preservation of Existing Rights of Indemnity.	SECTION 4.08. Same as House version.	Same as Senate version.
SECTION 4.08. Amends Sec. 417.001(b), Labor Code, relating to the insurance carrier's subrogation interest.	SECTION 4.09. Same as House version.	Same as Senate version.
SECTION 4.09. Repeals Secs. 33.002(b), (d), (e), (f), (g), and (h); 33.004(c), (d), and (e); 33.011(7); 33.012(c); and 33.013(c), Civil Practice and Remedies Code.	SECTION 4.10. Same as House version, except does not repeal Sec. 33.004(e) and repeals Sec. 33.014, Civil Practice and Remedies Code.	Same as Senate version.
SECTION 4.10. It is not the intent or purpose of this article to affect workers' compensation law.	SECTION 4.11. Nothing in the changes to Chapter 33, Civil Practice and Remedies Code, made by this article allowing an employer covered by workers' compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.	Same as Senate version.
No equivalent provision.	SECTION 4.12. The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.	Same as Senate version.
ARTICLE 5. PRODUCTS LIABILITY	ARTICLE 5. PRODUCTS LIABILITY	
SECTION 5.01. Amends Sec. 16.012, Civil Practice and	SECTION 5.01. Amends Sec. 16.012, Civil Practice and	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Remedies Code, Products Liability, as follows:	Remedies Code, Products Liability, as follows:	
(a) In this section, "claimant," "products liability action," "seller," and "manufacturer" have the meanings assigned by Section 82.001. (See Sec. 82.001(2) as added by SECTION 5.02.)	(a) In this section: (1) "Claimant," "seller," and "manufacturer" have the meanings assigned by Section 82.001. (2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for injury or damage to or loss of real or personal property, personal injury, wrongful death, economic loss, or declaratory, injunctive, or other equitable relief.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(b) Except as provided by Subsections *(c) and (d)*, a claimant must commence a products liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant.	(b) Same as House version, except specifies "except as provided by Subsections *(c)*, *(d)*, *and (d-1)*."	Same as Senate version.
(c) If a manufacturer or seller expressly warrants in writing that the product 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 product before the end of the number of years warranted after the date of the sale of the product by that seller.	(c) Same as House version.	Same as Senate version.
(d) This section does not apply to a products liability action in which the claimant alleges a product caused a disease the symptoms of which did not, before the end of 15 years after the date of the sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffers some injury. This section does not reduce a limitations period for a cause of action described by this subsection that accrues before the end of the limitations period under this section.	(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges: (1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold; (2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and (3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
	(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) 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 the product may be commenced under any other law.	(e) Same as House version.	Same as Senate version.
(f) This section applies only to the sale and not to the lease of a product.	(f) Same as House version.	Same as Senate version.
No equivalent provision.	(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in Note, 49 U.S.C. 40101) or its exceptions are applicable. (FA3)	
SECTION 5.02. Amends Sec. 82.001(2), Civil Practice and Remedies Code, to define "Products liability action."	(See Sec. 16.012(2), Civil Practice and Remedies Code, as added by SECTION 5.01, which is the same as the House version of the definition.)	Same as Senate version.
SECTION 5.03. Amends Chapter 82, Civil Practice and Remedies Code, by adding the following sections:	SECTION 5.02. Amends Chapter 82, Civil Practice and Remedies Code, by adding the following sections:	Same as Senate version.
Sec. 82.003. Liability of Nonmanufacturing Sellers. A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves: (1) that the seller altered or modified the product and the claimant's harm resulted from that alteration or	Sec. 82.003. (a) Similar to House version. Subdivision (2) is the same as Subdivision (1) of the House; Subdivision (4) is the same as Subdivision (2) of the House; Subdivision (5) is the same as Subdivision (3) of the House; Subdivision (6) is the same as Subdivision (4) of the House; and Subdivision	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
modification; (2) that: (A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product; (B) the warning or instruction was inadequate; and (C) the claimant's harm resulted from the inadequacy of the warning or instruction; (3) that: (A) the seller made an express factual representation about an aspect of the product; (B) the representation was incorrect; (C) the claimant relied on the representation in obtaining or using the product; and (D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm; (4) that: (A) the seller actually knew of a defect to the product at the time the seller supplied the product; and (B) the claimant's harm resulted from the defect; or (5) that the manufacturer of the product is: (A) insolvent; or (B) not subject to the jurisdiction of the court.	(7) is the same as Subdivision (5) of the House. Adds (1) that the seller participated in the design of the product; and (3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product. Also adds Subsection (b) to provide that this section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.	
Sec. 82.007. Medicines, as follows:	Sec. 82.007. Medicines, as follows:	Same as Senate version.
(a) In a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations if: (1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or	(a) Similar to House version. In such an action, *there is a rebuttable presumption that* the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations *involving failure to provide adequate warnings or information* if the conditions in Subdivisions (1) and (2) are met. (FA3)	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or (2) the warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.		
(b) This section does not apply if the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury.	(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that: (1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;	Same as Senate version.
No equivalent provision.	(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product; (3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration; (B) the product was used as recommended, promoted, or advertised; and (C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product; or (4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration; (B) the product was used as prescribed;	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
	and (C) the claimant's injury was causally related to the prescribed use of the product; (5) the defendant, before or after pre-market approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C. Section 201 and that conduct caused the warnings or instructions approved for the product by the United States Food and Drug Administration to be inadequate. (FA3)	
Sec. 82.008. Evidence of Subsequent Improvements and Measures. In a products liability action, a court may not admit, except for purposes of impeachment, evidence of a subsequent improvement made or measure taken with respect to the defect alleged to have caused harm, or a similar product, that, if made or taken before the product was supplied, would have made the claimant's harm less likely.	(See SECTION 5.03.)	Same as Senate version.
Sec. 82.009. Compliance with Government Standards, as follows:	Sec. 82.008. Compliance with Government Standards, as follows:	Same as Senate version.
(a) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that	(a) Same as House version.	Same as Senate version.

HOUSE VERSION

were applicable to the product at the time of manufacture, and that governed the product risk that allegedly caused harm.

(a-1) The claimant may rebut the presumption in Subsection (a) by establishing that:
(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;
(2) the manufacturer, before or after marketing the product, withheld information *required by or misrepresented information provided to the federal government or agency that was: (A) material and relevant to the federal government's or agency's determination that the mandatory safety standards or regulations at issue in the action were adequate;* and (B) causally related to the claimant's injury; or
(3) with respect to the manufacturer of a motor vehicle, or a component thereof, after the product was sold and before the alleged injury occurred, the manufacturer learned the vehicle or component part contained a defect causally related to the claimant's injury and to motor vehicle safety and failed to either: (A) give notice to the federal government, or agency of the federal government, that adopted or promulgated the applicable safety standards or regulations; or (B) give notice by first class mail to each person registered under Texas law as the owner and whose name and address are reasonably ascertainable by the manufacturer through state records or other available sources, or if the registered owner is not notified, to the most recent purchaser known to the manufacturer.

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(b) Similar to House version. May establish in (2) that the manufacturer, before or after marketing the product, withheld information *or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action* (FA4). Does not include 2(B) or 3.

CONFERENCE

Same as Senate version with the following marked changes:

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:
(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or
(2) the manufacturer, before or after marketing the product, <u>withheld or misrepresented</u> information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(b) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that: (1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or (2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.	(c) Same as House version. (FA4)	Same as Senate version.
(c) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.	(d) Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	(e) This section does not extend to products covered by Section 82.007.	Same as Senate version.
(See Sec. 82.008)	SECTION 5.03. Requires the Supreme Court to amend Texas Rules of Evidence 407(a) to conform to Federal Rule of Evidence 407 as soon as practicable after the effective date of the Act.	Same as Senate version.
ARTICLE 6. INTEREST	ARTICLE 6. INTEREST	
SECTION 6.01. Amends Sec. 304.003(c), Finance Code. (c) The postjudgment interest rate is: (1) the weekly average one-year constant maturity treasury yield as most recently published by the Board of Governors of the Federal Reserve System before the date of computation; (2) five percent a year if the weekly average one-year constant maturity treasury yield described by Subdivision (1) is less than five percent; or (3) 15 percent a year if the weekly average one-year constant maturity treasury yield described by Subdivision (1) is more than 15 percent.	SECTION 6.01. Amends Sec. 304.003(c), Finance Code. (c) The postjudgment interest rate is the prime rate as published by the Federal Reserve Bank of New York on the date of computation.	Same as House version with changes as marked: SECTION 6.01. Amends Sec. 304.003(c), Finance Code. (c) The postjudgment interest rate is: (1) the prime rate as published by the Federal Reserve Bank of New York on ~~weekly average one-year constant maturity treasury yield as most recently published by the Board of Governors of the Federal Reserve System before~~ the date of computation; (2) five percent a year if the prime rate as published by the Federal Reserve Bank of New York ~~weekly average one-year constant maturity treasury yield~~ described by Subdivision (1) is less than five percent; or (3) 15 percent a year if the prime rate as published by the Federal Reserve Bank of New York ~~weekly average one-year constant maturity treasury yield~~ described by Subdivision (1) is more than 15 percent.
SECTION 6.02. Adds Sec. 304.1045, Finance Code, Future Damages. Prejudgment interest may not be assessed or recovered on an award of future damages.	SECTION 6.02. Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	SECTION 6.03. Repeals Sec. 304.108, Finance Code.	Same as Senate version.
No equivalent provision. (*But see Article 21 for applicability provision*).	SECTION 6.04. The changes in law made by this article apply in any case in which a final judgment is signed or is subject to appeal on or after the effective date of this Act.	Same as Senate version.
ARTICLE 7. APPEAL BONDS	ARTICLE 7. APPEAL BONDS	Same as Senate version.
SECTION 7.01. Amends Sec. 35.006, Civil Practice and Remedies Code, Stay.	SECTION 7.01. Same as House version.	Same as Senate version.
SECTION 7.02. Adds Sec. 52.006, Civil Practice and Remedies Code, Amount of Security for Money Judgment.	SECTION 7.02. Same as House version, except adds Subsection (e), that provides: Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.	Same as Senate version.
SECTION 7.03. Repeals Secs. 52.002, 52.003, and 52.004, Civil Practice and Remedies Code.	SECTION 7.03. Same as House version.	Same as Senate version.
No equivalent provision.	SECTION 7.04. (a) The changes in law made in SECTION 7.01 of this article apply to any judgment filed in this state under Chapter 35, Civil Practice and Remedies Code, on or after the effective date of this Act. (b) The changes in law made in SECTIONS 7.02 and 7.03 of this article apply to any case in which a final judgment is	Same as Senate version.

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	signed on or after the effective date of this Act.	
ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS	ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS	Same as Senate version.
SECTION 8.01. Repeals Sec. 545.413(g), Transportation Code.	SECTION 8.01. Repeals Secs. 545.412(d) and 545.413(g), Transportation Code.	Same as Senate version.
ARTICLE 9. BENEVOLENT GESTURES.	No equivalent provision.	Same as Senate version.
No equivalent provision.	ARTICLE 9. RESERVED	Same as Senate version.
SECTION 9.01. Repeals Sec. 18.061(c), Civil Practice and Remedies Code.	No equivalent provision.	Same as Senate version.
SECTION 9.02. This article applies only to the admissibility of a communication in a proceeding that begins on or after the effective date of this article. The admissibility of a communication in a proceeding that began before the effective date of the article is governed by the law applicable to the admissibility of the communication immediately before the effective date of this article, and that law is continued in effect for that purpose.	No equivalent provision.	Same as Senate version.
ARTICLE 10. HEALTH CARE	ARTICLE 10. HEALTH CARE	*Conference version adopts new statutory citations to reflect Senate change that moved all of Article 4590i, Vernon's, to Chapter 74, Civil Practices & Remedies Code.*
SECTION 10.01. Amends Sec. 1.03(a), Subdivisions (3), (4), and (8), and adds Subdivisions (10)-(22), Medical Liability	SECTION 10.01. Amends Chapter 74, Civil Practice and Remedies Code, as follows:	Same as Senate version.

