

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 4
By: Nixon (Ratliff)
State Affairs
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Committee Report (Substituted)

DIGEST AND PURPOSE

C.S.H.B. 4 is the comprehensive tort reform bill addressing many issues affecting the civil court system. The authors' stated intent is to bring more balance to the Texas civil justice system, reduce litigation costs, and address the role of litigation in society. C.S.H.B. 4 contains elements addressing: class action lawsuits, offers of settlement, venue and forum non conveniens, proportionate responsibility, products liability, prejudgement and postjudgement interest, appeal bonds, seat belts and child safety seats, medical malpractice, charitable volunteer immunity and liability, admissibility of evidence regarding nursing homes, and liability relating to asbestos claims.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1.01 (Section 26.001, Civil Practice and Remedies Code) and SECTION 2.01 (Section 42.005, Civil Practice and Remedies Code) of this bill.

Rulemaking authority granted to the Texas Supreme Court is modified in SECTION 3.02 (Section 74.163, Civil Practice and Remedies Code), of this bill.

Rulemaking authority is expressly granted to the Judicial Panel on Multidistrict Litigation in SECTION 3.02 (Section 74.163, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CLASS ACTIONS

SECTION 1.01. Amends Subtitle B, Title 2, Civil Practice and Remedies Code, by adding Chapter 26, as follows:

CHAPTER 26. CLASS ACTIONS

SUBCHAPTER A. SUPREME COURT RULES

Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) Requires the Texas Supreme Court (supreme court) to adopt rules to provide for the fair and efficient resolution of class actions.

(b) Requires the supreme court to adopt rules under this chapter on or before December 31, 2003.

Sec. 26.002. MANDATORY GUIDELINES. Requires rules adopted under Section 26.001 to comply with the mandatory guidelines established by this chapter.

Sec. 26.003. ATTORNEY'S FEES. (a) Provides that if an award of attorney's fees is available under applicable substantive law, the rules adopted under this chapter must provide that the trial court is required to use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel. Authorizes the rules to give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method

by no more than four times based on specified factors.

(b) Requires rules adopted under this chapter to provide that in a class action, if any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney's fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.

[Reserves Sections 26.004-26.050 for expansion.]

SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION.

(a) Requires a trial court, before hearing or deciding a motion to certify a class action, to hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. Requires the court's ruling to be reflected in a written order.

(b) Authorizes a person, if a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, as part of an appeal of the order certifying the class action, to obtain appellate review of the order denying the plea to the jurisdiction.

(c) Provides that this section does not alter or abrogate a person's right to appeal or pursue an original proceeding in an appellate court in regard to a trial court's order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.

SECTION 1.02. Amends Section 22.225, Government Code, by amending Subsections (b) and (d) and adding Subsection (e), as follows:

(b) Provides that, except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review, rather than writ of error, is not allowed to, rather than from, the supreme court, in certain civil cases.

(d) Makes conforming changes.

(e) Provides that, for purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.03. Amends Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, as follows:

(a) Authorizes a person to appeal from an interlocutory order of a district court, county court at law, or county court that performs certain actions, including denying all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or granting relief sought by a motion under Section 74.351(l).

(b) Provides that an interlocutory appeal under Subsection (a)(3), (5), or (8) stays all other proceedings in the trial court pending resolution of that appeal. Makes a nonsubstantive change.

(c) Deletes text pertaining an automatic stay, specifically of the commencement of trial.

SECTION 1.04. Amends Section 22.001, Government Code, by adding Subsection (e), to provide that, for purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary

uncertainty in the law and unfairness to litigants.

SECTION 1.05. (a) Makes application of the changes in law made in Section 1.02 of this Act to Section 22.225(d), Government Code, prospective.

(b) Provides that the changes in law made by Section 1.03 of this Act to Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply to any case in which an appeal allowed by Section 51.014(a), Civil Practice and Remedies Code, as amended by this Act, is taken and the notice of appeal is filed on or after the effective date of this Act.

ARTICLE 2. SETTLEMENT

SECTION 2.01. Amends Subtitle C, Title 2, Civil Practice and Remedies Code, by adding Chapter 42, as follows:

CHAPTER 42. SETTLEMENT

Sec. 42.001. DEFINITIONS. Defines “claim,” “claimant,” “defendant,” “governmental unit,” “litigation costs,” and “settlement offer.”

Sec. 42.002. APPLICABILITY AND EFFECT. (a) Provides that the settlement procedures provided in this chapter apply only to claims for monetary relief.

(b) Provides that this chapter does not apply to a class action, a shareholder's derivative action, an action by or against a governmental unit, an action brought under the Family Code, or an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code.

(c) Provides that this chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. Provides that if there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.

(d) Provides that this chapter does not limit or affect the ability of any person to make an offer to settle or compromise a claim that does not comply with this chapter, or to offer to settle or compromise a claim to which this chapter does not apply.

(e) Provides that an offer to settle or compromise that is not made under this chapter or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.

Sec. 42.003. MAKING SETTLEMENT OFFER. Sets forth requirements for making a settlement offer.

Sec. 42.004. AWARDING LITIGATION COSTS. (a) Requires an offering party, if a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, to recover litigation costs from the rejecting party.

(b) Sets forth parameters for a judgment being significantly less favorable to the rejecting party than is the settlement offer.

(c) Limits the litigation costs that may be recovered by the offering party under this section to those litigation costs incurred by the offering party after the date the rejecting party rejected the settlement offer.

- (d) Prohibits the litigation costs that may be awarded under this chapter from being greater than an amount computed by a certain formula.
- (e) Prohibits a claimant or defendant from recovering litigation costs in addition to the fees and costs recoverable under another law, if that claimant or defendant is entitled to recover fees and costs under that law.
- (f) Prohibits the court, if a claimant or defendant is entitled to recover fees and costs under another law, from including fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).
- (g) Requires litigation costs, if they are to be awarded against a claimant, to be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) Requires the supreme court to promulgate rules implementing this chapter. Requires the rules to be limited to settlement offers made under this chapter. Requires the rules to be in effect on January 1, 2004.

- (b) Sets forth requirements for the rules promulgated by the supreme court.
- (c) Requires the rules promulgated by the supreme court to address actions in which there are multiple parties and to provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made is authorized to declare the offer void.
- (d) Authorizes the rules promulgated by the supreme court to designate other actions to which the settlement procedure of this chapter does not apply, and address other matters considered necessary by the supreme court to the implementation of this chapter.

SECTION 2.02. Makes application of the changes in law provided by this article prospective to January 1, 2004.

ARTICLE 3. VENUE; FORUM NON CONVENIENS

SECTION 3.01. Amends Section 74.024(c), Government Code, to authorize the supreme court to consider the adoption of rules relating to transfer of related cases for consolidated or coordinated pretrial proceedings.

SECTION 3.02. Amends Chapter 74, Government Code, by adding Subchapter H, as follows:

SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION. (a) Provides that the judicial panel on multidistrict litigation (panel) consists of five members designated from time to time by the chief justice of the supreme court. Requires the members of the panel to be active court of appeals justices or administrative judges.

