

Amend **CSHB 4** as follows:

On page 27, line 13, strike Article 4 of the bill and substitute a new Article 4 to read as follows:

ARTICLE 4. PROPORTIONATE RESPONSIBILITY

SECTION 4.01 Section 33.001 is amended by adding subsections (a)-(h) to read as follows:

Sec. 33.001 Proportionate Responsibility

(a) Except as provided by Subsections (b) and (c), this chapter applies to 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.

(b) Notwithstanding Subsection (a), a defendant who, with the specific intent to do harm to others, or acts in concert with another person to engage in the conduct described in the following sections of the Penal Code shall be jointly and severally liable with such other person for the damages legally recoverable by the claimant that were proximately caused by such conduct:

- (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 child, elderly individual, or disabled individual);
- (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); or
- (13) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) or actions against an employer for exemplary damages arising out of the death of an employee;

(2) a claim for exemplary damages included in an action to which this chapter otherwise applies; or

(3) a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

(d) Notwithstanding anything to the contrary stated in the sections of the Penal Code listed in Subsection (b), that subsection shall not apply unless the claimant proves the defendant acted or failed to act with intent to do harm as defined in this section.

(e) For purposes of this section, a person acts with intent to do harm with respect to the nature of the person's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in such conduct for the purpose of doing substantial harm to others.

(f) Nothing in this section shall require a submission to the jury of a question regarding conduct by any party absent sufficient evidence to support the submission.

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

(h) This chapter applies to an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code). ~~In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.~~

SECTION 4.02 Section 33.013 is amended by striking subsection (b) and amending subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) ~~and (b)~~, 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

the percentage of responsibility attributed to the defendant is equal to or greater than 15 percent. ~~and:~~

~~(1) the claimant's personal injury, property damage, death, or other harm is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7), or~~

~~(2) the claimant's personal injury, property damage, death, or other harm resulted from a toxic tort.~~

SECTION 4.03. Section 33.014 of the Civil Practice and Remedies Code is amended to read as follows:

Sec. 33.014 Election of Credit for Settlements If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any claimant ~~defendant~~ filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all defendants. If no claimant ~~defendant~~ makes this election or if conflicting elections are made, all claimants ~~defendants~~ are considered to have elected Subdivision (2) of Section 33.012(b).