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H.B. No. 4

A BILL TO BE ENTITLED

AN ACT

relating to reform of certain procedures and remedies in civil actions.

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

ARTICLE 1. CLASS ACTIONS

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

CHAPTER 26. CLASS ACTIONS INVOLVING JURISDICTION

OF STATE AGENCY

Sec. 26.001. DEFINITIONS. In this chapter:

(1) "Agency statute" means a statute of this state administered or enforced by a state agency.

(2) "Claimant" means a party seeking recovery of damages or other relief and includes a plaintiff, counterclaimant, cross-claimant, or third-party claimant.

(3) "Contested case" has the meaning assigned by Section 2001.003, Government Code.

(4) "Defendant" means a party from whom a claimant seeks recovery of damages or other relief.

(5) "Rule" has the meaning assigned by Section 2001.003, Government Code.

(6) "State agency" means a board, commission, department, office, or agency that:

(A) is in the executive branch of state

1 government;

2 (B) is created by the constitution or a statute
3 of this state;

4 (C) has statewide jurisdiction; and

5 (D) has rulemaking authority involving the
6 subject matter of the disputed claim.

7 Sec. 26.002. APPLICABILITY. This chapter applies only to
8 an action in which:

9 (1) a claimant seeks recovery of damages or other
10 relief on behalf of a class of claimants; and

11 (2) a disputed claim in the action involves the
12 interpretation, application, or violation of an agency statute or
13 rule with respect to one or more defendants.

14 Sec. 26.003. HEARING. (a) On motion of a party, a court
15 shall conduct a hearing to determine whether an action should be
16 dismissed or abated under this chapter.

17 (b) Notice of the hearing must be given to the named parties
18 to the action on or before the 21st day before the date of the
19 hearing.

20 Sec. 26.004. DISMISSAL FOR FAILURE TO EXHAUST
21 ADMINISTRATIVE REMEDIES. (a) A court shall dismiss an action
22 without prejudice if:

23 (1) a state agency has the exclusive jurisdiction to
24 determine an issue in dispute or grant an administrative remedy
25 before the claimant can seek a judicial remedy; and

26 (2) one or more class representatives failed to
27 exhaust the state agency's administrative remedy.

1 (b) The court's dismissal order must identify the state
2 agency having exclusive jurisdiction and state the administrative
3 remedy available to the claimant.

4 (c) The limitations period applicable to an action
5 dismissed under this section is suspended for members of the class
6 or putative class with respect to the defendants named in the class
7 action commenced in a court of this state for a period beginning on
8 the date the dismissal order is signed and continuing while the
9 class representatives diligently pursue the administrative remedy
10 identified in the dismissal order.

11 Sec. 26.005. ABATEMENT OR DISMISSAL. (a) On motion of a
12 party filed on or before the 30th day after the date the court
13 signed the order certifying the action as a class action, a court
14 shall abate or dismiss without prejudice an action if the court
15 determines that:

16 (1) an issue in dispute in the action involves a
17 question of fact within the jurisdiction of a state agency to
18 determine;

19 (2) an issue in dispute in the action involves the
20 application, interpretation, or violation of an agency statute or
21 rule;

22 (3) a state agency, if allowed to do so, could make
23 findings of fact and conclusions of law or issue orders that would
24 aid the court in resolving the action; or

25 (4) a state agency, through a contested case
26 proceeding, could order all or part of the relief a claimant seeks.

27 (b) The court's abatement or dismissal order must identify

1 the state agency and state the agency statute or rule on which the
2 order is based.

3 (c) A court that abates an action under this section shall:

4 (1) refer specific issues or claims within a state
5 agency's jurisdiction to the agency for action; and

6 (2) direct the state agency to report to the court
7 periodically concerning the disposition of the matters referred to
8 the agency.

9 (d) The limitations period applicable to an action
10 dismissed under this section is suspended for members of the class
11 or putative class with respect to the defendants named in the class
12 action commenced in a court of this state for a period beginning on
13 the date the dismissal order is signed and continuing while the
14 class representatives diligently pursue the administrative remedy
15 identified in the dismissal order.

16 Sec. 26.006. ABATEMENT PERIOD. (a) The order must provide
17 that the abatement period is at least six months from the date the
18 court signs the abatement order.

19 (b) The court may extend the abatement period if the court
20 determines that the state agency is proceeding diligently to
21 resolve the matters the court referred to the agency.