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and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).		
No equivalent provision.	Subchapter A. General Provisions.	Same as Senate version.
No equivalent provision.	Sec. 74.001. Definitions. (a) Defines a number of terms, as follows:	Same as Senate version.
(3)(A) Defines "health care provider" to mean any person, professional, association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including: a registered nurse; a hospital; a hospital system; a dentist; a hospice; a podiatrist; a pharmacist; an emergency medical services provider; an assisted living facility; a home and community support services agency; an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), as amended; a nursing home; or a chiropractor. Specifies that the term includes an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and an employee, independent contractor, or agent of a health care provider or physician acting in the course and scope of the employment or contractual relationship.	(12)(A) Similar to House version. The definition includes an optometrist and a "health care institution." "Health care institution" has its own definition, not in the House version, that includes the entities listed in the House definition of "health care provider" and some additional entities. (See the description of Subdivision (11), below.)	Same as Senate version.
(4) Defines "health care liability claim" to mean a cause of	(13) "health care liability claim" to mean a cause of action	Senate version with marked changes: (13) "Health care liability claim" means a cause of action

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action against a health care provider or physician *arising out of or related to* treatment, lack of treatment, or other claimed departure from accepted standards of medical care, health care, or safety *or professional or administrative services* which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.	against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, health care, or safety which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.	against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety <u>or professional or administrative services directly related to health care,</u> which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.
(8) Defines "physician" to mean: (A) an individual licensed to practice medicine in this state; (B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) by an individual physician or group of physicians; (C) a partnership or limited liability partnership formed by a group of physicians; (D) a nonprofit health corporation certified under Sec. 162.001, Occupations Code; or (E) a company formed by a group of physicians under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).	(23) Same as House version.	Same as Senate version.
(10) Defines "affiliate" to mean a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified person, including any direct or indirect parent or subsidiary.	(1) Same as House version.	Same as Senate version.
(11) Defines "claimant" to mean a person, including a decedent's estate, seeking or who has sought recovery of	(2) Same as House version.	Same as Senate version.

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damages in a health care liability claim. Provides that all persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.		
(12) Defines "control" to mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person, whether through ownership of equity or securities, by contract, or otherwise.	(3) Same as House version.	Same as Senate version.
(13) Defines "economic damages" to mean compensatory damages for any pecuniary loss or damage. Provides that the term does not include noneconomic damages.	(6) Provides that "economic damages" has the meaning assigned by Sec. 41.001.	Same as Senate version.
(14) Defines "emergency medical care" to mean bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in: (A) placing the patient's health in serious jeopardy; (B) serious impairment to bodily functions; or (C) serious dysfunction of any bodily organ or part.	(7) Same as House version, except provides that the term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or that is unrelated to the original medical emergency.	Same as Senate version.
(15) Defines "emergency medical services provider" to mean a licensed public or private provider to which Chapter 773, Health and Safety Code, applies.	(8) Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(16) Defines "home and community support services agency" to mean a licensed public or provider agency to which Chapter 142, Health and Safety Code, applies.	(14) Same as House version.	Same as Senate version.
(17) Defines "intermediate care facility for the mentally retarded" to mean a licensed public or private institution to which Chapter 252, Health and Safety Code, applies.	(18) Same as House version.	Same as Senate version.
(18) Defines "noneconomic damages" to mean any loss or damage, however characterized, for past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, physical impairment, and any other nonpecuniary loss or damage or element of loss or damage.	(20) Provides that "noneconomic damages" has the meaning assigned by Sec. 41.001.	Same as Senate version.
(19) Defines "nursing home" to mean a licensed public or private institution to which Chapter 242, Health and Safety Code, applies.	(21) Same as House version.	Same as Senate version.
(20) Defines "professional or administrative services" to mean those duties or services that a physician or health care provider is required to provide as a condition of maintaining the physician's or health care provider's license, accreditation status, or certification to participate in state or federal health care programs.	(24) Same as House version.	Same as Senate version.
(21) Defines "hospice" to mean a hospice facility or activity to which Chapter 142, Health and Safety Code, applies.	(15) Same as House version.	Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
(22) Defines "hospital system" to mean a system of hospitals located in this state that are under the common governance or control of a corporate parent.	(17) Same as House version.	Same as Senate version.
No equivalent provision.	(4) Defines "court" to mean any federal or state court.	Same as Senate version.
No equivalent provision.	(5) Defines "disclosure panel" to mean the Texas Medical Disclosure Panel.	Same as Senate version.
No equivalent provision.	(9) Provides that "gross negligence" has the meaning assigned by Sec. 41.001.	Same as Senate version.
No equivalent provision.	(10) Defines "health care" to mean any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.	Same as Senate version.
No equivalent provision.	(11) Defines "health care institution" to include: (A) an ambulatory surgical center; (B) an assisted living facility licensed under Chapter 247, Health and Safety Code; (C) an emergency medical services provider; (D) a health services district created under Chapter 287, Health and Safety Code (FA11); (E) a home and community support services agency; (F) a hospice; (G) a hospital; (H) a hospital system; (I) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section	Same as Senate version.

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	1396n), as amended; (J) a nursing home; or (K) an end stage renal disease facility licensed under Sec. 251.011, Health and Safety Code.	
No equivalent provision.	(16) Defines "hospital" to mean a licensed public or private institution as defined in Chapter 241, Health and Safety Code, or licensed under Chapter 577, Health and Safety Code.	Same as Senate version.
No equivalent provision.	(19) Defines "medical care" to mean any act defined as practicing medicine under Sec. 151.002, Occupations Code, performed or furnished, or which should have been performed, by one licensed to practice medicine in this state for, to, or on behalf of a patient during the patient's care, treatment, or confinement.	Same as Senate version.
No equivalent provision.	(22) Defines "pharmacist" to mean one licensed under Chapter 551, Occupations Code, who, for the purposes of this chapter, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.	Same as Senate version.
No equivalent provision.	(25) Defines "representative" to mean the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.	Same as Senate version.
No equivalent provision.	(b) Provides that any legal term or word of art used in this	Same as Senate version.

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	chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with the common law.	
SECTION 10.02. Amends Subchapter A, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as follows:	No equivalent provision.	Same as Senate version.
Sec. 1.04. Sets out provisions relating to conflict with other law and rules of civil procedures, as follows:	Sec. 74.002. Same as House version, except as follows:	Same as Senate version.
(a) Provides that in the event of a conflict between this *Act* and another law, including a rule of procedure or evidence or court rule, this *Act* controls to the extent of the conflict.	(a) Same as House version, except refers to *chapter* instead of *act*.	Same as Senate version.
(b) Provides that notwithstanding Subsection (a) of this section, in the event of a conflict between this *Act* and Sec. 101.023, 102.003, or 108.002, Civil Practice and Remedies Code, those sections of the Civil Practice and Remedies Code control to the extent of the conflict.	(b) Substantially the same as House version, except refers to *chapter* instead of *act*.	Same as Senate version.
(c) Prohibits the supreme court, notwithstanding Sec. 22.004, Government Code, and except as otherwise provided by this Act, from amending or adopting rules in conflict with this Act.	No equivalent provision.	Same as Senate version.
(d) Prohibits the district courts and statutory county courts in a county from adopting local rules in conflict with this *Act*.	(c) Same as House version, except refers to *chapter* instead of *act*.	Same as Senate version.
Sec. 1.05. Sovereign Immunity Not Waived. Provides that	Sec. 74.003. Same as House version, except refers to *chapter*	Same as Senate version.

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this *Act* does not waive sovereign immunity from suit or from liability.	instead of *act*.	
No equivalent provision.	Sec. 74.004. Exception from Certain Laws. (a) Notwithstanding any other law, Secs. 17.41-17.63, Business & Commerce Code, do not apply to physicians or health care providers with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider. (b) This section does not apply to pharmacists.	Same as Senate version.
No equivalent provision.	[Sections 74.005-74.050 reserved for expansion]	Same as Senate version.
No equivalent provision.	Subchapter B. Notice and Pleadings.	Same as Senate version.
No equivalent provision.	Sec. 74.051. Notice. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim. The notice must be accompanied by the authorization form for release of protected health information as required under Sec. 74.052. (b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and Sec. 74.052 and shall provide such evidence thereof as the judge of the court may require to	Same as Senate version.

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	determine if the provisions of this chapter have been met. (c) Notice given as provided in this chapter shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties. (d) All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Sec. 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection. (e) For the purposes of this section, and notwithstanding Chapter 159, Occupations Code, or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization in the form required by Sec. 74.052 signed by a parent, spouse, or adult child of the deceased or incompetent person.	
No equivalent provision.	Sec. 74.052. Authorization Form For Release of Protected Health Information. (a) Notice of a health care claim under Sec. 74.051 must be accompanied by a medical authorization in the form specified by this section. Failure to provide this authorization along with the notice of health care claim shall abate all further proceedings against the physician or health care provider receiving the notice until 60 days following receipt by the physician or health care provider of the required authorization.	Same as Senate version.

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	(b) If the authorization required by this section is modified or revoked, the physician or health care provider to whom the authorization has been given shall have the option to abate all further proceedings until 60 days following receipt of a replacement authorization that must comply with the form specified by this section. (c) The medical authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164). AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION A. I, _____ (name of patient or authorized representative), hereby authorize _____ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes: 1. To facilitate the investigation and evaluation of the health care claim described in the accompanying Notice of Health Care Claim; or 2. Defense of any litigation arising out of the claim made the basis of the accompanying Notice of Health Care Claim. B. The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written and is specifically described as follows: 1. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) in connection with the injuries alleged	

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	to have been sustained in connection with the claim asserted in the accompanying Notice of Health Care Claim. (Here list the name and current address of all treating physicians or health care providers). This authorization shall extend to any additional physicians or health care providers that may in the future evaluate, examine, or treat _____ (patient) for injuries alleged in connection with the claim made the basis of the attached Notice of Health Care Claim; 2. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) during a period commencing five years prior to the incident made the basis of the accompanying Notice of Health Care Claim. (Here list the name and current address of such physicians or health care providers, if applicable.) C. Excluded Health Information -- the following constitutes a list of physicians or health care providers possessing health care information concerning _____ (patient) to which this authorization does not apply because I contend that such health care information is not relevant to the damages being claimed or to the physical, mental, or emotional condition of _____ (patient) arising out of the claim made the basis of the accompanying Notice of Health Care Claim. (Here state "none" or list the name of each physician or health care provider to whom this authorization does not extend and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure.) D. The persons or class of persons to whom the health information of _____ (patient) will be disclosed or who	

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	will make use of said information are: 1. Any and all physicians or health care providers providing care or treatment to _____ (patient); 2. Any liability insurance entity providing liability insurance coverage or defense to any physician or health care provider to whom Notice of Health Care Claim has been given with regard to the care and treatment of _____ (patient); 3. Any consulting or testifying experts employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization; 4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization; 5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of _____ (patient). E. This authorization shall expire upon resolution of the claim asserted or at the conclusion of any litigation instituted in connection with the subject matter of the Notice of Health Care Claim accompanying this authorization, whichever occurs sooner. F. I understand that, without exception, I have the right to revoke this authorization in writing. I further understand the consequence of any such revocation as set out in Sec. 74.052, Civil Practice and Remedies Code.	

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	G. I understand that the signing of this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits. H. I understand that information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations. Signature of Patient/Representative _____ Date _____ Name of Patient/ Representative _____ Description of Representative's Authority _____	
No equivalent provision.	Sec. 74.053. Pleadings Not to State Damage Amount; Special Exception; Exclusion From Section. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.	Same as Senate version.
No equivalent provision.	[Sections 74.054-74.100 reserved for expansion]	Same as Senate version.

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No equivalent provision.	Subchapter C. Informed Consent.	Same as Senate version.
No equivalent provision.	Sec. 74.101. Theory of Recovery. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.	Same as Senate version.
No equivalent provision.	Sec. 74.102. Texas Medical Disclosure Panel. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. (b) The disclosure panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the disclosure panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the disclosure panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The	Same as Senate version.

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	panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in this chapter shall be exercised solely by the disclosure panel, and the board or Texas Department of Health shall have no authority or responsibility with respect to same. (c) The disclosure panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the disclosure panel shall be selected by the commissioner of health. (d) At the expiration of the term of each member of the disclosure panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the disclosure panel present at each such meeting may be removed by the commissioner at the request of the disclosure panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term. (e) Members of the disclosure panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel, including necessary travel expenses. (f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.	

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	(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice chairman shall preside. (h) Employees of the Texas Department of Health shall serve as the staff for the panel.	
No equivalent provision.	Sec. 74.103. Duties of Disclosure Panel. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient. (b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made. (c) Lists prepared under Subsection (b) together with written explanations of the degree and form of disclosure shall be published in the Texas Register. (d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures	Same as Senate version.

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	that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.	
No equivalent provision.	Sec. 74.104. Duty of Physician or Health Care Provider. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the disclosure panel's list requiring disclosure, the physician or health care provider shall disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Sec. 74.105.	Same as Senate version.
No equivalent provision.	Sec. 74.105. Manner of Disclosure. Consent to medical care that appears on the disclosure panel's list requiring disclosure shall be considered effective under this chapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the disclosure panel under Sec. 74.103.	Same as Senate version.

