

## BILL ANALYSIS

C.S.H.B. 4  
By: Nixon  
Civil Practices  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

Texas faces a general environment of excessive litigation. This has resulted in a crisis in access to healthcare as medical providers leave the state or leave the profession altogether. It has also resulted in higher costs to patients and consumers, caused companies to locate outside of Texas, disproportionately burdened Texas courts, and even forced some companies into bankruptcy.

C.S.H.B. 4 is a comprehensive civil justice reform bill intended to address and correct problems that currently impair the fairness and efficiency of our court system. C.S.H.B. 4 addresses many of the root causes of the current situation: non-meritorious lawsuits, a general increase in jury awards, a disproportionate increase in awards for non-economic damages, unreasonable pressure to settle defensible claims and other procedural aspects of our current court system that are patently unbalanced. Key components to the solutions contained within C.S.H.B. 4 include a cap on non-economic damages for medical liability claims, provisions for payment of future damages as accrued, limitations on plaintiff attorney contingency fee contracts, cost-shifting of litigation costs in some cases, and class action reforms.

In summary, C.S.H.B. 4 provides for various corrective measures that will help bring more balance to the Texas civil justice system, reduce the costs of litigation, and help restore litigation to its proper role in our society.

### RULEMAKING AUTHORITY

**It is the committee's opinion that rulemaking authority is expressly granted to the Judicial Panel on Multidistrict Litigation in SECTION 3.02 (Section 74.162, Government Code) of the bill, and to the Supreme Court in SECTION 14.01 (Section 74.0241, Government Code), of this bill.**

### ANALYSIS

C.S.H.B. 4 proposes the following:

The bill will allow the Supreme Court to hear interlocutory appeals of a trial court's certification of a class in a class action. It will require putative class representatives to exhaust their administrative remedies before an appropriate state agency before pursuing their claims as a class action in court. The bill will also require that the fee awarded to a lawyer for the class be based on a reasonable hourly rate.

The bill will allow juries to assess fault to all responsible parties in a lawsuit and will clarify the method for allocating settlement credits in multi-party lawsuits.

The bill will provide additional protection for innocent retailers who did not cause or contribute to a product defect. It will provide additional protections for product manufacturers who comply with federal or state safety requirements. The bill will also expand the current 15 year statute of repose applicable to manufacturing equipment to include all products.

The bill will prohibit the award of prejudgment interest on future damages and amend the current parameters for variable post-judgment interest rates to a floor of 5% and a ceiling of 15% in non-health care liability claims.

The bill will limit the amount of a supercedas bond to the amount of compensatory damages awarded in the judgment. It will also establish an upper limit on a supercedas bond of the lesser of \$25 million or 50% of a defendant's net worth. The bill will also provide courts the flexibility to lower the amount of a supercedas bond upon a showing of substantial economic harm.

The bill will allow evidence of the use or non-use of a seat belt to be admissible to the same extent other acts of a plaintiff are admissible under the Texas Rules of Evidence.

In addition, C.S.H.B. 4 addresses the health care crisis by including the following proposals:

- A \$250,000 cap on non-economic damages to be applied on a per-defendant basis.
- Modifications to the collateral source rule.
- Provisions addressing the payments of future medical expenses and compensation for loss of earning capacity.
- Limitations of plaintiff attorney contingency fee contracts.
- Provisions relating to jury instructions regarding income tax.
- Provisions relating to emergency care, including instructions to the jury and changing the burden of proof in cases involving emergency care.
- Imposing a 10-year statute of repose on all health care liability claims.
- Clarifies that the wrongful death cap that includes punitive damage awards is to be applied on a per-claimant basis, and that the amount does not start over as a result of passage of C.S.H.B. 4.
- Includes certain technical and procedural changes including definitions, changes the bond, expert witness report and expert witness qualifications, provisions for accelerated and direct appeals, repeals certain provisions, and contains provisions regarding disqualifying answers in voir dire,
- Clarifies who can consent to charity care and includes hospitals within the scope of the charity care provisions.
- Modifies the law regarding pre-judgment interest by clarifying that the statute applies to awards and modifying the rate of pre-judgment interest.
- Clarifies the permissible limitations on vendor's endorsements.
- Proposes findings relative to the health care crisis
- Contains provisions regarding effective dates.
- Contains provisions regarding claims against employees or volunteers of a unit of local government.
- Clarifies that a mere allegation of certain criminal conduct is insufficient to lift the limitations

on the award of punitive damages.

- Allows the supreme court on motion of any party to assign a more specialized judge to a health care liability claim.
- Other substantive, procedural and technical changes.

### **EFFECTIVE DATE**

Provides that some Articles apply to a suit commenced or pending on or after the effective date, but do not apply to a suit in which trial on the merits has commenced on or before the effective date of the article.

Provides that several Articles take effect September 1, 2003.

Provides that provisions relating to health care liability claims take effect immediately if it receives a vote of two-thirds of all members of each house, but that otherwise, the effective date is September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 4 differs from the original bill by revising various provisions of the multidistrict litigation section to clarify the procedure for consolidating cases in a single forum for pretrial purposes. The substitute clarifies that the trial judge will consider and determine whether an award of litigation costs is appropriate in a case in which a reasonable settlement offer was rejected by a plaintiff and that this process will occur after the jury's verdict. The substitute also clarifies that a plaintiff's insurance proceeds will not be available to satisfy an award of litigation costs pursuant to the offer of settlement provisions. The substitute provides that defendants shall have the right to elect a dollar-for-dollar or percentage settlement credit under the proportionate responsibility provisions. The substitute eliminates the provisions relating to choice of law for successor liability of foreign corporations that were part of the original bill. The substitute revises the provisions of the bill relating to products liability lawsuits by further defining the scope of the statute of repose and by clarifying the application and scope of the protections for product manufacturers who comply with government standards relating to their products.

The entire Article 10 is new and substantially incorporates H.B. 3 with certain changes.

Additionally, C.S.H.B 4 addresses the issue of limitations on lawsuits by minors by substituting a statute of repose, includes certain new definitions and clarifications, provides that attorneys fees for future benefits can be paid at the time of the judgment, includes provisions relating to claims against employees or volunteers of a unit of local government, clarifies that a mere allegation of certain criminal conduct is insufficient to lift the limitations on the award of punitive damages, allows the supreme court on motion of any party to assign a judge to a health care liability claim, proposes findings relative to the health care crisis.

The substitute also includes various other substantive, procedural and technical changes.