22 (c) The abatement period ends when:

23 (1) the state agency takes such final action as the
24 agency is authorized regarding the matters the court referred to
25 the agency; or

26 (2) the court determines that the state agency is not
27 proceeding diligently to resolve the matters the court referred to

1 the agency.

2 Sec. 26.007. PROCEEDING AFTER ABATEMENT; DISMISSAL. (a)
3 After the abatement period ends, the court shall decide whether to
4 dismiss the action, proceed with the action as an individual
5 action, or proceed with the action as a class action.

6 (b) A court shall dismiss an action if the court determines
7 that:

8 (1) the state agency granted all or a substantial part
9 of the relief sought by the claimant and the class; or

10 (2) the relief granted by the state agency is an
11 adequate substitute for the relief sought in the action by the
12 claimant and the class.

13 (c) If the court does not dismiss the action, it shall
14 determine whether to proceed with the action as a class action or as
15 an individual action by considering or reconsidering the case in
16 light of class certification criteria. In determining whether a
17 class action is superior to other available methods for the fair and
18 efficient adjudication of the controversy, the court shall consider
19 the availability of judicial review of the state agency's decision
20 and of declaratory relief under Section 2001.038, Government Code,
21 concerning the validity and applicability of agency rules.

22 (d) Relief awarded to a claimant may be adequate even if the
23 relief does not include exemplary damages, multiple damages,
24 attorney's fees, or costs of court.

25 (e) If a person seeks judicial review of a state agency's
26 decision on an issue referred to the agency by the court, the court
27 may transfer the action to a county of proper venue for the judicial

1 review if the court determines that:

2 (1) the transfer is necessary to avoid the likelihood
3 of conflicting or inconsistent judicial decisions affecting the
4 parties to the action;

5 (2) the transfer would promote judicial economy;

6 (3) the transfer would not work a substantial
7 injustice to the parties to the action; and

8 (4) the balance of interests of the parties to the
9 action predominates in favor of transferring the action.

10 (f) If a person seeks declaratory relief under Section
11 2001.038, Government Code, concerning the validity or
12 applicability of a state agency rule involved in a state agency's
13 decision on a matter referred to the agency by the court, the court
14 shall transfer the action to Travis County.

15 SECTION 1.02. Title 6, Civil Practice and Remedies Code, is
16 amended by adding Chapter 140 to read as follows:

17 CHAPTER 140. ATTORNEY'S FEES AWARDED IN CLASS ACTIONS

18 Sec. 140.001. APPLICABILITY. (a) Except as provided by
19 Subsection (b), this chapter applies to an award of attorney's fees
20 in a class action notwithstanding:

21 (1) any agreement between the attorney or attorneys
22 for the class and any member of the class; or

23 (2) any other law or rule of court.

24 (b) This chapter does not apply to fees payable to the
25 attorney or attorneys by a named plaintiff client out of that
26 client's funds, including the client's share of the common fund
27 recovered for the class, under an agreement between the attorney or

1 attorneys and the client.

2 Sec. 140.002. NO RIGHT TO FEES CREATED. This chapter does
3 not create a right to an award of attorney's fees.

4 Sec. 140.003. AWARD OF FEES. If a court awards a fee in a
5 class action to the attorney or attorneys for the class, the fee
6 must be awarded out of a common fund or as measured by a common
7 benefit recovered for the class, and the fee must be computed as
8 provided by this chapter.

9 Sec. 140.004. DETERMINATION OF BASE FEE. (a) In any class
10 action in which an award of attorney's fees is to be made, the court
11 shall first determine the base fee as provided by this section.

12 (b) The court shall find:

13 (1) the number of hours that it considers to have been
14 reasonably and necessarily expended by the attorney or attorneys
15 for the class; and

16 (2) the hourly rates it considers to be appropriate
17 for the services provided by the attorney or attorneys for the
18 class.

19 (c) The rates in Subsection (b)(2) must be based on and
20 cannot exceed the rates customarily charged in the locality for
21 similar legal services in nonclass litigation.

22 (d) To compute the base fee, the court shall multiply the
23 hours found in Subsection (b)(1) by the rates found in Subsection
24 (b)(2).