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No equivalent provision.	Sec. 74.106. Effect of Disclosure. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider: (1) both disclosure made as provided in Sec. 74.104 and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Secs. 74.104 and 74.105 have been complied with and this presumption shall be included in the charge to the jury; and (2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Secs. 74.104 and 74.105 shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Secs. 74.104 and 74.105, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence. (b) If medical care or surgical procedure is rendered with respect to which the disclosure panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.	Same as Senate version.

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No equivalent provision.	Sec. 74.107. Informed Consent for Hysterectomies. (a) The disclosure panel shall develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy. (b) The materials shall be available in English, Spanish, and any other language the panel considers appropriate. The information must be presented in a manner understandable to a layperson. (c) The materials must include: (1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment; (2) the name of the person providing and explaining the materials; (3) a statement that the patient or person authorized to consent for the patient understands that the hysterectomy is permanent and nonreversible and that the patient will not be able to become pregnant or bear children if she undergoes a hysterectomy; (4) a statement that the patient has the right to seek a consultation from a second physician; (5) a statement that the patient or person authorized to consent for the patient has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina; (6) a description of the risks and hazards involved in the performance of the procedure; and (7) a written statement to be signed by the patient or person authorized to consent for	Same as Senate version.

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	the patient indicating that the materials have been provided and explained to the patient or person authorized to consent for the patient and that the patient or person authorized to consent for the patient understands the nature and consequences of a hysterectomy. (d) The physician or health care provider shall obtain informed consent under this section and Section 74.104 from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not reasonably possible. If obtaining informed consent is not reasonably possible, the physician or health care provider shall include in the patient's medical records a written statement signed by the physician certifying the nature of the emergency. (e) The disclosure panel may not prescribe materials under this section without first consulting with the Texas State Board of Medical Examiners.	
No equivalent provision.	[Sections 74.108-74.150 reserved for expansion]	Same as Senate version.
SECTION 10.03. Adds Sec. 4.01(f), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). (f)(1) Notwithstanding the provisions of Rule 202, Texas Rules of Civil Procedure, a deposition may not be taken of a physician or health care provider for the purpose of investigating a health care liability claim before the filing of	No equivalent provision.	Same as Senate version.

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a lawsuit unless: (A) upon receipt of written notice as required under this section from a patient, patient's family, or patient's representative, the physician or health care provider has failed, within the 10 days specified in this section, to provide complete, unaltered records; (B) upon providing the records as required under this section, the records are incomplete, inaccurate, illegible, show evidence of having been changed after the events that they purport to record, or fail to comply with any applicable rules, regulations, standards, policies, or guidelines for proper completion of same; or (C) upon providing the records as required under this section, it cannot be reasonably determined from the records provided what sequence of events occurred in the relevant treatment or events, or cannot be reasonably determined who was present, involved, participated in, or observed the events in question. (2) If the physician or health care provider fails to provide the records as required under this section, the patient, the patient's family, or the patient's representative shall, notwithstanding Section 13.01(u) of this Act, be entitled to one deposition under Rule 202, Texas Rules of Civil Procedure, in addition to the deposition allowed under Section 13.01(u) of this Act, sufficient to provide the information needed for them to appropriately evaluate any potential health care liability claim and make decisions about inclusion or not of potential defendants.		
SECTION 10.04. Amends heading to Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Evidentiary Matters.	No equivalent provision.	Same as Senate version.

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SECTION 10.05. Amends Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as follows:	No equivalent provision.	Same as Senate version.
Sec. 7.03. Federal or State Income Taxes. (a) Notwithstanding any other law, *in a health care liability claim*, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a *net after-tax loss that either was or should have been paid by the injured party or decedent through which the alleged loss has occurred.* (b) *In a health care liability claim*, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.	SECTION 13.09. Adds Subchapter D, Chapter 18, Civil Practice and Remedies Code, Certain Losses, Sec. 18.091, Proof of Certain Losses; Jury Instruction. Same as House version, except not limited to only a health care liability claim, and requires evidence to prove the loss must be presented in the form of a net loss *after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law.*	Same as Senate version.
No equivalent provision.	Subchapter D. Emergency Care.	Same as Senate version.
No equivalent provision.		Senate version, but strike Subsections (c) and (d):
	Sec. 74.151. Liability for Emergency Care. (a) A person who in good faith administers emergency care, including using an automated external defibrillator, is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent. (b) This section does not apply to care administered: (1) for	Sec. 74.151. Liability for Emergency Care. (a) A person who in good faith administers emergency care, including using an automated external defibrillator, is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent. (b) This section does not apply to care administered: (1) for

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	or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or (2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration. (c) This section does not apply to a physician or other health care provider whose day-to-day responsibilities include the administration of care in a hospital emergency room for or in expectation of remuneration if the scene of an emergency is in a hospital or other health care facility or means of medical transport. (d) For purposes of Subsections (b)(1) and (c), a person who would ordinarily receive or be entitled to receive a salary, fee, or other remuneration for administering care under such circumstances to the patient in question shall be deemed to be acting for or in expectation of remuneration even if the person waives or elects not to charge or receive remuneration on the occasion in question.	or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or (2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.
No equivalent provision.	Sec. 74.152. Unlicensed Medical Personnel. Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.	Same as Senate version.

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Sec. 7.04. Jury Instructions in Cases Involving Emergency Medical Care. (a) *In a health care liability claim* that involves a claim of negligence arising from the provision of emergency medical care, the court shall instruct the jury to consider, together with all other relevant matters: (1) whether the person providing care did not have the patient's medical history or was unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications; (2) the lack of a preexisting physician-patient relationship or health care provider-patient relationship; (3) the circumstances constituting the emergency; and (4) the circumstances surrounding the delivery of the emergency medical care. (b) The provisions of Subsection (a) of this section do not apply to medical care or treatment: (1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or (2) that is unrelated to the original medical emergency.	Sec. 74.154. Similar to House version. (a) *In an action for damages* that involves a claim of negligence arising from the provision of emergency medical care *in a hospital emergency room or department*, the court shall instruct the jury to consider, together with all other relevant matters: (1) whether the person providing care *did or* did not have the patient's medical history or was *able or* unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications; (2) *the presence or* the lack of a preexisting physician-patient relationship or health care provider-patient relationship; (3) the circumstances constituting the emergency; and (4) the circumstances surrounding the delivery of the emergency medical care. In Subsection (b), adds: (3) that is related to an emergency caused in whole or in part by the negligence of the defendant.	Senate version with the following marked changes: Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency ~~room or~~ department <u>or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department</u>, the court shall instruct the jury to consider, together with all other relevant matters:
No equivalent provision.	Adds Subchapter E. Res Ipsa Loquitur.	Same as Senate version.
No equivalent provision.	Sec. 74.210. Application for Res Ipsa Loquitur. The common law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977.	Same as Senate version.
No equivalent provision.	[Sections 74.202-74.250 reserved for expansion]	Same as Senate version.

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SECTION 10.06. Amends heading to Subchapter I, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Payment of Medical or Health Care Expenses.	No equivalent provision.	Same as Senate version.
SECTION 10.07. Adds Sec. 9.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Recovery of Past Medical or Health Care Expenses. Recovery of past medical or health care expenses *in a health care liability claim* shall be limited to the amount actually paid or incurred by or on behalf of the claimant.	SECTION 13.08. Adds Sec. 41.0105, Civil Practice and Remedies Code, Evidence Relating to Amount of Economic Damages. (a) Limits the recovery of medical or health care expenses incurred in any action, not just in health care liability claims, to the amount actually paid or incurred by or on behalf of the claimant. This limitation is in addition to any other limitation under law. (b) A defendant may introduce evidence of any amount payable to the claimant as a collateral benefit arising from the event in the cause of action under: (1) the Social Security Act (42 U.S.C. Section 301 et seq.); or (2) a state or federal income disability or workers' compensation act. (c) If the defendant introduces evidence under Subsection (b), the plaintiff may introduce evidence of any legal obligation to reimburse any subrogated entity.	Senate version, but strike subsections (b) and (c).
No equivalent provision.	Adds Subchapter F. Statute of Limitations.	Same as Senate version.
SECTION 10.08. Amends Sec. 10.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Limitation on Health Care Liability Claims.	Sec. 74.251. Same as House version with minor wording changes. Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to Subsection (b)[~~of this section~~], no health	Same as Senate version.

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	care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided this section applies to all persons regardless of minority or other legal disability. (b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.	
No equivalent provision.	[Sections 74.252-74.300 reserved for expansion]	Same as Senate version.
SECTION 10.09. Adds Secs. 11.02(e) and (f), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). (e) The limitation on health care liability claims contained in Subsection (a) of this section includes punitive damages. (f) The limitation on health care liability claims contained in Subsection (a) of this section shall be applied on a per-claimant basis.	Sec. 74.303. Limitation on Damages. (a) In an action for wrongful death on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed $500,000. (c) Subsection (a) does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the	Senate version with the following marked changes: Sec. 74.303. LIMITATION ON DAMAGES. (a) In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages ~~[of the physician or health care provider]~~, including exemplary damages, shall be limited to an amount not to exceed $500,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

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	injury. (d) The liability of any insurer under the common law theory of recovery commonly known in Texas as the "Stowers Doctrine" shall not exceed the liability of the insured. (e) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: (1) "Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law." (2) "A finding of negligence may not be based solely on evidence of a bad result to the claimant in question, but a bad result may be considered by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence."	
No equivalent provision.	Subchapter G. Liability Limits.	Same as Senate version.
SECTION 10.10. Amends Sec. 11.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Limitation on Noneconomic Damages. In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for noneconomic damages of the physician or health care provider shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care	Sec. 74.301. Limitation on Noneconomic Damages. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages for each defendant physician or health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an	Senate version with marked changes: Sec. 74.301. Limitation on Noneconomic Damages. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution ~~for each defendant physician or health care provider other than a health care institution~~, inclusive of all persons and entities for which

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providers against whom the claim is asserted or the number of separate causes of action on which the claim is based. This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code.	amount not to exceed $250,000.	vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.
	(b) In an action on a health care liability claim where final judgment is rendered against a health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.	(b) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000[~~$500,000~~].
	(c) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all noneconomic damages shall be limited to an amount not to exceed $750,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.	(c) In an action on a health care liability claim where final judgment is rendered against [~~a physician or health care provider,~~] more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000[~~$750,000 for each claimant regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.~~] and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.

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SECTION 10.11. Adds Sec. 11.031, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Alternative Limitation on Noneconomic Damages. (a) In the event that Sec. 11.03 of this subchapter is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective: In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages and losses, other than economic damages, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

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Sec. 74.302. Alternative Limitation on Noneconomic Damages.

(a) In the event that Sec. 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

(1) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages for each defendant physician or health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000.

(2) In an action on a health care liability claim where final judgment is rendered against a health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.

(3) In an action on a health care liability claim where final

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Sec.74.302. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES.

(a) In the event that Section 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

(1) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution ~~for each defendant physician or health care provider other than a health care institution~~, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(2) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000[~~$500,000~~].

(3) In an action on a health care liability claim where final

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	judgment is rendered against a physician or health care provider, the limit of civil liability for all noneconomic damages shall be limited to an amount not to exceed $750,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.	judgment is rendered against [~~a physician or health care provider,~~] more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $250,000[~~$750,000 for each claimant regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.~~] and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed $500,000.
(b) Effective before September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies: (1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program; (2) at least $200,000 for each health care liability claim and at least $600,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and	(b)-(d) Same as House version with minor wording changes.	House version.

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(3) at least $500,000 for each health care liability claim and at least $1.5 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(c) Effective September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:
(1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;
(2) at least $300,000 for each health care liability claim and at least $900,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and
(3) at least $750,000 for each health care liability claim and at least $2.25 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(d) Effective September 1, 2007, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this

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subchapter applies: (1) at least $100,000 for each health care liability claim and at least $300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program; (2) at least $500,000 for each health care liability claim and at least $1 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and (3) at least $1 million for each health care liability claim and at least $3 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.		
(e) Subsection (e)(1) states that evidence of financial responsibility may be established at the time of judgment by providing proof of the purchase of a contract of insurance or other plan of insurance authorized by this state.	(e) Same as House version, except (1) provides for the purchase of a contract of insurance or other plan of insurance authorized by this state *or federal law or regulation.*	Same as Senate version.
(f) This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under	No equivalent provision.	Same as Senate version.

