

Substitute the following for **CSHB 4**.

A BILL TO BE ENTITLED

AN ACT

relating to health care liability claims.

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

SECTION 1. Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (3), (4), and (8) and adding Subdivisions (10)-(22) to read as follows:

(3)(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) ~~as~~ a registered nurse;

(ii) a ~~]~~ hospital;

(iii) a nonprofit hospital system;

(iv) a ~~]~~ dentist;

(v) a hospice;

(vi) a ~~]~~ podiatrist;

(vii) a ~~]~~ pharmacist;

(viii) an emergency medical services provider;

(ix) an assisted living facility;

(x) a home and community support services agency;

(xi) 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; ~~]~~ or

(xii) a nursing home.

(B) The term includes:

(i) ~~or~~ 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 [thereof] acting in the course and scope of the [his] employment or contractual relationship.

(4) "Health care liability claim" means a cause of action against a health care provider or physician arising out of or related to [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 practice or procedure which proximately results in injury to or death of a claimant [the patient], whether the claimant's [patient's] claim or cause of action sounds in tort or contract.

(8) "Physician" means:

(A) an individual [a person] 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).

(10) "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.

(11) "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.

(12) "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.

(13) "Economic damages" means compensatory damages for any pecuniary loss or damage. The term does not include noneconomic damages.

(14) "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:

(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.

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

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

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

(18) "Noneconomic damages" means 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.

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

(20) "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.

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

(22) "Hospital system" means a system of local nonprofit hospitals and nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles from the corporate parent.

SECTION 2. Subchapter A, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 1.04 to read as follows:

Sec. 1.04. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE. (a) 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.

(b) Notwithstanding Section 22.004, Government Code, and except as otherwise provided by this Act, the supreme court may not amend or adopt rules in conflict with this Act.

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

SECTION 3. Section 4.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) 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 a lawsuit.

SECTION 4. The heading to Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. EVIDENTIARY MATTERS [~~RES IPSA LOQUITUR~~]

SECTION 5. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Sections 7.03 and 7.04 to read as follows:

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.

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.

SECTION 6. The heading to Subchapter I, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's

Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER I. PAYMENT OF MEDICAL OR HEALTH CARE EXPENSES

~~[ADVANCE PAYMENTS]~~

SECTION 7. Subchapter I, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 9.01 to read as follows:

Sec. 9.01. RECOVERY OF MEDICAL OR HEALTH CARE EXPENSES.

Recovery of 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 8. Section 10.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.01. LIMITATION ON HEALTH CARE LIABILITY CLAIMS.

(a) Notwithstanding any other law and subject to Subsection (b) of this section, 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 subchapter 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.

SECTION 9. Section 11.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsections (e) and (f) to read as follows:

(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.

SECTION 10. Section 11.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.03. LIMITATION ON NONECONOMIC DAMAGES [~~ALTERNATIVE PARTIAL LIMIT ON CIVIL LIABILITY~~]. [~~In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following 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 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 providers against whom the claim is asserted or the number of separate causes of action on which the claim is based [~~of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000~~].

SECTION 11. Subchapter K, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 11.031 to read as follows:

Sec. 11.031. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES.

(a) In the event that Section 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.

(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;

(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.

SECTION 12. Section 11.04, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.04. ADJUSTMENT OF LIABILITY LIMIT [~~LIMITS~~]. 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, [each of] the liability limit [limits] prescribed in Section 11.02(a) [~~or in Section 11.03~~] of this subchapter [~~, as applicable,~~] 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 [~~limits~~] are awarded by final judgment or settlement.

SECTION 13. Subchapter L, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 12.02 to read as follows:

Sec. 12.02. 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, 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.

SECTION 14. The heading to Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.01. [~~COST BOND, DEPOSIT, AND~~] EXPERT REPORT.