25 Sec. 140.005. INCREASE OR DECREASE OF BASE FEE. (a) Except
26 as provided by Subsection (b), the court may increase or decrease
27 the base fee determined under Section 140.004 by applying the

1 following factors:

2 (1) the novelty and difficulty of the issues involved
3 in the action;

4 (2) the skill required to properly perform the legal
5 services performed by the attorney or attorneys for the class;

6 (3) the amount of money involved in the action and the
7 results obtained;

8 (4) the time limitations imposed by the class or the
9 circumstances; and

10 (5) the experience, reputation, and ability of the
11 attorney or attorneys performing services for the class.

12 (b) The total fees awarded by the court may not exceed the
13 lesser of:

14 (1) 25 percent of the amounts collected by class
15 members out of the common fund or as measured by a common benefit
16 recovered for the class; or

17 (2) four times the base fee as determined under
18 Section 140.004.

19 Sec. 140.006. ACTUAL EXPENSES AND COSTS. In addition to the
20 fee determined by the court under this chapter, the court may award
21 the attorney or attorneys representing the class all reasonable
22 expenses and costs of litigation actually incurred by the attorney
23 or attorneys on behalf of the class.

24 SECTION 1.03. Section 22.225, Government Code, is amended
25 by amending Subsections (b) and (d) and adding Subsection (e) to
26 read as follows:

27 (b) Except as provided by Subsection (c) or (d), a judgment

1 of a court of appeals is conclusive on the law and facts, and a
2 petition for review [~~writ of error~~] is not allowed to [~~from~~] the
3 supreme court, in the following civil cases:

4 (1) a case appealed from a county court or from a
5 district court when, under the constitution, a county court would
6 have had original or appellate jurisdiction of the case, with the
7 exception of a probate matter or a case involving state revenue laws
8 or the validity or construction of a statute;

9 (2) a case of a contested election other than a
10 contested election for a state officer, with the exception of a case
11 where the validity of a statute is questioned by the decision;

12 (3) an appeal from an interlocutory order appointing a
13 receiver or trustee or from other interlocutory appeals that are
14 allowed by law;

15 (4) an appeal from an order or judgment in a suit in
16 which a temporary injunction has been granted or refused or when a
17 motion to dissolve has been granted or overruled; and

18 (5) all other cases except the cases where appellate
19 jurisdiction is given to the supreme court and is not made final in
20 the courts of appeals.

21 (d) A petition for review [~~writ of error~~] is allowed to
22 [~~from~~] the supreme court for an appeal from an interlocutory order
23 described by Section 51.014(a)(3) or (6) [~~51.014(6)~~], Civil
24 Practice and Remedies Code.

25 (e) For purposes of Subsection (c), one court holds
26 differently from another when there is inconsistency in their
27 respective decisions that should be clarified to remove unnecessary

1 uncertainty in the law and unfairness to litigants.

2 SECTION 1.04. Sections 51.014(a), (b), and (c), Civil
3 Practice and Remedies Code, are amended to read as follows:

4 (a) A person may appeal from an interlocutory order of a
5 district court, county court at law, or county court that:

6 (1) appoints a receiver or trustee;

7 (2) overrules a motion to vacate an order that
8 appoints a receiver or trustee;

9 (3) certifies or refuses to certify a class in a suit
10 brought under Rule 42 of the Texas Rules of Civil Procedure;

11 (4) grants or refuses a temporary injunction or grants
12 or overrules a motion to dissolve a temporary injunction as
13 provided by Chapter 65;

14 (5) denies a motion for summary judgment that is based
15 on an assertion of immunity by an individual who is an officer or
16 employee of the state or a political subdivision of the state;

17 (6) denies a motion for summary judgment that is based
18 in whole or in part upon a claim against or defense by a member of
19 the electronic or print media, acting in such capacity, or a person
20 whose communication appears in or is published by the electronic or
21 print media, arising under the free speech or free press clause of
22 the First Amendment to the United States Constitution, or Article I
23 [~~1~~], Section 8, of the Texas Constitution, or Chapter 73;

24 (7) grants or denies the special appearance of a
25 defendant under Rule 120a, Texas Rules of Civil Procedure, except
26 in a suit brought under the Family Code; [~~or~~]

27 (8) grants or denies a plea to the jurisdiction by a

1 governmental unit as that term is defined in Section 101.001;

2 (9) denies all or part of the relief sought by a motion
3 under Section 13.01(b), Medical Liability and Insurance
4 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
5 Statutes); or

6 (10) grants relief sought by a motion under Section
7 13.01(1), Medical Liability and Insurance Improvement Act of Texas
8 (Article 4590i, Vernon's Texas Civil Statutes).