- (b) Provides that the concurrence of three panel members is necessary to any action by the panel.

Sec. 74.162. TRANSFER OF CASES BY PANEL. Authorizes the panel, notwithstanding any other law to the contrary, to transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to any district court for

consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. Authorizes a transfer to be made by the panel on its determination that the transfer will be for the convenience of the parties and witnesses, and promote the just and efficient conduct of the actions.

Sec. 74.163. OPERATION; RULES. (a) Requires the panel to operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. Sets forth requirements for the rules adopted by the supreme court.

(b) Authorizes the panel to prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.

Sec. 74.164. AUTHORITY TO PRESIDE. Authorizes a judge who is qualified and authorized by law to preside in the court to which an action is transferred under this subchapter, notwithstanding any other law to the contrary, to preside over the transferred action as if the transferred action were originally filed in the transferor court.

SECTION 3.03. Amends Section 15.003, Civil Practice and Remedies Code, as follows:

Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING PLAINTIFFS. (a) Requires each plaintiff in a suit in which there is more than one plaintiff, independently of every other plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, to establish proper venue. Requires a plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, if the plaintiff cannot independently establish proper venue, to be transferred to a county of proper venue or dismissed, as is appropriate, unless that plaintiff, independently of every other plaintiff, establishes certain facts.

(b) Authorizes an interlocutory appeal to be taken of a trial court's determination under Subsection (a) of certain facts.

(c) Requires an interlocutory appeal permitted by Subsection (b) to be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. Authorizes the appeal to be taken by a party that is affected by the trial court's determination under Subsection (a). Removes text regarding the perfection of the appeal by a certain deadline. Requires the court of appeals to determine whether the trial court's order, rather than joinder or intervention, is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard, and render judgment, rather than its decision, not later than the 120th day after the date the appeal is perfected. Makes conforming and nonsubstantive changes.

(d) Provides that an interlocutory appeal under Subsection (b) has the effect of staying the commencement of trial in the trial court pending resolution of the appeal.

SECTION 3.04. Amends Section 71.051(b), Civil Practice and Remedies Code, to require a court of this state, if the court, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, to decline to exercise jurisdiction under the doctrine of forum non conveniens and to stay or dismiss the claim or action. Sets forth considerations that the court may use in determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens. Makes conforming changes.

SECTION 3.05. Amends Section 5A, Texas Probate Code, by adding Subsection (f), to provide that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.06. Amends Section 5B, Texas Probate Code, as follows:

Sec. 5B. TRANSFER OF PROCEEDING. (a) Subsection created from existing text.

(b) Provides that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.07. Amends Section 607, Texas Probate Code, by adding Subsection (e), as follows:

(e) Provides that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.08. Amends Section 281.056(a), Health and Safety Code, to authorize a health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, to be brought against the district only in the county in which the district is established.

SECTION 3.09. Repealers: Sections 71.051(a) (regarding a forum non conveniens) and 71.052 (Jurisdiction, Election, Stipulations), Civil Practice and Remedies Code.

ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES

SECTION 4.01. Amends Section 33.002(a), Civil Practice and Remedies Code, to remove exceptions to the applicability of this chapter as provided by Subsections (b) and (c), and to provide that this chapter is applicable to any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

SECTION 4.02. Amends Section 33.003, Civil Practice and Remedies Code, as follows:

Sec. 33.003. DETERMINATION OF PERCENTAGE OF RESPONSIBILITY. (a) Subsection created from existing text. Makes a conforming change related to the designation of a responsible third party.

(b) Provides that this section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

SECTION 4.03. Amends the heading to Section 33.004, Civil Practice and Remedies Code, to read as follows:

Sec. 33.004. DESIGNATION OF RESPONSIBLE THIRD PARTY.

SECTION 4.04. Amends Section 33.004, Civil Practice and Remedies Code, by amending Subsections (a), (b), and (e) and adding Subsections (f)-(l), as follows:

(a) Removes an exception as provided in Subsections (d) and (e) and a reference to the expiration of limitations on a claim. Authorizes a defendant to seek to designate a person as, rather than join, a responsible third party by filing a motion for leave to designate that person as a responsible third party. Deletes a reference to the third party not having been sued by the claimant. Requires the motion to be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Makes nonsubstantive changes.

(e) Makes conforming and nonsubstantive changes.

(f) Requires a court to grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) Requires the court, if an objection to the motion for leave is timely filed, to grant leave to designate the person as a responsible third party unless the objecting party establishes certain facts.

(h) Provides that by granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) Provides that the filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person does not by itself impose liability on the person, and may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Requires the court, notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, to grant a motion for leave to designate the unknown person as a responsible third party if certain conditions are met.

(k) Provides that an unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(l) Authorizes a party, after adequate time for discovery, to move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. Requires the court to grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

SECTION 4.05. Amends Sections 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, to redefine "claimant," "defendant," "settling person," and "responsible third party."

SECTION 4.06. Amends Section 33.012(b), Civil Practice and Remedies Code, to require the court, if the claimant has settled with one or more persons, to further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility, rather than credit equal to one of certain sums.

SECTION 4.07. Amends Section 33.013, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsections (e) and (f), as follows:

(a) Removes a reference to Subsection (c).

(b) Modifies the conditions under which 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.

(e) Provides that, notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. Provides that a

defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) Prohibits the jury from being made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

SECTION 4.08. Amends Section 33.017, Civil Practice and Remedies Code, to delete statutory references and to make conforming and nonsubstantive changes.

SECTION 4.09. Amends Section 417.001(b), Labor Code, to limit an insurance carrier's subrogation interest to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. Sets forth requirements for the insurance carrier if the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest, rather than that paid or assumed by the insurance carrier to the employee or the legal beneficiary.

SECTION 4.10. Repealers: Civil Practice and Remedies Code, Sections:

- (1) 33.002(b), (d), (e), (f), (g), and (h) (pertaining to applicability of this chapter);
- (2) 33.004(c) and (d) (pertaining to a joinder of responsible third parties);
- (3) 33.011(7) (defining toxic tort);
- (4) 33.012(c) (regarding the reduction of the amount of damages recoverable by a claimant);
- (5) 33.013(c) (relating to the amount of liability of a defendant); and
- (6) 33.014 (Election of Credit for Settlements).

SECTION 4.11. Provides that nothing in the changes to Chapter 33, Civil Practice and Remedies Code, made by this article allowing an employer covered by workers' compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

SECTION 4.12. Requires the supreme court to amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Amends Section 16.012, Civil Practice and Remedies Code, as follows:

Sec. 16.012. New heading: PRODUCTS LIABILITY. (a) Redefines "claimant." Defines "products liability action." Removes the definition of "manufacturing equipment."

(b) Modifies statutory references to conform to changes in the law. Makes conforming changes.

(c) Requires a claimant, if a manufacturer or seller expressly warrants in writing, rather than represents, that the product has a useful safe life of longer than 15 years, to commence a products liability action against that manufacturer or seller

of the product before the end of the number of years warranted after the date of the sale of the product by that seller. Makes conforming changes.

