

Amend **CSHB 4** as follows:

On page 72, line 1, strike Subchapter R and insert a new Subchapter R to read as follows:

SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

Sec. 18.01. 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.

Sec. 18.02. SCOPE OF CHAPTER. This subchapter applies only to an action or a health care liability claim against a physician or health care provider in which the award of future damages exceeds \$1,000,000.

Sec. 18.03. COURT ORDER FOR PERIODIC PAYMENTS. (a) On the motion of a party or on its own motion, the court may, in the exercise of its discretion, order that future damages awarded in a health care liability judgment be paid in whole or in part in periodic payments rather than by a lump-sum payment. The allocation of a future damages award between future periodic payments and a lump-sum award shall be made by the court.

(b) Before issuing an order, the court shall receive evidence to determine how to provide for the payment of future damages, including, but not limited to the advantages and disadvantages of lump-sum and future payments, the plaintiffs' education and sophistication, medical needs, respective investment objectives, investment and trading experience and knowledge, financial situation, including estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other), tax status, employment status (name of employer, self-employed or retired),

marital status and number of dependents, and age. The court shall consider the recommendation by a guardian ad litem appointed by the court on behalf of a recipient concerning the treatment of the future damages award if such guardian ad litem has a Series 7 securities license issued by the National Association of Securities Dealers, or comparable expertise.

(c) Any decision rendered by a trial court under this section shall not be subject to appeal or liabilities, unless it is shown that the court abused its discretion in ordering such periodic payment.

(d) In the judgment ordering the payment of future damages by periodic payments the court shall specifically state:

(1) the recipient or beneficiary of the payments;

(2) the dollar amount of each scheduled payment;

(3) the commencement date of future payments, the interval between payments and the schedule of payments;

(4) the number of payments and the term or period of time over which payments are to be made; and

(5) the rated age or life expectancy of the recipient;

(6) the cost of the annuity instrument used to purchase or fund the obligation to make future payments; and

(7) the name of the insurer from which the annuity or funding instrument is purchased and the financial rating of the annuity issuer.

Sec. 18.04. FINANCIAL RESPONSIBILITY. (a) As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured for the duration of the term of future payments to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment. A court may order that security, in the form of cash or property, be given to guarantee full satisfaction of the judgment obligation to make future payments for the duration of the term.

(b) The judgment must provide sufficient guaranty for future payments which must be funded by:

(1) an annuity contract issued by a company licensed to do business as an insurance company;

(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.

Sec. 18.05. DEATH OF RECIPIENT. (a) On the death of the  
recipient or beneficiary, money damages awarded for loss of future  
earnings, physical pain and mental anguish, disfigurement, or  
physical impairment shall continue to be paid, in full, for the  
duration of the term for future payments to the estate of the  
recipient or beneficiary of the award without reduction or  
discount.

(b) If the recipient dies before all payments required by the  
judgment for future medical care are paid, the court may modify the  
judgment to terminate payment of unpaid portion of the periodic  
payments for future medical care.

(c) If the court terminates the obligation to make future  
payments for medical care under this section, the court shall  
require the defendant to pay the estate of the recipient of  
beneficiary a lump-sum amount equal to the present value of the  
benefit realized by the defendant due to the termination of the  
future payment obligation.

Sec. 18.06. AWARD OF ATTORNEYS FEES. For purposes of  
computing the attorney's fees when the plaintiff is awarded a  
judgment that will be paid in periodic payments pursuant to this  
section, attorney's fees shall be calculated on the amount awarded  
for all future damages and shall be paid at the time the judgment is  
entered. The court shall ensure that sufficient lump-sum funds are  
allocated in the judgment to pay attorney's fees and litigation  
costs at the time the judgment is entered.

Sec. 18.07. EXECUTION. In the event a defendant defaults or  
fails to timely make a required future payment, the recipient or  
beneficiary of the judgment or their legal representative shall be  
entitled to pursue full execution of the judgment regardless of  
whether the failure to timely make a required future payment is the  
fault of another and regardless of amounts paid at the time of  
default.