9 (b) An interlocutory appeal under Subsection (a), other
10 than an appeal under Subsection (a)(4), stays [~~shall have the~~
11 ~~effect of staying~~] the commencement of a trial in the trial court
12 pending resolution of the appeal. An interlocutory appeal under
13 Subsection (a)(3), (5), or (8) also stays all other proceedings in
14 the trial court pending resolution of that appeal.

15 (c) A denial of a motion for summary judgment, special
16 appearance, or plea to the jurisdiction described by Subsection
17 (a)(5), (7), or (8) is not subject to the automatic stay [~~of the~~
18 ~~commencement of trial~~] under Subsection (b) unless the motion,
19 special appearance, or plea to the jurisdiction is filed and
20 requested for submission or hearing before the trial court not
21 later than the later of:

22 (1) a date set by the trial court in a scheduling order
23 entered under the Texas Rules of Civil Procedure; or

24 (2) the 180th day after the date the defendant files:
25 (A) the original answer;
26 (B) the first other responsive pleading to the
27 plaintiff's petition; or

1 (C) if the plaintiff files an amended pleading
2 that alleges a new cause of action against the defendant and the
3 defendant is able to raise a defense to the new cause of action
4 under Subsection (a)(5), (7), or (8), the responsive pleading that
5 raises that defense.

6 SECTION 1.05. Section 22.001, Government Code, is amended
7 by adding Subsection (e) to read as follows:

8 (e) For purposes of Subsection (a)(2), one court holds
9 differently from another when there is inconsistency in their
10 respective decisions that should be clarified to remove unnecessary
11 uncertainty in the law and unfairness to litigants.

12 ARTICLE 2. SETTLEMENT

13 SECTION 2.01. Subtitle C, Title 2, Civil Practice and
14 Remedies Code, is amended by adding Chapter 42 to read as follows:

15 CHAPTER 42. SETTLEMENT AND RECOVERY OF LITIGATION COSTS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 42.001. DEFINITIONS. In this chapter:

18 (1) "Claim" means a request, including a counterclaim,
19 cross-claim, or third-party claim, to recover monetary damages or
20 to obtain other relief. The term does not include a request for an
21 injunction or to recover litigation costs.

22 (2) "Claimant" means a person making a claim.

23 (3) "Defendant" means a person from whom a claimant
24 seeks recovery on a claim, including a counterdefendant,
25 cross-defendant, or third-party defendant.

26 (4) "Governmental unit" means the state, a unit of
27 state government, or a political subdivision of this state.

1 (5) "Litigation costs" means money actually spent and
2 obligations actually incurred that are directly related to an
3 action. "Litigation costs" include:

4 (A) reasonable and necessary attorney's fees;

5 (B) court costs;

6 (C) reasonable and necessary deposition costs;

7 and

8 (D) reasonable fees for not more than two expert
9 witnesses.

10 (6) "Settlement offer" means an offer to settle or
11 compromise a claim made in compliance with Section 42.051.

12 Sec. 42.002. APPLICABILITY AND EFFECT. (a) This chapter
13 does not apply to:

14 (1) an action in which a class has been certified; or

15 (2) an action by or against a governmental unit.

16 (b) Without regard to whether an action is brought by itself
17 or in conjunction with other actions, this chapter does not apply to
18 an action:

19 (1) brought under the Family Code;

20 (2) brought under Chapter 27, Property Code;

21 (3) brought under the Texas Probate Code or Chapter
22 115, Property Code;

23 (4) brought under the Tax Code;

24 (5) brought on behalf of a minor or person of unsound
25 mind;

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

1 (7) brought under the Longshore and Harbor Workers'
2 Compensation Act (33 U.S.C. Section 901 et seq.), as amended;

3 (8) brought under the Jones Act (46 U.S.C. Section
4 688), as amended;

5 (9) brought in small claims court or justice court;

6 (10) brought by a homeowners association to enforce
7 deed restrictions or to collect delinquent fees, dues, or
8 assessments;

9 (11) brought under the Federal Employers' Liability
10 Act (45 U.S.C. Section 51 et seq.), as amended;

11 (12) brought under the Safety Appliance Acts (49
12 U.S.C. Sections 20102, 20301, 20302, 20304, 21302, and 21304), as
13 amended; or

14 (13) brought under the Locomotive Inspection Act (49
15 U.S.C. Sections 20102, 20701-20703, 21302, and 21304), as amended.