(d) Sets forth circumstances under which this section does not apply to a products liability action seeking damages for personal injury or wrongful death.

(d-1) Created from existing text. Makes conforming changes.

(e) Makes a conforming change.

(f) Makes a conforming change.

SECTION 5.02. Amends Chapter 82, Civil Practice and Remedies Code, by adding Sections 82.003, 82.007, and 82.008, as follows:

Sec. 82.003. **LIABILITY OF NONMANUFACTURING SELLERS.** (a) Provides that a seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves certain facts.

(b) Provides that this section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. Provides that in the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

Sec. 82.007. **MEDICINES.** (a) Provides that in a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations if certain circumstances exist.

(b) Authorizes the claimant to rebut the presumption in Subsection (a) as to each defendant by establishing certain facts.

Sec. 82.008. **COMPLIANCE WITH GOVERNMENT STANDARDS.** (a) Provides that in a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

(b) Authorizes the claimant to rebut the presumption in Subsection (a) by establishing certain facts.

[As drafted, Section 82.008, as added by SECTION 5.02 of this Act, contains no Subsection (c).]

(d) Provides that this section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

(e) Provides that this section does not extend to products covered by Section 82.007.

SECTION 5.03. Requires the supreme court, as soon as practicable after the effective date of this Act, to amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407,

Federal Rules of Evidence.

ARTICLE 6. INTEREST

SECTION 6.01. Amends Section 304.003(c), Finance Code, to provide that the postjudgment interest rate is the prime rate as published by the Federal Reserve Bank of New York on the date of computation. Deletes other methods of calculating the interest rate.

SECTION 6.02. Amends Subchapter B, Chapter 304, Finance Code, by adding Section 304.1045, as follows:

Sec. 304.1045. FUTURE DAMAGES. Prohibits prejudgment interest from being assessed or recovered on an award of future damages.

SECTION 6.03. Repealer: Section 304.108 (Accrual of Prejudgment Interest During Periods of Trial Delay), Finance Code.

SECTION 6.04. Makes application of the changes in law made by this article prospective.

ARTICLE 7. APPEAL BONDS

SECTION 7.01. Amends Section 35.006, Civil Practice and Remedies Code, as follows:

Sec. 35.006. STAY. (a) Requires the court, if the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, to stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) Requires the court, if the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, to stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement, rather than satisfaction, of the judgment that is required in this state in accordance with Section 52.006.

SECTION 7.02. Amends Chapter 52, Civil Practice and Remedies Code, by adding Section 52.006, as follows:

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a) Provides that, subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of certain amounts.

(b) Provides that, notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of certain amounts.

(c) Requires the trial court, on a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), to lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

(d) Authorizes an appellate court to review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court is prohibited from modifying the amount of security to exceed the amount allowed under this section.

(e) Provides that nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but prohibits the trial court from making any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

SECTION 7.03. Repealers: Civil Practice and Remedies Code, Sections:

- (1) 52.002 (Bond or Deposit for Money Judgment);
- (2) 52.003 (Review for Sufficiency); and
- (3) 52.004 (Review for Excessiveness).

SECTION 7.04. (a) and (b) Make application of this article prospective.

ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

SECTION 8.01. Repealers: Sections 545.412(d) (pertaining to the inadmissibility of the use of a child safety seat) and 545.413(g) (pertaining to the inadmissibility of the use of a safety belt), Transportation Code.

ARTICLE 9. RESERVED

ARTICLE 10. HEALTH CARE

SECTION 10.01. Amends Chapter 74, Civil Practice and Remedies Code, as follows:

CHAPTER 74. New heading: MEDICAL LIABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 74.001. DEFINITIONS. (a) Defines “affiliate,” “claimant,” “control,” “court,” “disclosure panel,” “economic damages,” “emergency medical care,” “emergency medical services provider,” “gross negligence,” “health care,” “health care institution,” “health care provider,” “health care liability claim,” “home and community support services agency,” “hospice,” “hospital,” “hospital system,” “intermediate care facility for the mentally retarded,” “medical care,” “noneconomic damages,” “nursing home,” “pharmacist,” “physician,” “professional or administrative services,” and “representative.”

(b) Provides that any legal term or word of art used in this chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with the common law.

Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE.

(a) Provides that in the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.

(b) Provides that, notwithstanding Subsection (a), in the event of a conflict between this chapter and Section 101.023, 102.003, or 108.002, those sections of this code control to the extent of the conflict.

(c) Prohibits the district courts and statutory county courts in a county from adopting local rules in conflict with this chapter.

Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. Provides that this chapter does not waive sovereign immunity from suit or from liability.

Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a) Provides that, notwithstanding any other law, Sections 17.41-17.63, Business & Commerce Code, do not apply to physicians or health care providers with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) Provides that this section does not apply to pharmacists.

[Reserves Sections 74.005-74.050 for expansion.]

SUBCHAPTER B. NOTICE AND PLEADINGS

Sec. 74.051. NOTICE. (a) Requires any person or the person's authorized agent asserting a health care liability claim to give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim. Requires the notice to be accompanied by the authorization form for release of protected health information as required under Section 74.052.

(b) Requires each party, in such pleadings as are subsequently filed in any court, to state that it has fully complied with the provisions of this section and Section 74.052 and to provide such evidence thereof as the judge of the court may require to determine if the provisions of this chapter have been met.

(c) Requires notice given as provided in this chapter to toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and requires this tolling to apply to all parties and potential parties.

(d) Requires all parties to be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Section 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection.

(e) Requires, for the purposes of this section, and notwithstanding Chapter 159, Occupations Code, or any other law, a request for the medical records of a deceased person or a person who is incompetent to be deemed to be valid if accompanied by an authorization in the form required by Section 74.052 signed by a parent, spouse, or adult child of the deceased or incompetent person.

Sec. 74.052. AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION. (a) Requires notice of a health care claim under Section 74.051 to be accompanied by a medical authorization in the form specified by this section. Provides that failure to provide this authorization along with the notice of health care claim shall abate all further proceedings against the physician or health care provider receiving the notice until 60 days following receipt by the physician or health care provider of the required authorization.

(b) Provides that if the authorization required by this section is modified or revoked, the physician or health care provider to whom the authorization has been given shall have the option to abate all further proceedings until 60 days following receipt of a replacement authorization that must comply with the form specified by this section.

(c) Requires the medical authorization required by this section to be in a certain form and to be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164). Sets

forth the form for the authorization.

Sec. 74.053. PLEADINGS NOT TO STATE DAMAGE AMOUNT; SPECIAL EXCEPTION; EXCLUSION FROM SECTION. Prohibits pleadings in a suit based on a health care liability claim from specifying an amount of money claimed as damages. Authorizes the defendant to file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff is required to inform the court and defendant in writing of the total dollar amount claimed. Provides that this section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

[Reserves Sections 74.054-74.100 for expansion.]

