

Amend **CSHB 4** as follows:

(1) On page 12, strike lines 6 through 16 and substitute the following:

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 Tax Code;

(4) brought on behalf of a minor or person of unsound mind;

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

(6) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901, et seq), as amended;

(7) the Jones Act (46 U.S.C. Section 688), as amended;

(8) brought in small claims court or justice court; or

(9) brought by a homeowners association to enforce deed restrictions or to collect delinquent fees, dues, or assessments.

(2) Strike page 12, line 27, through page 13, line 11.

(3) On page 13, line 12, strike "Sec. 42.004." and substitute "Sec. 42.003."

(4) On page 13, line 16, strike "Sec. 42.005." and substitute "Sec. 42.004."

(5) Strike page 15, line 17, through page 16, line 16, and substitute:

Sec. 42.055. AWARD OF LITIGATION COSTS. (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 judgement, 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.

(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.

(6) On page 16, line 17, strike "(d)" and substitute "(c)".

(7) On page 16, line 22, strike "(e)" and substitute "(d)".

(8) On page 16, line 26, strike "(f)" and substitute "(e)".

(9) On page 17, line 6, strike "(g)" and substitute "(f)".

(10) On page 17, line 11, strike "(h)" and substitute "(g)".

(11) Strike page 37, line 22, through page 38, line 17, and substitute the following:

Sec. 16.012. PRODUCTS LIABILITY[~~:-~~~~MANUFACTURING EQUIPMENT~~]. (a) In this section, "claimant,"[~~+~~

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

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

~~equipment or machinery.]~~

(12) On page 38, line 18, strike "Subsection (c)" and substitute "Subsections [Subsection] (c) and (d)".

(13) On page 39, strike lines 3 through 6 and substitute the following:

(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 applies to a products liability action involving manufacturing equipment~~] that accrues before the end of the limitations period under this section.

(14) On page 39, between lines 11 and 12, insert the following appropriately numbered SECTION and renumber existing SECTIONS of the ARTICLE appropriately:

SECTION \_\_\_\_\_. Section 82.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm [~~arising out of personal injury, death, or property damage~~] 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.

(15) On page 40, line 10, after the semicolon, strike "or".

(16) On page 40, line 14, between "defect" and the period, insert the following:

"; or

(5) that the manufacturer of the product is:

(A) insolvent; or

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

(17) On page 40, line 22, strike "required" and substitute "approved".

(18) On page 41, line 11, strike "A" and substitute "In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the".

(19) On page 41, line 12, strike ", distributor,".

(20) On page 41, line 13, strike "allegedly".

(21) On page 41, line 15, strike ", distributor,".

(22) On page 41, lines 15 and 16, strike "proves by a preponderance of the evidence" and substitute "establishes".

(23) On page 41, line 18, strike "state or".

(24) On page 41, line 19, strike "state or".

(25) On page 41, line 20, after "risk that" insert "allegedly".

(26) On page 41, lines 21 and 22, strike ", unless the claimant proves by clear and convincing evidence" and substitute ". The claimant may rebut this presumption by establishing".

(27) On page 41, line 22, strike "state or".

(28) On page 41, line 23, strike "grossly".

(29) On page 41, line 25, strike "A" and substitute "In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the".

(30) On page 41, line 25, strike ", distributor,".

(31) On page 42, line 1, strike ", distributor,".

(32) On page 42, lines 1 and 2, strike "proves by a preponderance of the evidence" and substitute "establishes".

(33) On page 42, line 2, strike "premarket" and substitute "pre-market".

(34) On page 42, line 3, strike "an agency of the state or" and substitute "the".

(35) On page 42, line 3, between "government," and "that", insert "or an agency of the federal government".

(36) On page 42, line 4, between "the" and "agency's", insert "government's or".

(37) On page 42, line 5, strike "premarket" and substitute "pre-market".

(38) On page 42, line 7, between "for sale by the" and "agency", insert "government or".

(39) On page 42, lines 7 and 8, strike ", unless the claimant proves by clear and convincing evidence" and substitute ". The claimant may rebut this presumption by establishing".

(40) On page 42, line 10, strike "premarket" and substitute "pre-market".

(41) On page 42, line 10, strike "grossly".

(42) On page 42, line 12, strike "premarket" and substitute "pre-market".

(43) On page 42, line 14, between "to the" and "agency", insert "government or".

(44) On page 42, line 14, strike "required".

(45) On page 42, line 19, between "by the" and "agency", insert "federal government or an".

(46) On page 42, line 19, between "agency" and the period, insert "of the federal government".

(47) Strike existing Article 15 (page 95, line 13, through page 96, line 12) and substitute the following:

ARTICLE 15. CLAIMS AGAINST SCHOOL DISTRICTS TRUSTEES AND EMPLOYEES  
OF ELEMENTARY AND SECONDARY SCHOOLS

SECTION 15.01. Subchapter C, Chapter 11, Education Code, is amended by adding Section 11.064 to read as follows:

Sec. 11.064. CIVIL IMMUNITY. 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, Chapter 22.

SECTION 15.02. Subchapter B, Chapter 22, Education Code, is amended by amending Section 22.051 and adding Sections 22.0511–22.0517 to read as follows:

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

(1) a superintendent, principal, teacher, 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; and

(5) 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 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. 22.0512. PROTECTION UNDER FEDERAL LAW. (a) In this section, "school" and "teacher" have the meaning 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.

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. 22.0514. EXHAUSTION OF REMEDIES. A person may not file 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 unless the person has exhausted any remedies provided by the school district for resolving the complaint.

Sec. 22.0515. LIMITATION ON DAMAGES. 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.

Sec. 22.0516. 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. 22.0517. 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 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. 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 15.04. 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, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. 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, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.06. 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 22.0512 [~~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 15.07. 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 in effect for that purpose.

(48) On page 96, insert a new article 16 to read as follows and renumber subsequent articles and sections appropriately:

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

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 a 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; and

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

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 a not-for-profit institution has violated this chapter or a rule adopted under this chapter; and

(2) the fact of the assessment of a penalty against a not-for-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.

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.

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.

(49) On page 96, line 22, insert a new appropriately numbered article to read as follows and renumber subsequent articles and sections appropriately:

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

SECTION \_\_\_\_\_.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 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.

(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 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 or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Transferor" means a corporation from which

successor asbestos-related liabilities are assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) The limitation in Section 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.

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (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 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 has 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 assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL ASSETS. (a) A corporation may establish the fair market value of total assets for the purpose of the limitation 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 assets include intangible asset.

(c) A showing by the corporation of a reasonable determination of the fair market value of total assets is prima facie evidence of their fair market value.

Sec. 149.005. CONTESTING FAIR MARKET VALUE. After a corporation has established a reasonable determination of the fair market value of total assets under Section 149.004, a claimant disputing that determination has the burden of establishing a different fair market value of the assets.

Sec. 149.006. ADJUSTMENT. (a) The fair market value of total 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 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 assets is determined.

Sec. 149.007. 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 \_\_\_\_\_.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.