16 (c) This chapter does not limit or affect the ability of any
17 person to:

18 (1) make an offer to settle or compromise a claim that
19 does not comply with this chapter; or

20 (2) offer to settle or compromise a claim to which this
21 chapter does not apply.

22 (d) An offer to settle or compromise that does not comply
23 with Section 42.051 or an offer to settle or compromise made in an
24 action to which this chapter does not apply does not entitle the
25 offering party to recover litigation costs under this chapter.

26 (e) This chapter does not apply to an action:

27 (1) on a contract that specifies remedies for breach,

1 including specific performance, liquidated damages, or attorney's
2 fees;

3 (2) on a negotiable instrument; or

4 (3) for a debt, including an action on a sworn account
5 or for services rendered.

6 Sec. 42.003. MODIFICATION OF TIME LIMITS. A court may
7 modify the time limits specified in this chapter by order resulting
8 from a pretrial conference conducted under Rule 166, Texas Rules of
9 Civil Procedure.

10 Sec. 42.004. SERVICE. When this chapter requires a writing
11 to be served on another party, service is adequate if it is
12 performed in a manner described in Rule 21a, Texas Rules of Civil
13 Procedure.

14 Sec. 42.005. APPLICABILITY OF CHAPTER IN RELATION TO
15 CERTAIN CRIMINAL BEHAVIOR. Without regard to whether an action is
16 brought by itself or in conjunction with other actions, this
17 chapter does not apply to an action arising from conduct of the
18 defendant described in any of the following sections of the Penal
19 Code:

20 (1) Section 49.04 (driving while intoxicated);

21 (2) Section 49.05 (flying while intoxicated);

22 (3) Section 49.06 (boating while intoxicated);

23 (4) Section 49.065 (assembling or operating an
24 amusement ride while intoxicated);

25 (5) Section 49.07 (intoxication assault); or

26 (6) Section 49.08 (intoxication manslaughter).

27 Sec. 42.006. ADDITIONAL APPLICABILITY PROVISION; CERTAIN

1 CRIMINAL BEHAVIOR. Without regard to whether an action is brought
2 by itself or in conjunction with other actions, this chapter does
3 not apply to an action in which the defendant is a person who has
4 engaged in conduct described as a felony in the following Penal Code
5 provisions if the conduct was committed knowingly or intentionally,
6 as defined by Sections 6.03(a) and (b), Penal Code:

7 (1) Section 19.02 (murder);

8 (2) Section 19.03 (capital murder);

9 (3) Section 20.03 (kidnapping);

10 (4) Section 20.04 (aggravated kidnapping);

11 (5) Section 22.02 (aggravated assault);

12 (6) Section 22.011 (sexual assault);

13 (7) Section 22.021 (aggravated sexual assault);

14 (8) Section 22.04 (injury to a child, elderly
15 individual, or disabled individual);

16 (9) Section 32.21 (forgery);

17 (10) Section 32.43 (commercial bribery);

18 (11) Section 32.45 (misapplication of fiduciary
19 property or property of financial institution);

20 (12) Section 32.46 (securing execution of a document
21 by deception);

22 (13) Section 32.47 (fraudulent destruction, removal,
23 or concealment of writing); or

24 (14) Chapter 31 (theft) the punishment level for which
25 is a felony of the third degree or higher.

26 Sec. 42.007. APPLICABILITY OF CHAPTER: NONMONETARY TERMS.
27 Notwithstanding any other provision of this chapter, if a monetary

1 settlement offer is made conditioned on terms other than monetary
2 relief pled by the party to whom the settlement offer was made and
3 recoverable by that party in law or in equity, other than the
4 requirement for a release and indemnity of claim by and through the
5 claimant, then this chapter does not apply unless the defendant
6 succeeds in obtaining those other terms in the judgment.

7 [Sections 42.008-42.050 reserved for expansion]

8 SUBCHAPTER B. AWARDING LITIGATION COSTS

9 Sec. 42.051. SETTLEMENT OFFER. (a) A defendant or a group
10 of defendants may serve on a claimant a settlement offer to settle
11 all claims in the action between that defendant or those defendants
12 and the claimant.

13 (b) The settlement offer must:

14 (1) be in writing;

15 (2) state that it is a settlement offer under this
16 chapter;

17 (3) state the terms by which the claims may be settled;

18 (4) state a deadline by which the settlement offer
19 must be accepted; and

20 (5) be served on the claimant to whom the settlement
21 offer is made.