SUBCHAPTER C. INFORMED CONSENT

Sec. 74.101. THEORY OF RECOVERY. Provides that in a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) Creates the Texas Medical Disclosure Panel (TMDP) to determine which risks and hazards related to medical care and surgical procedures are required to be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) Provides that the TMDP established herein is administratively attached to the Texas Department of Health (TDH). Requires TDH, at the request of TMDP, to provide administrative assistance to TMDP; and requires TDH and TMDP to coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. Requires TDH, at the request of TMDP, to submit the TMDP's budget request to the legislature. Requires TMDP to be subject, except where inconsistent, to the rules and procedures of TDH; however, requires that the duties and responsibilities of TMDP as set forth in this chapter be exercised solely by TMDP, and requires that the Texas Board of Health or TDH have no authority or responsibility with respect to same.

(c) Sets forth the composition of TMDP and requires that its members be selected by the commissioner of health (commissioner).

(d) Requires the commissioner, at the expiration of the term of each member of TMDP so appointed, to select a successor, and requires such successor to serve for a term of six years, or until the next successor is selected. Authorizes any member who is absent for three consecutive meetings without the consent of a majority of TMDP present at each meeting to be removed by the commissioner at the request of TMDP submitted in writing and signed by the chair. Requires the commissioner, on the death, resignation, or removal of any member, to fill the vacancy by selection for the unexpired portion of the term.

(e) Provides that members of TMDP are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of the member's duties on the panel, including necessary travel expenses.

(f) Requires meetings of TMDP to be held at the call of the chair or on petition of at least three members of TMDP.

(g) Requires the members, at the first meeting of TMDP each year after its members assume their positions, to select one of the members to serve as chair and one of the members to serve as vice chair, and requires each officer to serve for a term of one year. Requires the chair to preside at meetings of the panel, and in the chair's absence, requires the vice chair to preside.

(h) Requires employees of TDH to serve as the staff for TMDP.

Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) Requires TMDP, to the extent feasible, to identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) Requires TMDP to prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, to establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Requires lists prepared under Subsection (b) together with written explanations of the degree and form of disclosure to be published in the Texas Register.

(d) Requires TMDP, at least annually, or at such other period TMDP may determine from time to time, to identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, to assign them to the proper list, and to establish the degree of disclosure required and the form in which the disclosure will be made. Requires TMDP also to examine the treatments and procedures for the purpose of revising lists previously published. Requires these determinations to be published in the Texas Register.

Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER. Requires a physician or health care provider, before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on TMDP's list requiring disclosure, to disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. Provides that a physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 74.105.

Sec. 74.105. MANNER OF DISCLOSURE. Provides that consent to medical care that appears on TMDP's list requiring disclosure shall be considered effective under this chapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the disclosure panel under Section 74.103.

Sec. 74.106. EFFECT OF DISCLOSURE. (a) Provides that in a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, disclosure and failure to disclose certain matters has certain legal ramifications.

(b) Provides that if medical care or surgical procedure is rendered with respect to which TMDP has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) Requires TMDP to develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy.

(b) Requires the materials to be available in English, Spanish, and any other language TMDP considers appropriate. Requires that the information be presented in a manner understandable to a layperson.

(c) Requires the materials to include certain information.

(d) Requires the physician or health care provider to obtain informed consent under this section and Section 74.104 from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not reasonably possible. Requires the physician or health care provider, if obtaining informed consent is not reasonably possible, to include in the patient's medical records a written statement signed by the physician certifying the nature of the emergency.

(e) Prohibits TMDP from prescribing materials under this section without first consulting with the Texas State Board of Medical Examiners.

[Reserves Sections 74.108-74.150 for expansion.]

SUBCHAPTER D. EMERGENCY CARE

Sec. 74.151. Redesignated from Section 74.001. (a) Removes a stipulation that a person administering emergency care in good faith be at the scene of an emergency but not in a hospital or other health care facility or means of medical transport.

(b) Provides that this section does not apply to care administered for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration.

(c) Provides that this section does not apply to a physician or other health care provider whose day-to-day responsibilities include the administration of care in a hospital emergency room for or in expectation of remuneration if the scene of an emergency is in a hospital or other health care facility or means of medical transport. Makes conforming changes.

(d) Makes a conforming change.

(e) Makes no changes to this subsection.

Sec. 74.152. Redesignated from Section 74.002. Provides that persons not licensed or certified, rather than not licensed, in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent.

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. Authorizes a person bringing 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 in a hospital emergency room or department, to 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 a preponderance of the 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.

Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) Sets forth considerations for a jury in an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency room or department,

(b) Provides that the provisions of Subsection (a) do not apply to medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; that is unrelated to the original medical emergency; or that is related to an emergency caused in whole or in part by the negligence of the defendant.

[Reserves Sections 74.155-74.200 for expansion.]

SUBCHAPTER E. RES IPSA LOQUITUR

Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. Provides that the common law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977.

[Reserves Sections 74.202-74.250 reserved for expansion.]

SUBCHAPTER F. STATUTE OF LIMITATIONS

Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Provides that, notwithstanding any other law and subject to Subsection (b), 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. Provides that, except as herein provided, this section applies to all persons regardless of minority or other legal disability.

(b) Requires a claimant to 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. Provides that this subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.

[Reserves Sections 74.252-74.300 for expansion.]

SUBCHAPTER G. LIABILITY LIMITS

Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) Requires the limit of civil liability for noneconomic damages for each defendant physician or health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, in an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, to be limited to an amount not to exceed \$250,000.

(b) Requires the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, in an action on a health care liability claim where final judgment is rendered against a health care institution, to be limited to an amount not to exceed \$500,000.

(c) Requires the limit of civil liability for all noneconomic damages, in an action

on a health care liability claim where final judgment is rendered against a physician or health care provider, to be limited to an amount not to exceed \$750,000 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.

Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES. (a) Requires certain actions, in the event that Section 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, subject to the provisions of this section, to become effective.

(b) Provides that, effective before September 1, 2005, Subsection (a) applies only to a physician or health care provider that provides evidence of financial responsibility in certain amounts in effect for any act or omission to which this subchapter applies.

(c) Provides that, effective September 1, 2005, Subsection (a) applies only to a physician or health care provider that provides evidence of financial responsibility in certain amounts in effect for any act or omission to which this subchapter applies.

(d) Provides that, effective September 1, 2007, Subsection (a) applies only to a physician or health care provider that provides evidence of financial responsibility in certain amounts in effect for any act or omission to which this subchapter applies.

(e) Authorizes evidence of financial responsibility to be established at the time of judgment by providing proof of certain facts.

Sec. 74.303. LIMITATION ON DAMAGES. (a) Requires the limit of civil liability for damages of the physician or health care provider, in an action for wrongful death on a health care liability claim where final judgment is rendered against a physician or health care provider, to be limited to an amount not to exceed \$500,000.

(b) Requires the liability limit prescribed in Subsection (a), when there is an increase or decrease in the consumer price index with respect to the amount of that index on August 29, 1977, to 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, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average -- All Items), between August 29, 1977, and the time at which damages subject to such limits are awarded by final judgment or settlement.