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Chapter 166, Health and Safety Code.		
SECTION 10.12. Amends Sec. 11.04, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Adjustments of Liability Limit. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter, the liability limit prescribed in Section 11.02(a) of this subchapter shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limit are awarded by final judgment or settlement.	Sec. 74.303. Limitation on Damages. (b) When there is an increase or decrease in the consumer price index with respect to the amount of that index on August 29, 1977, the liability limit prescribed in Subsection (a) shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average -- All Items), between August 29, 1977, and the time at which damages subject to such limits are awarded by final judgment or settlement.	Same as Senate version.
No equivalent provision.	[Sections 74.304-74.350 reserved for expansion]	Same as Senate version.
SECTION 10.13. Adds Sec. 12.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Standard of Proof in Cases Involving Emergency Medical Care. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of	Sec. 74.153. Similar to House version. Specifies *emergency medical care in a hospital emergency room or department*, and changes *clear and convincing evidence* to *preponderance of the evidence*.	Same as Senate version with the following marked changes: Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising

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emergency medical care, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows by *clear and convincing evidence* that the physician or health care provider did not use the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.		out of the provision of emergency medical care in a hospital emergency[~~room or~~] department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant[~~person~~] bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant[~~person~~] shows by a preponderance of the evidence that the physician or health care provider, with willful and wanton negligence, deviated from [~~did not use~~] the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances
SECTION 10.14. Amends heading to Sec. 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Expert Report.	No equivalent provision.	Same as Senate version.
No equivalent provision.	Subchapter H. Procedural Provisions.	Same as Senate version.
SECTION 10.15. Amends Secs. 13.01(a), (b), (i), (j), (k), and (l), and adds (s), (t), and (u), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as follows:	(See below.)	Same as Senate version.
(a) In a health care liability claim, a claimant shall, not later than the *90th* day after the date the claim was filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for	Sec. 74.351. Expert Report. (a) In a health care liability claim, a claimant shall, not later than the *150th* day after the date the claim was filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae	Senate version with marked changes: Sec. 74.351. EXPERT REPORT. (a) In a health care liability claim, a claimant shall, not later than the 120th [~~150th~~] day after the date the claim was filed, serve on each

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each physician.	of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. *Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.*	party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.
(b) If, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a) *of this section*, the court, on the motion of the affected physician or health care provider, shall enter an order that: (1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and (2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.	(b) Same as House version, except omits the phrase *of this section.*	Same as Senate version.
No equivalent provision.	(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant a 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 150-day deadline has passed, then the 30-day extension shall run from the date the plaintiff first received	Same as Senate with changes marked: (c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant [~~a~~] one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the [~~150~~] 120-day deadline has passed, then the 30 day extension shall run from the date the plaintiff

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	the notice.	first received the notice.
No equivalent provision.	(d) If, on the motion of a claimant filed before the expiration of the 150-day period referred to in Subsection (a), the court finds that a claimant has been hindered in complying with Subsection (a) because a defendant physician or health care provider has failed to provide timely and complete discovery permitted under Subsection (s) or (u), the court shall extend the deadline until 30 days after complete discovery has been provided.	Same as House version.
	[Subsections (e) - (h) reserved]	
(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.	(i) through (l) same as House version.	Same as Senate version.
(j) Nothing in this section shall be construed to require the		

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serving of an expert report regarding any issue other than an issue relating to liability or causation.		
(k) An expert report served under this section: (1) is not admissible in evidence by any party; (2) shall not be used in a deposition, trial, or other proceeding; and (3) shall not be referred to by any party during the course of the action for any purpose.		
(l) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6) of this section.		
	[Subsections (m) - (q) reserved]	
No equivalent provision.	*[Renumbered existing law only]* (r) In this section:	
	(1) "Affected parties" means the claimant and the physician or health care provider who are directly affected by an act or agreement required or permitted by this section and does not include other parties to an action who are not directly affected by that particular act or agreement.	Same as Senate version.
	(2) "Claim" means a health care liability claim.	Same as Senate version.
	[(3) reserved]	
	(4) "Defendant" means a physician or health care provider against whom a health care liability claim is asserted. The	Same as Senate version.

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	term includes a third-party defendant, cross-defendant, or counterdefendant.	
SECTION 10.16. Amends Sec. 13.01(r)(5), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).		Same as Senate version.
(5) "Expert" means: (A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of *Section 14.01(a) of this Act*; (B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of *Section 14.02 of this Act*; (C) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health care liability claim, a physician who is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence; (D) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a dentist, a *dentist* who is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence; or (E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a *podiatrist* who	(5) "Expert" means: (A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of *Section 74.401*; (B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of *Section 74.402*; (C) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health care liability claim, a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence; (D) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a dentist, a *dentist or physician* who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence; or (E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a *podiatrist or physician* who	

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is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.	is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence.	
No equivalent provision.	(6) "Expert report" means a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.	Same as Senate version.
(s) Until a claimant has served the expert report and curriculum vitae, as required by Subsection (a) *of this section*, all discovery in a health care liability claim is stayed except for the acquisition of the patient's medical records, medical or psychological studies, or tissue samples through: (1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure; (2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and (3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.	(s) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), ~~*of this section*~~ all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, *including medical or hospital records or other documents or tangible things, related to the patient's health care or a defendant's liability* through: (1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure; (2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and (3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.	Same as Senate with marked changes: (s) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, *including medical or hospital records or other documents or tangible things, related to the patient's health care* ~~*or a defendant's liability*~~ through: (1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure; (2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and (3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.
(t) If an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a) *of this section*, the restrictions	(t) If an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a) ~~*of this section*~~, the restrictions	

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imposed by Subsection (k) of this section on use of the expert report by any party are waived.	imposed by Subsection (k) of this section on use of the expert report by any party are waived.	Same as Senate version.
(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than *one* deposition before the expert report is served as required by Subsection (a) of this section.	(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than *two* depositions before the expert report is served as required by Subsection (a) of this section. *The court may allow additional deposition discovery on a showing by a plaintiff that additional information is needed for the completion of an expert report that cannot otherwise practicably be obtained in a timely manner under this subsection and Subsection (s).*	Same as Senate version with marked changes: (u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than two deposition before the expert report is served as required by Subsection (a). ~~The court may allow additional deposition discovery on a showing by a plaintiff that additional information is needed for the completion of an expert report that cannot otherwise practicably be obtained in a timely manner under this subsection and Subsection (s).~~
SECTION 10.17. Amends Secs. 14.01(e) and (g), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). (e) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the	Subchapter I. Expert Witnesses. Secs. 74.401(e) and (g). Same as House version.	Same as Senate version.

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party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications. (g) In this subchapter, "physician" means a person who is: (1) licensed to practice medicine in one or more states in the United States; or (2) a graduate of a medical school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association only if testifying as a defendant and that testimony relates to that defendant's standard of care, the alleged departure from that standard of care, or the causal relationship between the alleged departure from that standard of care and the injury, harm, or damages claimed.		
No equivalent provision.	*[Renumbered existing law only]* Sec. 74.352. Discovery Procedures. (a) In every health care liability claim the plaintiff shall within 45 days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for	Same as Senate version.

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	production of documents and things promulgated by the Health Care Liability Discovery Panel. (b) Every physician or health care provider who is a defendant in a health care liability claim shall within 45 days after the date on which an answer to the petition was due serve on the plaintiff's attorney or, if the plaintiff is not represented by an attorney, on the plaintiff full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel. (c) Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and things, but no response shall be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case. (d) Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things in accordance with Subsections (a) and (b) or the making of a groundless objection under Subsection (c) shall be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party. (e) The time limits imposed under Subsections (a) and (b) may be extended by the court on the motion of a responding party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties. In no event shall an extension be for a period of more	

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	than an additional 30 days. (f) If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action. (g) If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses in accordance with the Texas Rules of Civil Procedure. (h) Nothing in this section shall preclude any party from taking additional non-duplicative discovery of any other party. The standard sets of interrogatories provided for in this section shall not constitute, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.	
No equivalent provision.	*[Renumbered existing law only]* Sec. 74.401. Qualifications of Expert Witness in Suit Against Physician. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the	Same as Senate version.

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	physician departed from accepted standards of medical care only if the person is a physician who: (1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose; (2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care. (b) For the purpose of this section, "practicing medicine" or "medical practice" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians. (c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is board certified or has other substantial training or experience in an area of medical practice relevant to the claim; and (2) is actively practicing medicine in rendering medical care services relevant to the claim. (d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but may depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert's testimony. The court shall state on the record the	

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	reason for admitting the testimony if the court departs from the criteria. (f) This section does not prevent a physician who is a defendant from qualifying as an expert.	
SECTION 10.18. Amends Subchapter N, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), by adding the following sections:	(See below.)	Same as Senate version.
Sec. 14.02. Qualifications of Expert Witness in Suit Against Health Care Provider. (a) For purposes of this section, "practicing health care" includes: (1) training health care providers in the same field as the defendant health care provider at an accredited educational institution; or (2) serving as a consulting health care provider and being licensed, certified, or registered in the same field as the defendant health care provider.	Sec. 74.402. (a) Same as House version.	Same as Senate version.
(b) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person: (1) is practicing health care *in the same field of practice as the defendant health care provider* at the time the testimony is given or was practicing that type of health care at the time the claim arose; (2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or	(b) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person: (1) is practicing health care in *a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual,* at the time the testimony is given or was practicing that type of health care at the time the claim	Same as Senate version.

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treatment of the illness, injury, or condition involved in the claim; and (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.	arose; (2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.	
(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is certified by a *Texas licensing agency* or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and (2) is actively practicing health care in rendering health care services relevant to the claim.	(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is certified by a *licensing agency of one or more states of the United States* or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and (2) is actively practicing health care in rendering health care services relevant to the claim.	Same as Senate version.
(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) *of this section* in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria. (e) This section does not prevent a health care provider who is a defendant, or an employee of the defendant health care	Subsections (d) through (f) Same as House version, except omits the phrase *of this section* in Subsection (d).	Same as Senate version.

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provider, from qualifying as an expert. (f) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.		
Sec. 14.03. Qualifications of Expert Witness on Causation in Health Care Liability Claim. (a) Except as provided by Subsections (b) and (c) *of this section*, in a suit involving a health care liability claim against a physician or health care provider, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or	Sec. 74.403. (a) Same as House version, except omits the phrase *of this section*.	Same as Senate version.

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damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.		
(b) In a suit involving a health care liability claim against a dentist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a *dentist* and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.	(b) In a suit involving a health care liability claim against a dentist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a *dentist or physician* and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.	Same as Senate version.
(c) In a suit involving a health care liability claim against a podiatrist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a *podiatrist* and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.	(c) In a suit involving a health care liability claim against a podiatrist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a *podiatrist or physician* and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.	Same as Senate version.
(d) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was	(d) Same as House version.	Same as Senate version.

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not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.		
No equivalent provision.	Subchapter J. Arbitration Agreements.	Same as Senate version.
No equivalent provision.	Sec. 74.451. Arbitration Agreements. (a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10-point boldface type clearly and conspicuously stating: UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.	Same as Senate version.

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	(b) A violation of this section by a physician or professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and shall be subject to the enforcement provisions and sanctions contained in that subtitle. (c) A violation of this section by a health care provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Sec. 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Sec. 17.47, Business & Commerce Code, notwithstanding Sec. 74.004 or any other law. (d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.	
No equivalent provision.	[Sections 74.452-74.500 reserved for expansion]	Same as Senate version.
SECTION 10.19. Amends Sec. 16.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), Application of Other Law. Notwithstanding Chapter 304, Finance Code, prejudgment interest in a judgment on a health care liability claim shall be awarded in accordance with this subchapter.	No equivalent provision.	Same as Senate version.