22 (c) A defendant or group of defendants may not make a
23 settlement offer under this section before the 90th day after the
24 later of:

25 (1) the date any of the offering defendants filed a
26 responsive pleading; or

27 (2) the date any of the offering defendants otherwise

1 appeared in the action.

2 (d) A defendant or group of defendants may not make a
3 settlement offer under this section after the 30th day before the
4 date set for trial.

5 (e) The parties are not required to file a settlement offer
6 with the court.

7 Sec. 42.052. ACCEPTANCE OF SETTLEMENT OFFER. (a) A
8 claimant may accept a settlement offer made under this chapter on or
9 before 5 p.m. on the 30th day after the date the claimant received
10 the settlement offer or before the deadline stated in the
11 settlement offer, whichever is later.

12 (b) Acceptance of a settlement offer must be:

13 (1) in writing; and

14 (2) served on the defendant or defendants who made the
15 settlement offer.

16 Sec. 42.053. WITHDRAWING SETTLEMENT OFFER. (a) A
17 defendant or group of defendants may withdraw a settlement offer by
18 serving a written withdrawal on the claimant to whom the settlement
19 offer was made before the claimant accepts the settlement offer. A
20 claimant may not accept a settlement offer after it is withdrawn.

21 (b) If a settlement offer is withdrawn, the defendant or
22 group of defendants that made the settlement offer is not entitled
23 to recover litigation costs under this chapter.

24 Sec. 42.054. REJECTION OF SETTLEMENT OFFER. For purposes
25 of this chapter, a settlement offer is rejected if:

26 (1) the claimant to whom the settlement offer was made
27 rejects the settlement offer by serving a written rejection on any

1 defendant making the settlement offer; or

2 (2) the settlement offer is not withdrawn and is not
3 accepted before the deadline for accepting the offer.

4 Sec. 42.055. AWARD OF LITIGATION COSTS. (a) Any defendant
5 who makes a settlement offer under this chapter to a claimant
6 seeking monetary relief shall recover litigation costs from the
7 claimant if:

8 (1) the settlement offer is rejected;

9 (2) the amount of monetary relief to be awarded in the
10 judgment, exclusive of any litigation costs awarded under this
11 chapter and exclusive of any attorney's fees, expenses, and costs
12 incurred by the claimant after rejection of the offer, is more
13 favorable to the defendant or group of defendants who made the
14 settlement offer than the settlement offer; and

15 (3) the difference between the amount of monetary
16 relief to be awarded to the claimant in the judgment, exclusive of
17 any litigation costs awarded under this chapter and exclusive of
18 any attorney's fees, expenses, and costs incurred by the claimant
19 after rejection of the offer, and the amount of the settlement offer
20 is equal to or greater than 10 percent of the amount of the
21 settlement offer.

22 (b) Any defendant who makes a settlement offer to a claimant
23 seeking nonmonetary relief, other than injunctive relief, may
24 recover litigation costs from the claimant if:

25 (1) the settlement offer is rejected; and

26 (2) the judgment, exclusive of any litigation costs
27 awarded under this chapter and exclusive of any attorney's fees,

1 expenses, and costs incurred by the claimant after rejection of the
2 offer, is more favorable to the defendant or group of defendants who
3 made the settlement offer than the settlement offer.

4 (c) Litigation costs awarded to a defendant under this
5 section include only those litigation costs incurred by the
6 defendant who made a settlement offer after the rejection of the
7 earliest settlement offer that entitles the defendant to an award
8 of litigation costs under this section.

9 (d) Litigation costs awarded under this section shall:

10 (1) be awarded in the judgment; and

11 (2) offset the claimant's recovery against the
12 offering defendant.

13 (e) The court shall determine the amount of litigation costs
14 awarded based on written or oral evidence presented to the court.

15 In jury trials:

16 (1) the evidence must be presented outside the
17 presence of the jury; and

18 (2) the presentation of evidence may be made after the
19 jury has reached its verdict.

20 (f) The trial judge who presided over the trial of the case
21 shall act as the finder of fact in regard to the award of litigation
22 costs under this section. If that judge is unable to do so, the
23 local presiding judge shall appoint another judge to hear and
24 determine all issues related to the award.

25 (g) An award of litigation costs under this section may be
26 reviewed on appeal from a final judgment for abuse of discretion.