(c) Provides that Subsection (a) does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(d) Prohibits the liability of any insurer under the common law theory of recovery commonly known in Texas as the "Stowers Doctrine" from exceeding the liability of the insured.

(e) Requires certain instructions, in any action on a health care liability claim that is tried by a jury in any court in this state, to be included in the court's written instructions to the jurors.

[Reserves Sections 74.304-74.350 for expansion.]

SUBCHAPTER H. PROCEDURAL PROVISIONS

Sec. 74.351. EXPERT REPORT. (a) Requires a claimant, in a health care liability claim, not later than the 150th day after the date the claim was filed, to serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. Authorizes the date for serving the report to be extended by written agreement of the affected parties. Requires each defendant physician or health care provider whose conduct is implicated in a report to file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

(b) Requires the court, if, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a), on the motion of the affected physician or health care provider, subject to Subsection (c), to enter a certain order.

(c) Authorizes the court, if an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, to grant a 30-day extension to the claimant in order to cure the deficiency. Requires the 30-day extension to run from the date the plaintiff first received the notice, if the claimant does not receive notice of the court's ruling granting the extension until after the 150-day deadline has passed.

(d) Requires the court to extend the deadline until 30 days after complete discovery has been provided, if, on the motion of a claimant filed before the expiration of the 150-day period referred to in Subsection (a), the court finds that a claimant has been hindered in complying with Subsection (a) because a defendant physician or health care provider has failed to provide timely and complete discovery permitted under Subsection (s) or (u).

[Reserves Subsections (e)-(h).]

(i) Authorizes a claimant, notwithstanding any other provision of this section, to satisfy any requirement of this section for serving an expert report by serving 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. Requires nothing in this section to 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) Requires nothing in this section to be construed to require the serving of an expert report regarding any issue other than an issue relating to liability or causation.

(k) Provides that, subject to Subsection (t), an expert report served under this section is not admissible in evidence by any party, prohibits it from being used in a deposition, trial, or other proceeding, and prohibits it from being referred to by any party during the course of the action for any purpose.

(l) Requires a court to 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 good faith effort to comply with the definition of an expert report in Subsection (r)(6).

[Reserves Subsections (m)-(q).]

(r) Defines “affected parties,” “claim,” “defendant,” “expert,” and “expert report.”

(s) Provides that until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, including medical or hospital records or other documents or tangible things, related to the patient’s health care or a defendant’s liability through certain means.

(t) Provides that 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), the restrictions imposed by Subsection (k) on use of the expert report by any party are waived.

(u) Provides that, notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a). Authorizes the court to allow additional deposition discovery on a showing by a plaintiff that additional information is needed for the completion of an expert report that cannot otherwise practicably be obtained in a timely manner under this subsection and Subsection (s).

Sec. 74.352. DISCOVERY PROCEDURES. (a) Requires the plaintiff, in every health care liability claim, within 45 days after the date of filing of the original petition, to serve on the defendant’s attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(b) Requires every physician or health care provider who is a defendant in a health care liability claim, within 45 days after the date on which an answer to the petition was due, to serve on the plaintiff’s attorney or, if the plaintiff is not represented by an attorney, on the plaintiff full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(c) Authorizes no objection, except on motion and for good cause shown, to be asserted regarding any standard interrogatory or request for production of documents and things, but requires that no response be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case.

(d) Requires failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things in accordance with Subsections (a) and (b) or the making of a groundless objection under Subsection (c) to be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party.

(e) Authorizes the time limits imposed under Subsections (a) and (b) to be extended by the court on the motion of a responding party for good cause shown and requires it to be extended if agreed in writing between the responding party and all opposing parties. Requires time limits, in no event, to be extended for a period of more than an additional 30 days.

(f) Requires the new party, if a party is added by an amended pleading, intervention, or otherwise, to file full and complete answers to the appropriate

standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action.

(g) Requires the party to supplement the answers and responses in accordance with the Texas Rules of Civil Procedure, if information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed,

(h) Requires nothing in this section to preclude any party from taking additional non-duplicative discovery of any other party. Prohibits the standard sets of interrogatories provided for in this section from constituting, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.

[Reserves Sections 74.353-74.400 for expansion.]

SUBCHAPTER I. EXPERT WITNESSES

Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) Authorizes a person, in a suit involving a health care liability claim against a physician for injury to or death of a patient, to qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if the person is a physician who meets certain criteria.

(b) Defines “practicing medicine” and “medical practice.”

(c) Requires the court, in determining whether a witness is qualified on the basis of training or experience, to consider whether, at the time the claim arose or at the time the testimony is given, the witness meets certain criteria.

(d) Requires the court to apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but authorizes the court to depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert’s testimony. Requires the court to state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) Requires a pretrial objection to the qualifications of a witness under this section to 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. Provides that 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. Requires the court to 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. Requires the hearing, if the objecting party is unable to object in time for the hearing to be conducted before the trial, to be conducted outside the presence of the jury. Provides that this subsection does not prevent a party from examining or cross-examining a witness at trial about the witness’s qualifications.

(f) Provides that this section does not prevent a physician who is a defendant from qualifying as an expert.

(g) Defines “physician.”

Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST HEALTH CARE PROVIDER. (a) Defines “practicing health care.”

(b) Authorizes a person, in a suit involving a health care liability claim against a health care provider, to qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person meets certain criteria.

(c) Requires the court, in determining whether a witness is qualified on the basis of training or experience, to consider whether, at the time the claim arose or at the time the testimony is given, the witness meets certain criteria.

(d) Requires the court to apply the criteria specified in Subsections (a), (b), and (c) 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 authorizes it to depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert’s testimony. Requires the court to state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) Provides that 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) Requires a pretrial objection to the qualifications of a witness under this section to 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. Provides that 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. Requires the court to 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. Requires the hearing, if the objecting party is unable to object in time for the hearing to be conducted before the trial, to be conducted outside the presence of the jury. Provides that this subsection does not prevent a party from examining or cross-examining a witness at trial about the witness’s qualifications.

Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION IN HEALTH CARE LIABILITY CLAIM. (a) Authorizes a person, except as provided by Subsections (b) and (c), in a suit involving a health care liability claim against a physician or health care provider, to 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) Authorizes a person, in a suit involving a health care liability claim against a dentist, to 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 or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(c) Authorizes a person, in a suit involving a health care liability claim against a podiatrist, to 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 or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(d) Requires a pretrial objection to the qualifications of a witness under this section to 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. Provides that 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. Requires the court to 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. Requires the hearing, if the objecting party is unable to object in time for the hearing to be conducted before the trial, to be conducted outside the presence of the jury. Provides that this subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

[Reserves Sections 74.404-74.450 for expansion.]

SUBCHAPTER J. ARBITRATION AGREEMENTS

Sec. 74.451. ARBITRATION AGREEMENTS. (a) Requires that no physician, professional association of physicians, or other health care provider request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a certain clearly and conspicuously written notice in 10-point boldface.