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SECTION 10.20. Amends Secs. 16.02(b) and (c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). (b) Subject to Subchapter K of this Act, the judgment must include prejudgment interest on past damages awarded in the judgment, but shall not include prejudgment interest on future damages awarded in the judgment. (c) Prejudgment interest allowed under this subchapter shall be computed in accordance with Sec. 304.003(c)(1), Finance Code, for a period beginning on the date of injury and ending on the date before the date the judgment is signed.	No equivalent provision.	Same as Senate version.
SECTION 10.21. Adds Subchapters R, S, and T, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as follows:	No equivalent provision.	Same as Senate version.
Subchapter R. Payment for Future Losses.	Subchapter K. Payment for Future Losses.	Same as Senate version.
Sec. 18.01. Definitions.	Sec. 74.501. Same as House version.	Same as Senate version.
Sec. 18.02. Scope of Subchapter.	Sec. 74.502. Same as House version.	Same as Senate version.
Sec. 18.03. Court Order for Periodic Payments.	Sec. 74.503. Same as House version, with marked changes: Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court ~~[shall]~~ *may* order that future damages awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by	Senate version with marked changes: Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court ~~[may]~~ shall order that ~~[future damages]~~ medical, health care, or custodial services awarded in a health care liability claim be paid in

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	a lump-sum payment. (b) The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages. (c) The court shall specify in its judgment ordering the payment of future damages by periodic payments the: (1) recipient of the payments; (2) dollar amount of the payments; (3) interval between payments; and (4) number of payments or the period of time over which payments must be made.	whole or in part in periodic payments rather than by a lump sum payment. (b) At the request of a defendant physician or health care provider or claimant, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump sum payment. (c)[~~b~~] The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages. (d)[~~c~~] The court shall specify in its judgment ordering the payment of future damages by periodic payments the: (1) recipient of the payments; (2) dollar amount of the payments; (3) interval between payments; and (4) number of payments or the period of time over which payments must be made.
Sec. 18.04. Release.	Sec. 74.504. Same as House version.	Same as Senate version.
Sec. 18.05. Financial Responsibility. In Subsection (b)(1), provides that the judgment must provide for payments to be funded by an annuity contract issued by a company licensed to do business as an insurance company.	Sec. 74.505. Same as House version, except Subsection (b)(1) provides that the judgment must provide for payments to be funded by an annuity contract issued by a company licensed to do business as an insurance company, *including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended.*	Same as Senate version.
Sec. 18.06. Death of Recipient.	Sec. 74.506. Same as House version.	Same as Senate version.

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Sec. 18.07. Award of Attorney's Fees.	Sec. 74.507. Same as House version.	Same as Senate version.
Subchapter S. Attorney's Fees.	No equivalent provision.	Senate Version.
Sec. 19.01. Definition. In this subchapter, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical or health care services incurred by the claimant and the attorney's office overhead costs or charges are not deductible disbursements or costs.	No equivalent provision.	Same as Senate version.
Sec. 19.02. Applicability. The limitations in this subchapter apply without regard to whether: (1) the recovery is by settlement, arbitration, or judgment; or (2) the person for whom the recovery is sought is an adult, a minor, or an incapacitated person.	No equivalent provision.	Same as Senate version.
Sec. 19.03. Periodic Payments. If periodic payments are recovered by the claimant, the court shall place a total value on these payments based on the claimant's projected life	No equivalent provision.	Same as Senate version.

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expectancy and then reduce this amount to present value for purposes of computing the award of attorney's fees.		
Subchapter T. Declaratory Judgments; Injunctions; Appeals.	SECTION 24.01, as follows:	Same as Senate version.
Sec. 20.01. Applicability. This subchapter applies only to an amendment to this Act that is effective on or after January 1, 2003.	No equivalent provision.	Same as Senate version.
Sec. 20.02. Declaratory Judgment. The constitutionality and other validity under the state or federal constitution of all or any part of *an amendment to this Act* may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the amendment or a part of the amendment affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.	(a) Same as House version, except refers to *Article 10 of this Act* rather than *an amendment to this Act.*	Same as Senate version.
Sec. 20.03. Accelerated Appeal. (a) An appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining, *under Section 20.02 of this subchapter*, that all or any part of *an amendment to this Act* is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.	(b) Same as House version, except does not include *under Section 20.02 of this subchapter* and refers to *Article 10 of this Act* rather than *an amendment to this Act.*	Same as Senate version.
(b) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an	(c) Same as House version.	Same as Senate version.

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accelerated appeal.		
Sec. 20.04. Injunctions. A district court in Travis County may grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of *an amendment to this Act.*	(d) Same as House version, except refers to *Article 10 of this Act* rather than *an amendment to this Act.*	Same as Senate version.
Sec. 20.05. Direct Appeal. (a) There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of *any amendment to this Act.*	(c) Same as House version, except refers to *Article 10 of this Act*, rather than *any amendment to this Act.*	Same as Senate version.
(b) The direct appeal is an accelerated appeal.		
(c) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.	(f) Same as House version.	Same as Senate version.
Sec. 20.06. Standing of an Association or Alliance to Sue. (a) An association or alliance has standing to sue for and obtain the relief described by Subsection (b) of this section if it is alleged that: (1) the association or alliance has more than one member who has standing to sue in the member's own right; (2) the interests the association or alliance seeks to protect are germane to a purpose of the association or	No equivalent provision.	Same as Senate version.

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alliance; and (3) the claim asserted and declaratory relief requested by the association or alliance relate to all or a specified part of the amendment involved in the action being found constitutional or unconstitutional on its face, or otherwise found valid or invalid on its face, under the state or federal constitution. (b) The association or alliance has standing: (1) to sue for and obtain a declaratory judgment under Sec. 20.02 of this subchapter in an action filed and maintained by the association or alliance; (2) to appeal or otherwise be a party to an appeal under Sec. 20.03 of this subchapter; (3) to sue for and obtain an order under Sec. 20.04 of this subchapter granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction in an action filed and maintained by the association or alliance; and (4) to appeal or otherwise be a party to an appeal under Sec. 20.05 of this subchapter.		
Sec. 20.07. Rules for Appeals. An appeal under this subchapter, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.	(g) Same as House version.	Same as Senate version.
No equivalent provision.	SECTION 10.02. Amends Sec. 84.003(1), Civil Practice and Remedies Code, to change the definition of "charitable organization" to include private primary or secondary schools if accredited by a member association of the Texas Private	Same as Senate version.

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	School Accreditation Commission and exclude fraternities, sororities, and secret societies.	
SECTION 10.22. Adds Sec. 84.003(6), Civil Practice and Remedies Code. (6) "Hospital system" means a system of *hospitals* located in this state that are under the common governance or control of a corporate parent.	SECTION 10.03. Same as House version, except refers to a system of *hospitals and other health care providers.*	Same as Senate version.
SECTION 10.23. Adds Sec. 84.003(7), Civil Practice and Remedies Code. Defines "person responsible for the patient."	SECTION 10.04. Same as House version.	Same as Senate version.
SECTION 10.24. Adds Sec. 84.004(f), Civil Practice and Remedies Code, relating to signing the acknowledgment statement.	SECTION 10.05. Same as House version.	Same as Senate version.
SECTION 10.25. Adds Sec. 84.0065, Civil Practice and Remedies Code, Organization Liability of Hospitals. (a) Except as provided by Sec. 84.007, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of $500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient, signs a written statement that acknowledges: (1) that the hospital is	No equivalent provision.	Same as House version.

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providing care that is not administered for or in expectation of compensation; and (2) the limitations on the recovery of damages from the hospital in exchange for receiving the health care services. (b) Subsection (a) applies even if: (1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or (2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.		
SECTION 10.26. Adds Sec. 11, Art. 5.15-1, Insurance Code, Vendor's Endorsement.	SECTION 10.05. Same as House version.	Same as Senate version.
SECTION 10.27. Repeals: (1) Sec. 11.02(c); (2) Secs. 13.01(c),(d), (e), (f), (g), (h), (m), (n), (o), and (r)(3); (3)Sec. 16.02(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes); (4) and Sec. 242.0372, Health and Safety Code.	SECTION 10.07. Repeals the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). SECTION 10.06. Adds Sec. 242.0372(f), Health and Safety Code, to provide that an institution is not required to comply with this section before September 1, 2005. This subsection expires September 2, 2005.	Same as Senate version. Same as Senate version.
No equivalent provision.	SECTION 10.08. Unless otherwise removed as provided by	Same as Senate version.

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	law, a member of the Texas Medical Disclosure Panel serving on the effective date of this Act continues to serve for the term to which the member was appointed.	
SECTION 10.28. (a) Relates to findings of the legislature. (b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to: (8) encourage offering services by physicians and hospitals, particularly those involving high risk, that will benefit, in particular, high-cost and low-income groups because lower malpractice insurance rates increase the willingness of physicians and hospitals to provide treatments that carry a relatively high risk of failure but offer the only real prospect of success for seriously ill patients; (9) encourage quality of care and discourage defensive medicine; (10) decrease malpractice insurance premiums, which are a significant part of overall health care cost, and, as the cost savings are reflected in health insurance premiums, make health insurance benefit programs more affordable to businesses, particularly small businesses, and increase employee participation in health insurance programs offered by their employers; (11) discourage unnecessary services and encourage fewer tests, procedures, and visits so that the direct financial cost to the patient will be reduced as well as time, travel, and other indirect costs;	SECTION 10.09. (a) Same as House version with minor wording changes. (b) Same as House version, except does not include Subsections (b)(8) to (b)(20).	Same as Senate version.

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(12) support health care insurance for employers and employees because malpractice insurance is a component of the overhead costs that providers must take into account in negotiating reimbursement rates with commercial insurers and employers that pay all or a portion of the premiums for their employees will save money and may make the difference in whether an employer can afford to maintain current health insurance benefits for its employees; (13) reduce the time required for plaintiffs to obtain awards; (14) reduce malpractice pressure and, as a result, increase the supply of physicians, especially obstetricians and other impacted specialists; (15) contribute to the viability of community hospitals by lowering malpractice insurance premiums; (16) free funds in the operating budgets of self-insured hospitals, allowing the hospital to treat more patients; (17) reduce or eliminate the incentive for physicians to go without insurance; (18) lower costs for teaching and safety-net hospitals as well as nonprofit community clinics; (19) decrease the costs for health care facilities that self-insure; and (20) allow the Texas Medicaid program to save resources that can be used to provide additional health care goods and services.		
SECTION 10.29. (a) Subchapter S, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), as added by this article, applies only to	No equivalent provision.	Same as Senate version.

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an attorney's fee agreement or contract that is entered into on or after January 1, 2004. An attorney's fee agreement or contract entered into before January 1, 2004, is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose. (b) This article does not make any change in law with respect to the adjustment under Sec. 11.04, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), of the liability limit prescribed in Sec. 11.02(a) of that Act, and that law is continued in effect only for that liability limit.		
ARTICLE 10A. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS.	No equivalent provision.	Same as Senate version.
SECTION 10A.01. Adds Subchapter R, Chapter 5, Insurance Code, Rates for Professional Liability Insurance for Physicians and Health Care Providers, as follows:	No equivalent provision.	Same as Senate version.
Art. 5.161. Findings. The legislature finds that: (1) the cost of professional liability insurance for physicians and health care providers, as defined by Sec. 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state; (2) legislation under consideration by the Regular Session of the 78th Legislature should eliminate or significantly reduce the	No equivalent provision.	Same as Senate version.

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cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect; (3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience; (4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this article, and this benefit should be passed on to insureds; and (5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.		
Art. 5.162. Scope of Subchapter. (a) This subchapter applies to any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including: (1) a Lloyd's plan; (2) a reciprocal or interinsurance exchange; (3) the joint underwriting association established under Article 21.49-3 of this code; and (4) a self-insurance trust established under Article 21.49-4 of this code. (b) It is the intent of the legislature that all insurers, as defined by this article, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls,	No equivalent provision.	Same as Senate version.

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informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state. (c) This subchapter applies only to professional liability insurance for physicians and health care providers.		
Art. 5.163. Equitable Rate Reduction.	No equivalent provision.	Same as Senate version.
Sec. 1. Hearing. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers. (b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code. (c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence	No equivalent provision.	

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adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code. (d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer, as defined by Article 5.162 of this code, shall apply the rate reduction to the rates used by the insurer. (e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.		
Sec. 2. Administrative Relief. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of	No equivalent provision.	Same as Senate version.

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this article. (b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code. (c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on a preponderance of the evidence presented by an insurer that: (1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction; (2) the insurer will be financially unable to continue writing in a particular line of insurance; (3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or (4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.		
Sec. 3. Duration of Reduction. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.	No equivalent provision.	Same as Senate version.
Sec. 4. Modification. The commissioner may, by bulletin or	No equivalent provision.	Same as Senate version.

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directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.		
Sec. 5. Hearings and Orders. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.	No equivalent provision.	Same as Senate version.
Sec. 6. Pending Rate Matters. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.	No equivalent provision.	Same as Senate version.
Sec. 7. Recommendations to Legislature. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.	No equivalent provision.	Same as Senate version.
Art. 5.164. Contingent Rollback. (a) If a $250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval	No equivalent provision.	Same as Senate version.

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of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer, as defined by Article 5.162 of this code, that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured, provided that the rate was adequate and not artificially inflated prior to the determination of constitutionality. An insurer may petition the commissioner for an exception to the rate reduction. A proceeding under this article is a contested case under Chapter 2001, Government Code. The commissioner shall not grant the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. If the insurer meets this evidentiary burden, the commissioner may grant the exception only to the extent that the reduction is confiscatory. The contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.		
(b) If the commissioner makes no determination as to a rate		

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reduction in accordance with Section 1, Article 5.163, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a $250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.		
(c) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a $250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.		