27 Sec. 42.056. LIMITATION ON LITIGATION COSTS. (a) The

1 amount of litigation costs awarded under this chapter shall not
2 exceed the claimant's total recovery, less any statutory liens, in
3 connection with the transactions or occurrences giving rise to the
4 claim.

5 (b) The claimant's total recovery under this section does
6 not include the proceeds of an insurance policy paid to the claimant
7 as a beneficiary of the policy, unless the proceeds are the subject
8 of the litigation.

9 (c) The claimant's total recovery under this section
10 includes:

11 (1) the amount of any monetary relief awarded to the
12 claimant in the judgment; and

13 (2) the amount of any money paid or to be paid to the
14 claimant by any person in consideration of actual or potential
15 liability in connection with the transactions or occurrences giving
16 rise to the claim.

17 (d) If litigation costs are awarded against a claimant under
18 this chapter, the claimant shall not be awarded any attorney's
19 fees, expenses, or costs to which the claimant would otherwise be
20 entitled under any other law that were incurred by the claimant
21 after the claimant's rejection of the earliest settlement offer
22 that entitles the defendant or group of defendants to an award of
23 litigation costs under this section.

24 Sec. 42.057. ADMISSIBILITY OF EVIDENCE. (a) This chapter
25 does not affect the admissibility or inadmissibility of evidence as
26 provided in the Texas Rules of Evidence.

27 (b) The provisions of this chapter may not be made known to

1 the jury through any means, including voir dire, introduction into
2 evidence, instruction, or argument.

3 ARTICLE 3. VENUE; FORUM NON CONVENIENS

4 SECTION 3.01. Chapter 15, Civil Practice and Remedies Code,
5 is amended by adding Subchapter F to read as follows:

6 SUBCHAPTER F. CONSOLIDATION OF MULTIDISTRICT LITIGATION FOR
7 PRETRIAL PROCEEDINGS

8 Sec. 15.151. PURPOSE. The purpose of this subchapter is to
9 facilitate the just and efficient resolution of litigation in the
10 courts of this state. To accomplish this purpose, this subchapter
11 shall be construed in harmony with federal judicial interpretation
12 of comparable federal multidistrict litigation statutes to the
13 extent consistent with this purpose.

14 Sec. 15.152. DEFINITIONS. In this subchapter:

15 (1) "Panel" means the judicial panel on multidistrict
16 litigation authorized by Subchapter H, Chapter 74, Government Code.

17 (2) "Related" means that cases involve common material
18 issues of fact.

19 Sec. 15.153. APPLICABILITY. (a) This subchapter applies
20 to any civil action, including any class action, that is one of
21 multiple related cases pending in the district courts of this
22 state.

23 (b) This subchapter does not apply to any action in which
24 this state is a complainant arising under the antitrust laws.

25 Sec. 15.154. TRANSFER FOR COORDINATED OR CONSOLIDATED
26 PRETRIAL PROCEEDINGS. The panel may transfer any case to which this
27 subchapter applies to any district court for the purpose of

1 allowing coordinated or consolidated pretrial proceedings in
2 related cases.

3 Sec. 15.155. INITIATION OF TRANSFER PROCEEDINGS. (a)
4 Proceedings to transfer a case under this subchapter may be
5 initiated by:

6 (1) the panel on its own initiative; or

7 (2) a motion filed with the panel by a party in a case
8 to which this subchapter applies.

9 (b) A motion filed under Subsection (a)(2) must state:

10 (1) the number and style of the case that is the
11 subject of the motion;

12 (2) the number and style of the related case or cases
13 with which coordinated or consolidated pretrial proceedings are
14 sought, and the court and county in which the related case or cases
15 are pending;

16 (3) the material questions of fact common to the
17 cases;

18 (4) the reasons why coordinated or consolidated
19 pretrial proceedings would promote the just and efficient conduct
20 of the cases; and

21 (5) whether the parties to the case that is the subject
22 of the motion agree to the motion.

23 (c) A copy of the motion shall be filed by the movant in each
24 case identified in Subsections (b)(1) and (2).

25 Sec. 15.156. DETERMINATION OF TRANSFER. (a) After notice
26 to all parties in all related cases that may be subject to
27 coordinated or consolidated pretrial proceedings, and a hearing,

1 the panel shall order the transfer of any or all related cases to
2 one or more district courts for coordinated or consolidated
3 pretrial proceedings if it determines that transfer:

4 (1) is for the convenience of parties and witnesses;
5 and

6 (2) will promote the just and efficient conduct of the
7 actions.