(b) Provides that a violation of this section by a physician or professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and requires it to be subject to the enforcement provisions and sanctions contained in that subtitle.

(c) Requires a violation of this section by a health care provider other than a physician to constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and to be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Section 17.47, Business & Commerce Code, notwithstanding Section 74.004 or any other law.

(d) Requires a person who is found to be in violation of this section for the first time, notwithstanding any other provision of this section, to be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.

[Reserves Sections 74.452-74.500 for expansion.]

SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

Sec. 74.501. DEFINITIONS. Defines "future damages," "future loss of earnings," and "periodic payments."

Sec. 74.502. SCOPE OF SUBCHAPTER. Provides that this subchapter applies only to an action on a health care liability claim against a physician or health care provider in

which the present value of the award of future damages, as determined by the court, equals or exceeds \$100,000.

Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) Authorizes the court, at the request of a defendant physician or health care provider or claimant, to 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) Requires the court to make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages.

(c) Requires the court to specify in its judgment ordering the payment of future damages by periodic payments the recipient of the payments, dollar amount of the payments, interval between payments, and number of payments or the period of time over which payments must be made.

Sec. 74.504. RELEASE. Provides that 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. 74.505. FINANCIAL RESPONSIBILITY. (a) Requires the court, as a condition to authorizing periodic payments of future damages, to 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) Requires the judgment to provide for payments to be funded by certain means.

(c) Requires the court, on termination of periodic payments of future damages, to order the return of the security, or as much as remains, to the defendant.

Sec. 74.506. DEATH OF RECIPIENT. (a) Provides that 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) Provides that periodic payments, other than future loss of earnings, terminate on the death of the recipient.

(c) Authorizes the court, if the recipient of periodic payments dies before all payments required by the judgment are paid, to modify the judgment to award and apportion the unpaid damages for future loss of earnings in an appropriate manner.

(d) Provides that 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. 74.507. AWARD OF ATTORNEY'S FEES. Requires the court, for purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, to place a total value on the payments based on the claimant's projected life expectancy and reduce the amount in Subdivision (1) to present value.

SECTION 10.02. Amends Section 84.003, Civil Practice and Remedies Code, by adding Subdivision (6), to define "hospital system."

SECTION 10.03. Amends Section 84.003, Civil Practice and Remedies Code, by adding Subdivision (7), to define "person responsible for the patient."

SECTION 10.04. Amends Section 84.004, Civil Practice and Remedies Code, by adding Subsection (f), to provide that Subsection (c) applies even if the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection or the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.05. Amends Article 5.15-1, Insurance Code, by adding Section 11, as follows:

Sec. 11. **VENDOR'S ENDORSEMENT.** Prohibits an insurer from excluding or otherwise limiting 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. Requires a physician or health care provider to be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

SECTION 10.06. Amends Section 242.0372, Health and Safety Code, by adding Subsection (f), to provide that an institution is not required to comply with this section before September 1, 2005. Provides that this subsection expires September 2, 2005.

SECTION 10.07. Repealer: Article 4590i (Medical Liability and Insurance Improvement Act), V.T.C.S.

SECTION 10.08. Provides that unless otherwise removed as provided by law, a member of the TMDP serving on the effective date of this Act continues to serve for the term to which the member was appointed.

SECTION 10.09. (a) Sets forth legislative findings.

(b) Provides that because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to perform certain tasks.

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT

SECTION 11.01. Amends Sections 108.002(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Provides that, except in an action arising under the constitution or laws of the United States, a public servant is not personally liable for damages in excess of \$100,000 arising from personal injury, death, or deprivation of a right, privilege, or immunity if certain criteria exists. Deletes text regarding an exception to a provider of health care as that term is defined in Section 108.002(c).

(b) Provides that, except in an action arising under the constitution or laws of the United States, a public servant is not liable for damages in excess of \$100,000 for property damage if certain criteria exists. Deletes text regarding an exception to a provider of health care as that term is defined in Section 108.002(c).

SECTION 11.02. Amends Chapter 261, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. **DEFINITION.** Defines "municipal hospital management contractor."

Sec. 261.052. **LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR.** Provides that a municipal hospital management contractor in its

management or operation of a hospital under a contract with a municipality is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 11.03. Amends Section 285.071, Health and Safety Code to redefine “hospital district management contractor.”

SECTION 11.04. Amends Section 285.072, Health and Safety Code, as follows:

Sec. 285.072. **LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR.** Provides that a hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee, rather than are employees, of the hospital district for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 11.05. Amends Section 101.106, Civil Practice and Remedies Code, as follows:

Sec. 101.106. New heading: **ELECTION OF REMEDIES.** (a) Provides that the filing of a suit under this chapter against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter.

(b) Provides that the filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents.

(c) Requires the settlement of a claim arising under this chapter to immediately and forever bar the claimant from any suit against or recovery from any employee of the same governmental unit regarding the same subject matter.

(d) Requires a judgment against an employee of a governmental unit to immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit.

(e) Requires the employees, if a suit is filed under this chapter against both a governmental unit and any of its employees, to immediately be dismissed on the filing of a motion by the governmental unit.

(f) Provides that if a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. Requires the suit against the employee, on the employee's motion, to be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed.

Deletes existing Section 101.106 titled **EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR JUDGMENT**, and relating to a judgment in an action or a settlement of a claim under this chapter barring any action involving the same subject matter by the claimant against the employee of the governmental unit whose act or omission gave rise to the claim.

SECTION 11.06. Amends Section 108.001, Civil Practice and Remedies Code, by adding Subdivision (3) to define “public servant.”

SECTION 11.07. Repealer: Section 108.002(c) (listing licensed health care providers), Civil Practice and Remedies Code.

ARTICLE 12. RESERVED

ARTICLE 13. DAMAGES

SECTION 13.01. Amends the heading to Chapter 41, Civil Practice and Remedies Code, to read as follows:

CHAPTER 41. DAMAGES

SECTION 13.02. Amends Section 41.001, Civil Practice and Remedies Code, by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (8)-(13), to redefine “claimant,” “defendant,” “economic damages,” “exemplary damages,” and “malice,” and to define “compensatory damages,” “future damages,” “future loss of earnings,” “gross negligence,” “noneconomic damages,” and “periodic payments.”

SECTION 13.03. Amends Sections 41.002(a) and (b), Civil Practice and Remedies Code, as follows:

- (a) Provides that this chapter applies to any action in which a claimant seeks damages, rather than exemplary damages, relating to a cause of action.
- (b) Makes conforming changes.

SECTION 13.04. Amends Section 41.003, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsections (d) and (e) as follows:

- (a) Provides that, except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from fraud, malice, or gross negligence, rather than wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body under a statute enacted under Section 26, Article XVI, Texas Constitution. Deletes the requirement to provide the definition of “gross neglect” in the instruction submitted to the jury.
- (d) Authorizes exemplary damages to be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.
- (e) Requires, in all cases where the issue of exemplary damages is submitted to the jury, certain instruction to be included in the charge of the court.