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Art. 5.165. Filing of Rate Information with Department; Report to Legislature.	No equivalent provision.	Same as Senate version.
Sec. 1. Purpose. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each legislature and the determination by the commissioner of equitable rate reductions under Article 5.163 of this code. Information submitted under this article must be sufficient for the commissioner to determine the extent of equitable rate reductions under Article 5.163 of this code. The commissioner's report shall contain a review of the rates, presented in a manner that protects the identity of individual insurers: (1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and (2) to assist in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in Texas.	No equivalent provision.	Same as Senate version.

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Sec. 2. Definitions. In this article: (1) "Insurer" means an insurer described by Article 5.162 of this code. (2) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating. (3) "Security" or "securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).	No equivalent provision.	Same as Senate version.
Sec. 3. Rate Information. (a) Insurers must file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner in accordance with the requirements determined by the commissioner under this article. (b) Filings made by each insurer must be sufficient to respond to the commissioner's request for information under this article and must provide both current rates and estimated rates for the year following the required filing date of this article based on information reasonably known to the insurer at the time of filing.	No equivalent provision.	Same as Senate version.

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(c) The insurer shall file, in a format specified by the commissioner, including an electronic format: (1) all rates for professional liability insurance for physicians and health care providers, supplementary rating information, underwriting guidelines, reasonable and pertinent supporting information for risks written in the state, and all applicable rating manuals; (2) actuarial support, including all statistics, data, or other information to support the rates, supplementary rating information, and underwriting guidelines used by the insurer; (3) the policy fees, service fees, and other fees that are charged under Article 21.35B of this code; (4) information on the insurer's losses from investments in securities, whether publicly or privately traded, including investments in the securities of companies required by any oversight agency to restate earnings within the 24 months preceding the filing date, possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article; (5) information on the insurer's costs of reinsurance possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article; (6) a complete explanation, and an electronic copy, of all computer models used by the insurer not protected by a contract with a third party; and (7) a complete explanation of any changes to underwriting guidelines, rates, and supplementary rating information since the last filing under		

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this article.		
(d) The commissioner shall determine the date on which the filing is due.		
(e) The commissioner may require additional information as provided by Section 4 of this article.		
(f) The commissioner shall issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.		
(g) The commissioner is not required to hold a hearing before issuing the order required under Subsection (f) of this section.		
(h) The commissioner shall notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.		
Sec. 4. Additional Information. After the initial rate submission under Section 3 of this article, the commissioner may require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.	No equivalent provision.	Same as Senate version.
Sec. 5. Use of Filed Rate Information. (a) Information filed by an insurer with the department under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not	No equivalent provision.	Same as Senate version.

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subject to disclosure under Chapter 552, Government Code, except that the information may be disclosed as provided by Sec. 552.008, Government Code, relating to information for legislative purposes. Information disclosed pursuant to Sec. 552.008, Government Code, shall be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. The information may not be released to the public except in summary form in the report required under Section 6 of this article.		
(b) Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.		
Sec. 6. Report. (a) The commissioner shall, on a date determined by the commissioner, submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. The report may be created based on a sample of the information provided under Section 3 of this article.	No equivalent provision.	Same as Senate version.
(b) The report required under this section shall provide a		

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summary review of the rates currently charged and estimated to be charged over the year following the date of the report, presented in a manner that protects the identity of individual insurers: (1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and (2) to assist the legislature in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in this state.		
Sec. 7. Notification; Noncompliance. The commissioner shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers that the commissioner requested to make the rate filings under this article and the names of the insurers that did not respond in whole or in part to the commissioner's request. This notification shall be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(f) of this article.	No equivalent provision.	Same as Senate version.
Sec. 8. Application of Certain Law. Chapter 40 of this code does not apply to an action of the commissioner under Section 3(f) of this article.	No equivalent provision.	Same as Senate version.
Sec. 9. Failure to Comply. An insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 and 84 of	No equivalent provision.	Same as Senate version.

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this code.		
SECTION 10A.02. The commissioner of insurance shall commence a hearing under Section 1, Article 5.163, Insurance Code, as added by this article, on September 1, 2003, and shall issue rules mandating any appropriate rate reductions under Section 1, Article 5.163, Insurance Code, not later than October 1, 2003.	No equivalent provision.	Same as Senate version.
ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT	ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT	Same as Senate version.
SECTION 11.01. Amends Secs. 108.002(a) and (b), Civil Practice and Remedies Code, relating to limitations of liability for public servants.	SECTION 11.01. Same as House version.	Same as Senate version.
SECTION 11.02. Adds Subchapter C, Liability of Nonprofit Management Contractor, to Chapter 261, Health and Safety Code, as follows:	SECTION 11.02. Same as House version, except as follows:	Same as Senate version.
Sec. 261.051. Definition. Defines "municipal hospital management contractor" as a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a municipality.	Sec. 261.051. Same as House version, with a minor wording change.	Same as Senate version.
Sec. 261.052. Liability of Municipal Hospital Management Contractor. Establishes that a municipal hospital management contractor and any employee of the contractor	Sec. 261.052. Liability of *a* Municipal Hospital Management Contractor. Similar to House version. Establishes that a municipal hospital management contractor in its management	Same as Senate version.

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are, while performing services under the contract for the benefit of the hospital, employees of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.	or operation of a hospital under a contract with a municipality is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and states that any employee of the contractor is, while performing services under the contract for the hospital's benefit, an employee of the municipality for purposes of those chapters.	
SECTION 11.03. Amends Sec. 285.071, Health and Safety Code, Definition. Defines "hospital district management contractor" as a nonprofit corporation, partnership, or sole proprietorship that *manages* a hospital or provides services under contract with a hospital district that was created by general or special law. Deletes a reference to participation in a rural health network and a population bracket from the definition.	SECTION 11.03. Same as House version, except that the definition includes a nonprofit corporation, partnership, or sole proprietorship that *manages or operates* a hospital or provides services.	Same as Senate version.
No equivalent provision.	SECTION 11.04. Amends Sec. 285.072, Health and Safety Code, Liability of a Hospital District Management Contractor, to clarify that a hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and that any employee of the contractor is, while performing services under the contract for the hospital's benefit, an employee of the hospital district.	Same as Senate version.
No equivalent provision.	SECTION 11.05. Amends Sec. 101.106, Civil Practice and	Same as Senate version.

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	Remedies Code, Election of Remedies. (a) The filing of a suit under this chapter against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter. (b) The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents. (c) The settlement of a claim arising under this chapter shall immediately and forever bar the claimant from any suit against or recovery from any employee of the same governmental unit regarding the same subject matter. (d) A judgment against an employee of a governmental unit shall immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit. (e) If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit. (f) If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's	

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	official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed.	
No equivalent provision.	SECTION 11.06. Adds Sec. 108.001(3), Civil Practice and Remedies Code, Definitions, to define "public servant" to include a licensed physician who provides emergency or postemergency stabilization services to patients in a hospital owned or operated by a unit of local government.	Same as Senate version.
SECTION 11.04. Repeals Sec. 108.002(c), Civil Practice and Remedies Code.	SECTION 11.07. Same as House version.	Same as Senate version.
ARTICLE 12. JUROR QUALIFICATION.	No equivalent provision.	Same as Senate version.
SECTION 12.01. Amends Sec. 62.105, Government Code, Disqualification for Particular Jury, to replace a gender-specific pronoun with *the person* in establishing grounds for disqualification and to add a new Subsection (b). (b)(1) Provides that, in an action seeking damages for personal injury or death, a person's answer in voir dire that the person could not award a certain sum of money damages based on a hypothetical set of circumstances does not, in and of itself, establish a bias or prejudice in favor of or against a party in the action that warrants disqualification under Subsection (a)(4). (2) Assigns to the term "side" the same meaning as in Rule	No equivalent provision.	Same as Senate version.

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233, Texas Rules of Civil Procedure, or its successor and provides that: (A) in any civil action to be tried before a jury, the trial court shall allow each side voir dire, as follows: (i) in Level 1 cases, as defined by Rule 190.2, Texas Rules of Civil Procedure, at least one hour; (ii) in Level 2 cases, as defined by Rule 190.3, Texas Rules of Civil Procedure, at least two hours; and (iii) in Level 3 cases, as defined by Rule 190.4, Texas Rules of Civil Procedure, at least three hours; (B) that the time allocated in this subsection shall not include time consumed in making preemptory challenges or challenges for cause to jurors or in making or responding to objections; and (C) that the supreme court may adopt rules consistent with the provisions of this section. To the extent that any rule conflicts with the provisions of this section, this section controls.		
No equivalent provision.	ARTICLE 12. RESERVED	Same as Senate version.
ARTICLE 13. EXEMPLARY DAMAGES	ARTICLE 13. DAMAGES	Same as Senate version.
No equivalent provision.	SECTION 13.01. Amends the heading to Chapter 41, Civil Practices and Remedies Code, to read "Damages," striking the word "Exemplary."	Same as Senate version.
SECTION 13.01. Amends Sec. 41.001(1), Civil Practice and Remedies Code, to amend the definition of "claimant" so that it refers to a person, rather than to a party, and to include in the definition a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff who has sought recovery of exemplary	SECTION 13.02. Amends Secs. 41.001(1), (3)-(5), and (7), Civil Practice and Remedies Code, and adds (8)-(13) to amend the definitions of "claimant," "defendant," "economic damages," "exemplary damages," and "malice," and to define "compensatory damages," "future damages," "future loss of	Same as Senate version.

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damages as well as one seeking recovery.	earnings," "gross negligence," "noneconomic damages," and "periodic payments." The amended definitions of "claimant" and "defendant" in (1) and (3) strike the word *exemplary* in references to damages. (4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or pecuniary loss and does not include exemplary damages or noneconomic damages. (5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes and are neither economic nor noneconomic damages; also includes punitive damages. (7) "Malice" means a specific intent by the defendant to cause substantial injury or harm. Amended definition strikes reference to certain acts or omissions. (8) "Compensatory damages" means economic and noneconomic damages but does not include exemplary damages. (9) "Future damages" means damages incurred after the date of judgment but does not include exemplary damages. (10) "Future loss of earnings" means a pecuniary loss incurred after the date of judgment, including loss of income, wages, or earning capacity and loss of inheritance. (11) "Gross negligence" means an act or omission which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others. (12) "Noneconomic damages" means damages awarded to compensate a claimant for physical pain	

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	and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages. (13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.	
No equivalent provision.	SECTION 13.03. Amends Secs. 41.002(a) and (b), Civil Practice and Remedies Code, relating to the applicability of the chapter's provisions, to strike the word *exemplary* from references to damages sought or awarded.	Same as Senate version.
No equivalent provision.	SECTION 13.04. Amends Sec. 41.003, Civil Practice and Remedies Code, relating to standards for recovery of damages. (a) Requires a claimant to prove by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from fraud, malice, or gross negligence. Gross negligence is substituted for a wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs. (d) Allows exemplary damages to be awarded only if the jury was unanimous in its finding of liability and on the amount of exemplary damages. (e) Requires the court's charge, in all cases where the issue of exemplary damages is submitted to the jury, to include a specific instruction regarding the need for unanimity on the amount of damages to be awarded.	Same as Senate version.

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No equivalent provision.	SECTION 13.05. Amends Sec. 41.004(b), Civil Practice and Remedies Code, relating to factors precluding recovery, to delete a provision allowing a claimant to recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery results from malice as the term was previously defined.	Same as Senate version.
SECTION 13.02. Amends Sec. 41.008(b), Civil Practice and Remedies Code, relating to limitation on the amount of recovery, to clarify that exemplary damages awarded against a defendant to a claimant may not exceed an amount equal to the greater of: (1)(A) two times the amount of economic damages to be awarded in the judgment; plus (B) an amount equal to any noneconomic damages to be awarded in the judgment, not to exceed $750,000; or (2) $200,000.	SECTION 13.06. Amends Sec. 41.008, Civil Practice and Remedies Code, Limitation on Amount of Recovery, to clarify that the requirement for the trier of fact to determine the amount of economic damages separately from the amount of other compensatory damages applies to an action in which a claimant seeks recovery of damages, not *exemplary* damages. Does not amend Sec. 41.008(b), relating to the limitation on the recovery of exemplary damages. Clarifies that the applicability of and exemptions from certain provisions refers to the entire section rather than to particular subsections. Clarifies that the section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in Sec. 22.04, Penal Code (injury to a child or elderly or disabled individual), if the conduct was committed knowingly or intentionally, but not if the conduct occurred while providing health care as defined by Section 74.001.	Same as Senate version.
No equivalent provision.	SECTION 13.07. Amends Sec. 41.010(b), Civil Practice and Remedies Code, relating to considerations in making awards,	Same as Senate version.