SECTION 15. Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), (i), (j), (k), and (l) and adding Subsections (s) and (t) to read as follows:

(a) In a health care liability claim, a claimant shall, not later than the 180th ~~[90th]~~ day after the date the claim is 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~~[+~~

~~[(1) file a separate cost bond in the amount of \$5,000 for each physician or health care provider named by the claimant in the action;~~

~~[(2) place cash in an escrow account in the amount of \$5,000 for each physician or health care provider named in the action; or~~

~~[(3) file an expert] report for each physician or health care provider against whom a liability claim is asserted ~~[with respect to whom a cost bond has not been filed and cash in lieu of the bond has not been deposited under Subdivision (1) or (2) of this subsection].~~~~

(b) If, as to a defendant physician or health care provider, an expert report~~[, cost bond, or cash in lieu of bond]~~ has not been served ~~[filed or deposited]~~ within the period specified by Subsection (a) ~~[or (h)]~~ 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 ~~[requires the filing of a \$7,500 cost bond with respect to the physician or health care provider not later than the 21st day after the date of the order];~~ and

(2) dismisses the claim ~~[provides that if the claimant fails to comply with the order, the action shall be dismissed for want of prosecution]~~ with respect to the physician or health care provider, with prejudice to the refileing of the claim ~~[subject to reinstatement in accordance with the applicable rules of civil procedure and Subsection (c) of this section].~~

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for servicing ~~[filing]~~ an expert report by servicing ~~[filing]~~ 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 servicing ~~[filing]~~ of an expert report regarding any issue other than an issue relating to liability or causation.

(k) An ~~[Notwithstanding any other law, an]~~ expert report served ~~[filed]~~ under this section:

(1) is not admissible in evidence by any party ~~[a defendant]~~;

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

(3) shall not be referred to by any party ~~[a defendant]~~ 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 ~~[a]~~ good faith effort to comply with the definition of an expert report in Subsection (r)(6) of this section.

(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.

(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 imposed by Subsection (k) of this section on use of the expert report by any party are waived.

SECTION 16. Section 13.01(r)(5), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

(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; ~~[or]~~

(B) with respect to a person giving opinion testimony regarding whether ~~[about]~~ a ~~[nonphysician]~~ 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 is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence ~~[who has knowledge of accepted standards of~~

~~care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim].~~

SECTION 17. Sections 14.01(e) and (g), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), are amended to read as follows:

(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.

(g) In this subchapter [~~section~~], "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.

SECTION 18. Subchapter N, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil

Statutes), is amended by adding Sections 14.02 and 14.03 to read as follows:

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.

(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 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.

(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 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 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.

(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.

(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.

SECTION 19. Section 16.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil

Statutes), is amended to read as follows:

Sec. 16.01. APPLICATION OF OTHER LAW. Notwithstanding Chapter 304, Finance Code [Articles 1E.101, 1E.102, and 1E.104-1E.108, Title 79, Revised Statutes], prejudgment interest in a judgment on a health care liability claim shall be awarded in accordance with this subchapter.

SECTION 20. Sections 16.02(b) and (c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Subject to Subchapter K of this Act [In a health care liability claim that is not settled within the period specified by Subsection (a) of this section], the judgment must include prejudgment interest on past damages awarded in the judgment [found by the trier of fact], but shall not include prejudgment interest on future damages awarded in the judgment [found by the trier of fact].

(c) Prejudgment interest allowed under this subchapter shall be computed in accordance with Section 304.003(c)(1), Finance Code [Article 1E.103, Title 79, Revised Statutes], for a period beginning on the date of injury and ending on the date before the date the judgment is signed.

SECTION 21. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapters Q, R, S, and T to read as follows:

SUBCHAPTER Q. COLLATERAL SOURCE BENEFITS

Sec. 17.01. DEFINITION. In this subchapter, "collateral source benefit" means a benefit paid or payable to or on behalf of a claimant under:

(1) the Social Security Act (42 U.S.C. Section 301 et seq.), and its subsequent amendments;

(2) a state or federal income replacement, disability, workers' compensation, or other law that provides partial or full income replacement; or

(3) any insurance policy, other than a life insurance policy, including:

(A) an accident, health, or sickness insurance policy; and

(B) a disability insurance policy.