SECTION 13.05. Amends Section 41.004(b), Civil Practice and Remedies Code, to prohibit exemplary damages from being awarded to a claimant who elects to have the plaintiff's recovery multiplied under another statute. Deletes existing Subsection (b) relating to authorizing a claimant to recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A).

SECTION 13.06. Amends Section 41.008, Civil Practice and Remedies Code, as follows:

- (a) Makes a conforming change.

(b) No changes made to this subsection.

(c) Provides that this section, rather than Subsection (b), does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in certain sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally under certain sections, including Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001).

(d) No changes made to this subsection.

(e) Prohibits the provisions of this section, rather than Subsections (a) and (b), from being made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) Prohibits this section, rather than Subsection (b), from applying to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

SECTION 13.07. Amends Section 41.010(b), Civil Practice and Remedies Code, to provide that, subject to Section 41.008, the determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

SECTION 13.08. Amends Chapter 41, Civil Practice and Remedies Code, by adding Section 41.0105, as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES.

(a) Provides that, in addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

(b) Authorizes a defendant to introduce evidence of any amount payable to the claimant as a collateral benefit arising from the event in the cause of action under certain laws.

(c) Authorizes the plaintiff, if the defendant introduces evidence under Subsection (b), to introduce evidence of any legal obligation to reimburse any subrogated entity.

SECTION 13.09. Amends Chapter 18, Civil Practice and Remedies Code, by adding Subchapter D, as follows:

SUBCHAPTER D. CERTAIN LOSSES

Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION. (a) Provides that, notwithstanding any other law, 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 loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law.

(b) Requires the court to instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance,

ARTICLE 14. RESERVED

ARTICLE 15. SCHOOL EMPLOYEES

SECTION 15.01. Amends Subchapter B, Chapter 22, Education Code, by amending Section 22.051, and adding Sections 22.0511 through 22.0517, as follows:

Sec. 22.051. DEFINITION. Defines “professional employee of a school district.”

Sec. 22.0511. Redesignated from Section 22.051. New heading: IMMUNITY FROM LIABILITY.

(c) Provides that in addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Provides that nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. Defines “individual” for purposes of this subsection. Deletes definition of “professional employee.”

Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR PROFESSIONAL EMPLOYEES. (a) Prohibits a professional employee of a school district from being subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62, Penal Code.

(b) Defines “disciplinary proceeding.”

(c) Provides that nothing in this section shall prohibit a school district from enforcing a policy relating to corporal punishment.

Sec. 22.0513. NOTICE OF CLAIM. (a) Requires a person, not later than the 90th day before the date the person files a suit against a professional employee of a school district, to give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) Authorizes a professional employee of a school district against whom a suit is pending who does not receive written notice, as required by Subsection (a), to file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) Requires the court to abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section.

(d) Provides that an abatement under Subsection (c) continues until the 90th day after the date written notice is given to the professional employee of a school district as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. Prohibits a person from filing suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

Sec. 22.0515. LIMITATION ON DAMAGES. (a) Provides that subject to Subsection (b), 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. Provides that the limitation on liability provided by this subsection does not apply to any attorney's fees or court costs that may be awarded against the professional employee under Section 22.0517.

(b) Provides that the limitation on liability provided by Subsection (a) does not apply if the actions of the professional employee of a school district constitute gross negligence.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. Authorizes a court in which a judicial proceeding is being brought against a professional employee of a school district to 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. Provides that in an action against a professional employee of a school district based on an allegation that the employee physically abused a student, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee substantially prevails.

SECTION 15.02. Amends Section 22.053(a), Education Code, to provide that 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, rather than Section 22.051.

SECTION 15.03. Amends Section 30.024(c), Education Code, to provide that in addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511, 22.0512, 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school. Deletes a reference to Section 22.051.

SECTION 15.04. Amends Section 30.055(c), Education Code, to make a conforming change.

SECTION 15.05. Amends Section 105.301(e), Education Code, to make a conforming change.

SECTION 15.06. Makes application of this article prospective.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 16.01. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.060, as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NOT-FOR-PROFIT NURSING INSTITUTIONS. (a) Sets forth items not admissible as evidence in a civil action.

(b) Provides that 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. Amends Subchapter A, Chapter 242, Health and Safety Code, by adding Section 242.017, as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) Sets forth items that are not admissible as evidence in a civil action.

(b) Provides that 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. Repealers: Sections 32.021(i) and (k) (regarding testimony and records in a civil action), Human Resources Code; and Section 242.050 (Drug Testing of Employees), Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 17.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 149, as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO

CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. Defines “asbestos claim,” “corporation,” “successor asbestos-related liabilities,” “successor,” and “transferor.”

Sec. 149.002. APPLICABILITY. (a) Requires the limitations in Section 149.003 to apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).

(b) Prohibits the limitations in Section 149.003 from applying to certain benefits, claims, obligations, and entities.

Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Provides that, except as further limited in Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. Provides that the corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) Provides that if the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, is required to be substituted for the limitation set forth in Subsection (a) for purposes of determining the limitation of liability of a corporation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) Authorizes a corporation to establish the fair market value of total gross assets for the purpose of the limitations under Section 149.003 through any method reasonable under the circumstances, including 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, 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) Provides that total gross assets include intangible assets.

(c) Provides that total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). Requires a settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter to be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) Requires the fair market value of total gross assets to reflect no deduction for any liabilities arising from any asbestos claim.

Sec. 149.005. ADJUSTMENT. (a) Provides that, except as provided in Subsections (b), (c), and (d), the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of: 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 one percent.

(b) Provides that the rate in Subsection (a) is not compounded.

(c) Provides that the adjustment of fair market value of total gross 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 a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) Provides that no adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by Section 149.004(c).

Sec. 149.006. SCOPE OF CHAPTER. Requires the courts in this state to 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 17.02. Provides that Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all actions commenced on or after the effective date of this Act, or pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

SECTION 18.01. Amends Sections 84.004(a) and (c), Civil Practice and Remedies Code, as follows:

(a) Provides that, except as provided by Subsection (d) and Section 84.007, a volunteer, rather than a volunteer who is serving as an officer, director, or trustee, of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's, rather than his, duties or functions, including as an officer, director, or trustee within the organization.

(c) Provides that, 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 the volunteer commits the act or omission in the course of providing health care services to the patient, the services provided are within the scope of the license of the volunteer, and 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, rather than the patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of, the patient signs a written statement that acknowledges certain facts.

SECTION 18.02. Amends Section 84.007(a), Civil Practice and Remedies Code, to provide that this chapter does not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others. Deletes existing text "or wantonly" as a modifier for "negligent."

SECTION 18.03. Repealers: Section 84.003(4) (defining "good faith") and Section 84.004(b) (regarding a volunteer being immune from civil liability), Civil Practice and Remedies Code.

ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS

SECTION 19.01. (a) Sets forth legislative findings.

(b) Provides that the purpose of this article is to reduce the exposure to liability of a volunteer fire department while involved in or providing an emergency response, and a volunteer fire fighter while acting as a member of a volunteer fire department.