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	to make the determination of whether to award exemplary damages and the amount of exemplary damages to be awarded that are within the discretion of the trier of fact subject to Sec. 41.008.	
ARTICLE 14. ASSIGNMENT OF JUDGES.	No equivalent provision.	Same as Senate version.
SECTION 14.01. Adds Sec. 74.0241, Government Code, Assignment of Judges for Health Care Liability Claims. (a) In this section, "health care liability claim" has the meaning assigned by Section 1.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes). (b) Requires the supreme court, notwithstanding any other law or rule and on a motion of a party to a health care liability claim, to assign a judge for the health care liability claim and any action or suit that includes the claim. A motion to assign a judge must be made: (1) by a party asserting a claim not later than 30 days following the appearance of any defendant; or (2) by a party against whom the claim is asserted concurrently with or before the filing of the movant's answer. (b-1) Provides that any judge assigned under this section may not have been defeated in the general election immediately preceding the assignment under this section. (b-2) Provides that any judge assigned under this section may not have retired before the end of the applicable election term immediately preceding the assignment under this section. (c) Requires the supreme court to provide each party to the health care liability claim and any action or suit that includes	No equivalent provision.	Same as Senate version.

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the claim a list of the judges from whom the assigned judge will be selected. (d) Allows each of the following groups of parties, within a period specified by the supreme court, to file with the court a written objection to one of the judges on the list provided under Subsection (c) who is not a regular judge in the county in which the suit is pending: (1) all of the parties asserting the claim; (2) all of the parties against whom the claim is asserted; and (3) all other parties in the case. (e) Prohibits any further objection after the period specified for filing an objection under Subsection (d) has expired. Requires the supreme court to assign one judge on the list who has not been timely objected to under Subsection (d) to serve as the assigned judge for the health care liability claim and any action or suit that includes the claim. (f) Provides that, notwithstanding any other law or rule, the supreme court has authority to issue any rule necessary or appropriate to implement this section.		
No equivalent provision.	ARTICLE 14. RESERVED	Same as Senate version.
ARTICLE 15. CLAIMS AGAINST SCHOOL DISTRICT TRUSTEES AND EMPLOYEES OF ELEMENTARY AND SECONDARY SCHOOLS	ARTICLE 15. SCHOOL EMPLOYEES	Same as Senate version.
SECTION 15.01. Adds Sec. 11.064, Education Code, Civil Immunity, to establish that a member of the board of trustees of a school district is considered to be a professional employee of the district for purposes of Subchapter B,	No equivalent provision.	Same as Senate version, except that a member of the board of trustees of a school district being considered to be a professional employee for immunity purposes is added to Section 22.051, Education Code (Definition).

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Chapter 22.		
SECTION 15.02. Amends Sec. 22.051 and adds Secs. 22.0511-22.0516, Education Code, as follows:	SECTION 15.01. Amends Sec. 22.051 and adds Secs. 22.0511-22.0517, Education Code, as follows:	Same as Senate version with marked changes: SECTION 15.01. Amends Sec. 22.051 and adds Secs. 22.0511, 22.0513, 22.0514, 22.0516, and 22.0517, Education Code, as follows:
Sec. 22.051. Definition.	Sec. 22.051. Same as House version with minor wording changes.	Same as Senate version with addition of board of trustees being considered to be a professional employee for immunity purposes from House's SECTION 15.01. The new section will read as follows: Sec. 22.051. Definition. In this subchapter, "professional employee of a school district" includes: (1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district; (2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district; (3) a student in an education preparation program participating in a field experience or internship; (4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas; *(5) a member of the board of trustees of an individual school district*; and (6) any other person employed by a school district whose employment requires certification and the exercise of discretion.
Sec. 22.0511. Immunity From Liability, as follows:	Sec. 22.0511. Immunity From Liability, as follows:	Same as Senate version.
(a) A professional employee of a school district is not	(a) Same as House version.	Same as Senate version.

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personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students. (b) This section does not apply to the operation, use, or maintenance of any motor vehicle.	(b) Same as House version.	Same as Senate version.
Sec. 22.0512. Protection Under Federal Law. (a) In this section, "school" and "teacher" have the meanings assigned by 20 U.S.C. Section 6733 and its subsequent amendments. (b) In addition to the immunity provided by *Section 22.0511 and other* state law, *a teacher* is entitled to any immunity and other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.) *and its subsequent amendments.* (c) This section may not be construed as limiting or abridging any immunity or protection afforded a teacher under state law.	(c) In addition to the immunity provided *under this section and under other provisions of* state law, *an individual* is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), *as amended.* Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law.	Same as Senate version.
No equivalent provision.	Sec. 22.0512. Immunity From Disciplinary Proceedings for Professional Employees. (a) A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Sec. 9.62, Penal Code. (b) In this section, "disciplinary proceeding" means: (1) an action brought by the school district employing a professional	Same as House version.

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	employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or (2) an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Sec. 21.041(b)(8). (c) Nothing in this section shall prohibit a school district from enforcing a policy relating to corporal punishment.	
Sec. 22.0513. Notice of Claim. (a) Not later than the 90th day before the date a person files *an action* against a professional employee of a school district *involving an act that is incident to or within the scope of duties of the employee's position of employment*, the person must give written notice to the employee of the claim, reasonably describing the act from which the claim arises. (b) A professional employee of a school district against whom *an action* is pending who did not receive written notice as required by Subsection (a) may file a plea in abatement not later than the 30th day after the date the *employee* files an original answer in the court in which the action is pending. (c) The court shall abate the *action* if the court, after a hearing, finds that the *employee* is entitled to an abatement because notice was not provided as required by this section. (d) An abatement under Subsection (c) continues until the 90th day after the date written notice is given to the *employee* as provided by Subsection (a).	Sec. 22.0513. Similar to House version. Omits the qualifier in Subsection (a) regarding an act incident to or within the scope of the employee's duties. Substitutes *a suit* for *an action* throughout and *person* for *employee* in Subsections (b) and (c). Qualifies employee in Subsection (d) as a *professional employee of a school district.*	Same as Senate version.
Sec. 22.0514. Exhaustion of Remedies. A person may not file *an action* against a professional employee of a school	Sec. 22.0514. Same as House version, except substitutes *a suit* for *an action* and omits the phrase *involving an act that*	Same as Senate version.

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district *involving an act that is incident to or within the scope of duties of the employee's position of employment* unless the person has exhausted any remedies provided by the school district for resolving the complaint.	*is incident to or within the scope of duties of the employee's position of employment.*	
No equivalent provision.	Sec. 22.515. Limitation on Damages. (a) Subject to Subsection (b), the liability of a professional employee of a school district for an act incident to or within the scope of duties of the employee's position of employment may not exceed $100,000. The limitation on liability provided by this subsection does not apply to any attorney's fees or court costs that may be awarded against the professional employee under Sec. 22.0517. (b) The limitation on liability provided by Subsection (a) does not apply if the actions of the professional employee of a school district constitute gross negligence.	Same as House version.
Sec. 22.0515. Alternative Dispute Resolution. A court in which *an action* is brought against a professional employee of a school district *involving an act that is incident to or within the scope of duties of the employee's position of employment* may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.	Sec. 22.516. Same as House version, except substitutes *a judicial proceeding* for *an action* and omits the phrase *involving an act that is incident to or within the scope of duties of the employee's position of employment.*	Same as Senate version.
Sec. 22.0516. Recovery of Attorney's Fees in Action Against Professional Employee. In an action against a professional employee of a school district *involving an act that is incident to or within the scope of duties of the employee's position of*	Sec. 22.517. Employee. Similar to House version. In an action against a professional employee of a school district *based on an allegation that the employee physically abused a student*, the employee is entitled to recover attorney's fees	Same as House version, except with numbering from the Senate version. The section will read as follows: *Sec. 22.517. Recovery of Attorney's Fees in Action Against Professional Employee. In an action against a professional*

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employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee *is immune from liability under this subchapter.*	and court costs from the plaintiff if the employee *substantially prevails.*	*employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee is immune from liability under this subchapter.*
SECTION 15.03. Amends Sec. 22.053(a), Education Code, relating to immunity of school district volunteers.	SECTION 15.02. Same as House version.	Same as Senate version.
SECTION 15.04. Amends Sec. 30.024(c), Education Code, relating to immunity of professional employees and volunteers at the Texas School for the Blind and Visually Impaired.	SECTION 15.03. Same as House version.	Same as Senate version.
SECTION 15.05. Amends Sec. 30.055(c), Education Code, relating to immunity of professional employees and volunteers at the Texas School for the Deaf.	SECTION 15.04. Same as House version.	Same as Senate version.
SECTION 15.06. Amends Sec. 105.301(e), Education Code, relating to the applicability of Texas Education Code provisions and Texas Education Agency rules to the Texas Academy of Mathematics and Science.	SECTION 15.05. Same as House version.	Same as Senate version.
SECTION 15.07. This article applies only to *an action* for damages involving conduct that occurs on or after *September 1, 2003. An action for damages* involving conduct that occurs before *September 1, 2003,* is governed by the law in effect on the date the conduct occurs, and the former law is continued	SECTION 15.06. *The change in law made by* this article applies only to *a suit* for damages *or a school employee disciplinary proceeding* involving conduct that occurs on or after *the effective date of this Act. A suit for damages or a school district disciplinary proceeding* involving conduct	Same as Senate version.

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in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

SECTION 16.01. Adds Sec. 32.060, Human Resources Code, Admissibility of Certain Evidence Relating to Nursing Institutions. (a) The following are not admissible as evidence in a civil action: (1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; and (2) the fact of the assessment of a monetary penalty against an institution under Sec. 32.021 or the payment of the penalty by an institution.
(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.
(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if: (1) the evidence relates to a material violation of a standard or assessment of a monetary penalty with respect to: (A) the particular incident that is the basis of the claim being brought; (B) an incident comparable to the incident that is the basis of the claim in the civil action; or (C) the particular individual whose personal injury is the basis of the claim being brought in the civil action; and (2)

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that occurs before *the effective date of this Act* is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

SECTION 16.01. Similar to House version. Adds *Not-for-Profit* before *Nursing Institutions* in the section heading and before the word *institution* in Subsection (a). Does not include provisions of Subsection (c).

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Same as Senate version.

Senate version with marked changes:
SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:
Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO [~~NOT-FOR-PROFIT~~] NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:
(1) any finding by the department that an [~~not-for-profit~~] institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or
(2) the fact of the assessment of a monetary penalty against an [~~not-for-profit~~] institution under Section 32.021 or the payment of the penalty by an institution.
(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.
(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:
(1) the evidence relates to a material violation of this

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the violation of the standard or the violation that resulted in the assessment of a monetary penalty is a proximate cause of the injury that is the basis of the claim being brought in the civil action.

SECTION 16.02. Adds Sec. 242.017, Health and Safety Code, Admissibility of Certain Evidence in Civil Actions. (a) The following are not admissible as evidence in a civil action: (1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; and (2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section,

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SECTION 16.02. Similar to House version. Adds *a not-for-profit* before the word *institution* in Subsection (a) and does not include provisions of Subsection (c).

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chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Senate version with marked changes:

SECTION 16.02. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an ~~[not-for-profit]~~ institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an ~~[not-for-~~

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evidence described by Subsection (a) is admissible as evidence in a civil action only if: (1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to: (A) the particular incident that is the basis of the claim being brought in the civil action; or (B) the particular individual whose personal injury is the basis of the claim being brought in the civil action; and (2) the violation of the chapter or rule or the violation that resulted in the assessment of a monetary penalty is a proximate cause of the injury that is the basis of the claim being brought in the civil action.		~~profit]~~ institution under this chapter or the payment of the penalty by an institution. (b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party. (c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if: (1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to: (A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or (B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and (2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and (3) the record is otherwise admissible under the Texas Rules of Evidence.
SECTION 16.03. Repeals Secs. 32.021(i) and (k), Human Resources Code; and Sec. 242.050, Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.	SECTION 16.03. Same as House version.	Same as Senate version.

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SECTION 16.04. (a) Except as provided by Subsection (b) of this section, this article applies only to a suit commenced or pending on or after the effective date of this article. (b) This article does not apply to a suit in which the trial on the merits commenced on or before the effective date of this article; that suit is governed by the law in effect immediately before the change in law made by this article, and that law is continued in effect for that purpose.	No equivalent provision.	Same as Senate version.
ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS	ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS	Same as Senate version.
SECTION 17.01. Adds Chapter 149, Civil Practice and Remedies Code, Limitations in Civil Actions of Liabilities Relating to Certain Mergers or Consolidations, as follows:	SECTION 17.01. Same as House version, except as follows:	Same as Senate version.
Sec. 149.001. Definitions, as follows:	Sec. 149.001. Same as House version, except as follows:	Same as Senate version.
(1) Defines "asbestos claim."	(1) Same as House version.	Same as Senate version.
(2) "Corporation" means a corporation for profit, including: (A) a domestic *business* corporation organized under the laws of this state; or (B) a foreign corporation organized under laws other than the laws of this state *that has a certificate of authority to transact business in this state or is doing business in this state.*	(2) Same as House version, except substitutes *domestic corporation* for *domestic business corporation* in (A) and deletes the phrase *that has a certificate of authority to transact business in this state or is doing business in this state* relating to foreign corporations in (B).	Same as Senate version.
(3) "Successor asbestos-related liabilities" means any	(3) Same as House version, except adds the phrase *or by a*	Same as Senate version.