Sec. 17.02. ADMISSIBILITY OF EVIDENCE OF COLLATERAL SOURCE BENEFITS. A defendant physician or health care provider may introduce evidence in a health care liability claim of any amount payable to the claimant as a collateral benefit. If a defendant physician or health care provider introduces evidence of a collateral source benefit, the claimant may introduce evidence of any amount the claimant has paid to secure the right to the benefit.

Sec. 17.03. MAINTENANCE OF COVERAGE DURING CLAIM. (a) During the pendency of a health care liability claim, if the claimant has a policy of insurance that provides health benefits or income disability coverage and the claimant is unwilling or unable to pay the costs of renewing or continuing that policy of insurance in force, the defendant physician or health care provider may tender to the claimant the cost of maintaining the insurance coverage.

(b) On receipt of the tender, the claimant shall continue the policy in force.

Sec. 17.04. SUBROGATION. The payer of collateral benefits introduced under this subchapter may not recover any amount against the claimant and is not subrogated to any rights or claims of the claimant, unless authorized by a federal law.

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.

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

Sec. 18.03. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court shall order that future damages 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) 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.

Sec. 18.04. 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. 18.05. 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;
 - (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. 18.06. 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. 18.07. 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.

SUBCHAPTER S. ATTORNEY'S FEES

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.

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.

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 expectancy and then reduce this amount to present value for purposes of computing the award of attorney's fees.

Sec. 19.04. LIMITATION ON ATTORNEY CONTINGENCY FEE AGREEMENTS. (a) An attorney may not contract for or collect a contingency fee for representing any person seeking damages in connection with a health care liability claim in excess of 33-1/3 percent of the amount recovered.

(b) This section has no effect if Section 11.03 of this Act is stricken from this Act or is otherwise to any extent invalidated by a method other than through legislative means.

Sec. 19.05. ALTERNATIVE LIMIT ON ATTORNEY CONTINGENCY FEES. (a) If Section 11.03 of this Act is stricken from this Act or is otherwise to any extent invalidated by a method other than through legislative means, this section is effective.

(b) An attorney may not contract for or collect a contingency fee for representing any person seeking damages in connection with a health care liability claim that exceeds the following limits:

- (1) 40 percent of the first \$50,000 recovered;
- (2) 33.3 percent of the next \$50,000 recovered;
- (3) 25 percent of the next \$500,000 recovered; and
- (4) 15 percent of any additional amount recovered.

SUBCHAPTER T. DECLARATORY JUDGMENTS; INJUNCTIONS; APPEALS

Sec. 20.01. APPLICABILITY. This subchapter applies only to an amendment to this Act that is effective on or after January 1, 2003.

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.

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) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an 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.

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.

(b) The direct appeal is an accelerated appeal.

(c) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

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 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 Section 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 Section 20.03 of this subchapter;

(3) to sue for and obtain an order under Section 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 Section 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.

SECTION 22. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

(6) "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 23. Section 84.004(c), Civil Practice and Remedies Code, is amended to read as follows:

(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 the patient [~~patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of~~] 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 24. 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. 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.

SECTION 25. Section 88.002, Civil Practice and Remedies Code, is amended by adding Subsection (1) to read as follows:

(1) This chapter does not create liability on the part of physicians or health care providers for medical care or health care services performed or furnished or that should have been performed or furnished for, to, or on behalf of a patient.

SECTION 26. 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 27. The following provisions are repealed:

(1) Section 11.02(c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(2) Sections 13.01(c), (d), (e), (f), (g), (h), (m), (n), (o), and (r)(3), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(3) Section 16.02(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes); and

(4) Section 242.0372, Health and Safety Code.

SECTION 28. The changes made by this article to the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) apply to a cause of action that

accrues on or after January 1, 2004. A cause of action that accrues before January 1, 2004, is governed by the laws in effect immediately before January 1, 2004, and that law is continued in effect for that purpose.