SECTION 19.02. Amends Chapter 78, Civil Practice and Remedies Code, by adding Subchapter C, as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. Defines “emergency response,” “volunteer fire department,” and “volunteer fire fighter.”

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. Provides that this subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of a volunteer fire department while involved in or providing an emergency response, or a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. Provides that a volunteer fire department is liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101, and is entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. Provides that a volunteer fire fighter is liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable, and is entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

ARTICLE 20. DESIGN PROFESSIONALS

SECTION 20.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 150, as follows:

CHAPTER 150. DESIGN PROFESSIONALS

Sec. 150.001. DEFINITION. Defines “design professional.”

Sec. 150.002. CERTIFICATE OF MERIT. (a) Requires the plaintiff, in any action for damages alleging professional negligence by a design professional, to be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit is required to set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. Requires the third-party professional engineer or registered architect to be licensed in this state and actively engaged in the practice of architecture or engineering.

(b) Prohibits the contemporaneous filing requirement of Subsection (a) from applying to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. Requires the plaintiff, in such cases, to have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. Authorizes the trial court to, on motion, after hearing and for good cause, extend such time as it determines justice requires.

(c) Prohibits the defendant from being required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.

(d) Provides that the plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) may result in dismissal with prejudice of the complaint against the defendant.

(e) Prohibits this statute from being construed to extend any applicable period of limitation or repose.

ARTICLE 21. LIMITATIONS OF LIABILITY

SECTION 21.01. Amends Section 75.002, Civil Practice and Remedies Code, by adding Subsection (h), to provide that an owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.

ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

SECTION 22.01. Amends Section 311.041, Health and Safety Code, as follows:

Sec. 311.041. POLICY STATEMENT. Provides that it is the purpose of this subchapter to clarify and set forth the duties, responsibilities, and benefits that apply to hospitals for providing community benefits that include charity care, rather than to clarify and set forth the duties and responsibilities of nonprofit hospitals.

SECTION 22.02. Amends Subchapter D, Chapter 311, Health and Safety Code, by adding Section 311.0456, as follows:

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) Defines "department."

(b) Provides that this section applies only to a nonprofit hospital or hospital system that is certified by the Texas Department of Health (TDH) under Subsection (d), or a hospital that is licensed under Chapter 241, is not a nonprofit hospital, and is certified by TDH under Subsection (g).

(c) Provides that to be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide charity care and community benefits in a certain amount, and at least 40 percent of the charity care required by the county in which the hospital is located.

(d) Provides that to be certified under this subsection, a nonprofit hospital or hospital system is required to submit a report based on its most recent completed and audited prior fiscal year to TDH not later than April 30 of each year stating that the hospital or system is eligible for certification. Requires TDH to verify the information in the report not later than May 31 of the year in which TDH receives the report by checking the information against the report filed by the hospital or system under Section 311.046. Requires TDH, after TDH has verified the information in the report, to certify that the hospital or hospital system has met the requirements for certification. Provides that the certification issued under this subsection to a nonprofit hospital or hospital system takes effect on May 31 of that year and expires on the anniversary of that date.

(e) Provides that for the purposes of Subsection (b)(1), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Provides that to be eligible for certification under Subsection (g), a hospital described by Subsection (b)(2) must provide charity care and community benefits in a certain amount, and must provide at least 40 percent of the charity care required by the county in which the hospital is located.

(g) Requires a hospital described by Subsection (b)(2), to be certified under this subsection, to submit a report based on its most recent completed and audited prior fiscal year to TDH not later than April 30 of each year stating that the hospital is eligible for certification. Requires the report to include the information described by Sections 311.046(a)(3), (4), and (5). Requires TDH to verify the information in the report not later than May 31 of the year in which TDH receives the report. Requires TDH, after TDH has verified the information in the report, to certify that the hospital has met the requirements for certification. Provides that the certification issued under this subsection to a hospital takes effect on May 31 of that year and expires on the anniversary of that date.

(h) Provides that, notwithstanding any other law, the liability of a hospital or hospital system for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply.

SECTION 22.03. Amends the heading to Subchapter D, Chapter 311, Health and Safety Code, to read as follows:

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE

ARTICLE 23. INVERSE CONDEMNATION

SECTION 23.01. Amends Title 4, Property Code, by adding Chapter 30, as follows:

CHAPTER 30. INVERSE CONDEMNATION

Sec. 30.001. CONCURRENT JURISDICTION. Provides that district courts and county courts at law have concurrent jurisdiction in inverse condemnation cases. Provides that a county court has no jurisdiction in inverse condemnation cases.

Sec. 30.002. TRANSFER OF CASES. Requires the judge, if an inverse condemnation case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, to transfer the case to a district court.

Sec. 30.003. DISTRICT COURT AUTHORITY. Authorizes a district court to determine all issues in an inverse condemnation case, including whether property has been taken or damaged for a public purpose without compensation and the assessment of damages, in any suit in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party.

Sec. 30.004. STANDARD PROCEDURE. (a) Requires the judge of a court in which an inverse condemnation petition is filed to order a bench trial to determine whether the property owned by the plaintiff was taken or damaged for a public purpose without compensation, and to resolve any jurisdictional matters.

(b) Requires the judge, if requested, if the judge determines that the taking of or damage to the property occurred, to conduct a jury trial on valuation issues.

(c) Requires the judge, if the judge determines that the taking of or damage to the property has not occurred, to dismiss the petition.

Sec. 30.005. VENUE IN CERTAIN CASES. Requires an inverse condemnation action arising from flooding, the impoundment of water, the discharge of water into a natural watercourse, or the construction or operation of dams for flood control, to be brought in the county in which the principal office of the defendant is located.

SECTION 23.02. Provides that Chapter 30, Property Code, as added by this article, applies only to an inverse condemnation action filed on or after the effective date of this article. Provides that an inverse condemnation action filed before the effective date of this article is governed by the law in effect on the date the action was filed, and the former law is continued in effect for that purpose.

ARTICLE 24. ACCELERATED APPEAL;
EFFECTIVE DATE; SEVERABILITY

SECTION 24.01. (a) Authorizes the constitutionality and other validity under the state or federal constitution of all or any part of Article 10 of this Act to 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 all or any part of Article 10 of this Act affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.

(b) Provides that 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 that all or any part of Article 10 of this Act is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) Provides that if the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) Authorizes a district court in Travis County to 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 Article 10 of this Act.

(e) Provides that 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 Article 10 this Act. Provides that the direct appeal is an accelerated appeal.

(f) Provides that this section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

(g) Provides that an appeal under this section, 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 24.02. (a) Effective date: Provides that all articles of this Act, other than Article 17, take effect September 1, 2003.

(b) Provides that Article 17 of this Act takes effect upon passage or September 1, 2003.

(c) Makes application of Articles 4, 5, and 8 of this Act prospective to May 30, 2003.

(d) Makes application of this Act prospective, except as otherwise provided in this section or by a specific provision in an article.

SECTION 24.03. Provides that if any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.