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liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Sec. 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, *by or on behalf of the corporation*, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.	*successor of the corporation* after the phrase *by or on behalf of the corporation.*	
No equivalent provision.	(4) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.	Same as Senate version.
(4) "Transferor" means a corporation from which successor asbestos-related liabilities *are* assumed or incurred.	(5) Same as House version, except refers to liabilities that *are or were* assumed or incurred.	Same as Senate version.
Sec. 149.002. Applicability, as follows:	Sec. 149.002. Similar to House version, as follows:	Same as Senate version.
(a) The limitation in Section 149.003 applies to a merger or	(a) The limitations in Section 149.003 shall apply to a	Same as Senate version.

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consolidation effected under the laws of this state or another jurisdiction.	domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).	
(b) The limitation in Sec. 149.003 does not apply to: (1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or comparable workers' compensation law of another jurisdiction; (2) any claim against a corporation that does not constitute a successor asbestos-related liability; (3) an insurance corporation, as that term is used in the Insurance Code; or (4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement.	(b) Same as House version, except adds four subdivisions so that the Sec. 149.003 limitations also do not apply to: (5) a successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor; (6) a contractual obligation existing as of the effective date of this chapter that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims; (7) any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to April 1, 2003, under the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or against such debtor, or against a bankruptcy trust established under 11 U.S.C. Section 524(g) or similar provisions of the United States Code in such a bankruptcy proceeding commenced prior to such date; or	Same as Senate version.

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	(8) a successor asbestos-related liability arising from a claim brought under Chapter 95, a common law claim for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.	
Sec. 149.003. Limitation on Successor Asbestos-Related Liabilities, as follows:	Sec. 149.003. Similar to House version, as follows:	Same as Senate version.
(a) Except as *provided by* Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation *and any policies of insurance*. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.	(a) Except as *further limited in* Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.	Same as Senate version.
(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, *the cumulative successor asbestos-related liabilities of a corporation are limited to* the fair market value of the total *gross* assets of the prior transferor, determined as of the time of *the* earlier merger or consolidation.	(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, *then* the fair market value of the total assets of the prior transferor, determined as of the time of *such* earlier merger or consolidation, *shall be substituted for the limitation set forth in Subsection (a) for purposes of determining the limitation of liability of a corporation.*	Same as Senate version.
Sec. 149.004. Establishing Fair Market Value of Total Gross Assets, as follows:	Sec. 149.004. Same as House version, except as follows:	Same as Senate version.

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(a) and (b) Relate to establishing the fair market value of total gross assets, including intangible assets, for the purpose of the limitation under Section 149.003.	(a) and (b) Same as House version.	Same as Senate version.
No equivalent provision.	(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.	Same as Senate version.
No equivalent provision.	(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.	Same as Senate version.
Sec. 149.005. Adjustment, as follows:	Sec. 149.005. Same as House version, except as follows:	Same as Senate version.
(a) The fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of: (1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and (2) one percent.	(a) Same as House version, except provisions are made subject to exceptions in Subsecs. (b), (c), and (d).	Same as Senate version.

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(b) The rate in Subsection (a) is not compounded.	(b) Same as House version.	Same as Senate version.
(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.	(c) Same as House version, except adds the phrase *or a predecessor* after *corporation.*	Same as Senate version.
No equivalent provision.	(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by Sec. 149.004(c).	Same as Senate version.
Sec. 149.006. Scope of Chapter.	Sec. 149.006. Same as House version.	Same as Senate version.
SECTION 17.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.	SECTION 17.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all actions: (1) commenced on or after the effective date of this Act; or (2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.	Same as Senate version.
ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY	ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY	Same as Senate version.
SECTION 18.01. Amends Secs. 84.004(a) and (c), Civil Practice and Remedies Code, as follows:	SECTION 18.01. Same as House version, except as follows:	Same as Senate version.

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(a) Except as provided by Subsection (d) and Section 84.007, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions within the organization.	(a) Same as House version, with a wording change.	Same as Senate version.
(c) Except as provided by Subsection (d) and Sec. 84.007, a volunteer health care provider is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if: (1) the volunteer commits the act or omission in the course of providing health care services to the patient; (2) the services provided are within the scope of the license of the volunteer; and (3) before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges: (A) that the volunteer is providing care that is not administered for or in expectation of compensation; and (B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.	(c) Same as House version, except restores the phrase *who is serving as a direct service volunteer of a charitable organization* that qualified a volunteer health care provider being granted immunity, which phrase was deleted from the statute in the House version.	Same as Senate version.
SECTION 18.02. Amends Sec. 84.007(a), Civil Practice and Remedies Code, to state that this chapter does not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others.	SECTION 18.02. Same as House version.	Same as Senate version.
SECTION 18.03. Repeals Secs. 84.003(4) and 84.004(b), Civil Practice and Remedies Code.	SECTION 18.03. Same as House version.	Same as Senate version.

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SECTION 18.04. This article applies only to a cause of action that accrues on or after the effective date of this article. An action that accrued before the effective date of this article is governed by the law applicable to the action immediately before the effective date of this article, and that law is continued in effect for that purpose.	No equivalent provision. *(But see Article 21 for applicability provision).*	Same as Senate version.
ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS	ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS	Same as Senate version.
SECTION 19.01. Findings and Purpose.	SECTION 19.01. Same as House version, except omits bill section heading, *Findings and Purpose.*	Same as Senate version.
SECTION 19.02. Amendment. Adds Subchapter C, Fire-Fighting Services, to Chapter 78, Civil Practice and Remedies Code.	SECTION 19.02. Same as House version, except omits bill section heading, *Amendment.*	Same as Senate version.
SECTION 19.03. Transition. Subchapter C, Chapter 78, Civil Practice and Remedies Code, as added by this article, applies only to a cause of action that accrues on or after the effective date of this article. An action that accrues before the effective date of this article is governed by the law applicable to the action immediately before the effective date of this article, and that law is continued in effect for that purpose.	No equivalent provision. *(But see Article 21 for applicability provision).*	Same as Senate version.
ARTICLE 20. CERTAIN PROVISIONS IN CONTRACTS	No equivalent provision.	Same as Senate version.
SECTION 20.01. Adds Chapter 145, Certain Provisions in Construction Contracts, to Title 6, Civil Practice and	No equivalent provision.	Same as Senate version.

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Remedies Code, as follows:		
Sec. 145.001. Definition. In this chapter, "construction contract" means a contract or agreement made and entered into by a contractor, construction manager, subcontractor, supplier, or equipment lessor, concerning construction, alteration, or repair.	No equivalent provision.	Same as Senate version.
Sec. 145.002. Agreement Void and Unenforceable. (a) Except as provided by Subsection (b), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that: (1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and (2) arises from: (A) personal injury or death; (B) property damage; (C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or (D) any other loss, damage, or expense that arises from an occurrence described by Paragraph (A), (B), or (C). (b) A covenant, promise, or agreement, contained in a construction contract, or in an agreement collateral to or affecting a construction contract, may provide for a person to indemnify, hold harmless, or defend another person against	No equivalent provision.	Same as Senate version.

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loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of: (1) the indemnitor; (2) the indemnitor's subcontractor, supplier, or equipment lessor; (3) any lower-tier subcontractor, supplier, or equipment lessor of the indemnitor's subcontractor; or (4) any independent contractor directly responsible to a person described in Subdivisions (1)-(3).		
Sec. 145.003. Certain Laws and Contracts Unaffected. (a) This chapter does not affect the validity and enforceability of: (1) an insurance contract; (2) benefits and protections under the workers' compensation laws of this state; or (3) any statutory right of contribution. (b) This chapter does not affect a contract covered by Section 2252.902, Government Code.	No equivalent provision.	Same as Senate version.
Sec. 145.004. Waiver Prohibited. This chapter may not be waived by contract or otherwise.	No equivalent provision.	Same as Senate version.
SECTION 20.02. (a) This article applies to: (1) a contract entered into or renewed on or after the effective date of this article; and (2) any specific, terminable performance of a specific job or activity begun under a contract after the effective date of this article regardless of whether the contract was entered into or renewed before the effective date of this article. (b) A contract entered into or renewed before the effective	No equivalent provision.	Same as Senate version.

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date of this article and any job or activity under the contract begun before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.		
No equivalent provision.	ARTICLE 20. DESIGN PROFESSIONALS	Same as Senate version.
No equivalent provision.	SECTION 20.01. Adds Chapter 150, Civil Practice and Remedies Code, Design Professionals, as follows:	Same as Senate version.
No equivalent provision.	Sec. 150.001. Definitions. Defines "design professional" as a registered architect or licensed professional engineer.	Same as Senate version.
No equivalent provision.	Sec. 150.002. Certificate of Merit. (a) In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered architect shall be licensed in this state and actively engaged in the practice of architecture or engineering. (b) The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer	

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	could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires. (c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit. (d) The plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) may result in dismissal with prejudice of the complaint against the defendant. (e) This statute shall not be construed to extend any applicable period of limitation or repose.	
No equivalent provision.	ARTICLE 21. LIMITATIONS ON LIABILITY	Same as Senate version.
No equivalent provision.	SECTION 21.01. Adds Sec. 75.002(h), Civil Practice and Remedies Code, to make an owner, lessee, or occupant of real property in this state liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.	Same as Senate version.
No equivalent provision.	ARTICLE 22. COMMUNITY AND CHARITY CARE	Same as Senate version.
No equivalent provision.	SECTION 22.01. Amends Sec. 311.041, Health and Safety Code, Policy Statement, to clarify that it is the purpose of this subchapter to clarify and set forth the duties, responsibilities,	Same as Senate version.

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	and benefits that apply to hospitals for providing community benefits that include charity. Deletes reference to *nonprofit* hospitals.	
No equivalent provision.	SECTION 22.02. Adds Sec. 311.0456, Health and Safety Code, Eligibility and Certificate for Limited Liability. (a) Defines "department" as the Texas Department of Health. (b) Restricts the section's applicability to a nonprofit hospital or hospital system that is certified by the department. (c) Requires a nonprofit hospital or hospital system to provide charity care in an amount equal to at least eight percent of its net patient revenue during its preceding fiscal year to be eligible for certification. (d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a report based on its most recent completed and audited prior fiscal year to the department not later than April 30 of each year stating that the hospital or system is eligible for certification. The department must verify the information in the report not later than May 31 of the year in which the department receives the report by checking the information against the report filed by the hospital or system under Section 311.046. After the department has verified the information in the report, the department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on May 31 of that year and expires on the anniversary of that date. (e) For the purposes of Subsection (b)(1), a corporation	Same as Senate version.

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	certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system. (f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.	
No equivalent provision.	SECTION 22.03. Amends the heading to Subchapter D, Chapter 311, Health and Safety Code, to read Community Benefits and Charity Care.	Same as Senate version.
ARTICLE 21. EFFECTIVE DATE.	ARTICLE 24. ACCELERATED APPEAL; EFFECTIVE DATE; SEVERABILITY	Same as Senate version.
SECTION 21.01. Effective date and transition provisions, as follows:	SECTION 24.02. Same as House version, except as follows:	Same as Senate version.
(a) All articles of this Act, other than Article *10*, take effect	(a) and (b) Same as House version, except to refer to Article	Same as Senate version.

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September 1, 2003. (b) Article *10* of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Article *10* of this Act takes effect September 1, 2003.	*17*, rather than Article *10*.	
No equivalent provision.	(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after May 30, 2003. An action filed before May 30, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.	Same as Senate version the following marked changes: (c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.
(c) Except as otherwise provided in *Articles 10, 15, 18, 19, and 20*, this Act applies only to a *civil action commenced* on or after the effective date of this Act. An action *commenced* before the effective date of this Act is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.	(d) Except as otherwise provided in *this section or by a specific provision in an article*, this Act applies only to *an action filed* on or after the effective date of this Act. An action *filed* before the effective date of this Act, *including an action filed before that date in which a party is joined or designated after that date*, is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.	Same as Senate version.
No equivalent provision.	SECTION 24.03. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.	Same as Senate version.