8 (b) Any party to any case that would be affected by the
9 proceedings under this subchapter may appear at the hearing and
10 offer evidence on the propriety of coordinated or consolidated
11 pretrial proceedings in the related cases.

12 (c) The panel's order directing or denying transfer must be
13 supported by findings of fact and conclusions of law.

14 Sec. 15.157. FILING OF PANEL ORDERS. (a) Any order of the
15 panel shall be filed by the panel in the district court in which the
16 transfer hearing is to be or has been held.

17 (b) A copy of an order directing or denying transfer of
18 related cases shall be sent by the panel to both the transferee and
19 transferor courts.

20 (c) An order directing the transfer of related cases for
21 coordinated or consolidated pretrial proceedings is effective when
22 filed in the district court in which the transfer hearing was held.

23 Sec. 15.158. REVIEW OF PANEL ORDERS. (a) Review of an
24 order of the panel is by extraordinary writ.

25 (b) A petition for an extraordinary writ to review an order
26 of the panel in regard to setting a transfer hearing, or to review
27 any other order of the panel made before the order either directing

1 or denying transfer is made, must be filed in the court of appeals
2 having jurisdiction over the district in which the transfer hearing
3 is to be or has been held.

4 (c) A petition for an extraordinary writ to review an order
5 directing the transfer of one or more related cases, or to review
6 any order made after the transfer order is made, must be filed in
7 the court of appeals having jurisdiction over the transferee
8 district.

9 (d) An order of the panel denying a motion to transfer for
10 coordinated or consolidated pretrial proceedings may not be
11 appealed or reviewed.

12 Sec. 15.159. ASSIGNMENT. (a) On request of the panel, a
13 district judge may be assigned to preside in the transferee
14 district over coordinated or consolidated pretrial proceedings
15 being conducted pursuant to this subchapter.

16 (b) The assignment may be made by the chief justice of the
17 supreme court or by the presiding judge of the administrative
18 judicial region in which the transferee court sits, in accordance
19 with Subchapter C, Chapter 74, Government Code.

20 Sec. 15.160. CONDUCT OF PROCEEDINGS. (a) The coordinated
21 or consolidated pretrial proceedings shall be conducted by the
22 judge or judges to whom the cases are assigned by the panel.

23 (b) When conducting pretrial proceedings in cases
24 coordinated or consolidated for pretrial proceedings, the judge or
25 judges to whom the cases are assigned, the members of the panel, and
26 other district judges designated when needed by the panel may
27 exercise the powers of a district judge in any district, including

1 deciding motions to transfer venue and motions for summary
2 judgment.

3 (c) The judge or judges to whom the cases are assigned shall
4 give priority to the pretrial proceedings in cases coordinated or
5 consolidated under this subchapter over all other matters pending
6 before them.

7 Sec. 15.161. REMAND. A court to which a case is transferred
8 under this subchapter shall remand the transferred case, at or
9 before the conclusion of pretrial proceedings, to the district
10 court from which it was transferred unless it has been terminated,
11 except that the court may separate any claim, cross-claim,
12 counterclaim, or third-party claim and remand the separated claim
13 before the remainder of the case is remanded.

14 SECTION 3.02. Chapter 74, Government Code, is amended by
15 adding Subchapter H to read as follows:

16 SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

17 Sec. 74.161. JUDICIAL PANEL. (a) The judicial panel on
18 multidistrict litigation consists of seven justices of the courts
19 of appeals designated from time to time by the chief justice of the
20 supreme court. Two panel members may not be from the same court of
21 appeals district.

22 (b) The concurrence of four members shall be necessary to
23 any action by the panel.

24 Sec. 74.162. OPERATION; RULES. (a) The judicial panel on
25 multidistrict litigation shall operate subject to rules of
26 administration for multidistrict litigation practice and procedure
27 adopted by the supreme court under Section 74.024.

1 (b) The panel may prescribe additional rules for the conduct
2 of its business not inconsistent with Subchapter F, Chapter 15,
3 Civil Practice and Remedies Code, and the rules of administration
4 for multidistrict litigation practice and procedure, as adopted by
5 the supreme court.

6 SECTION 3.03. Section 15.003, Civil Practice and Remedies
7 Code, is amended to read as follows:

8 Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING
9 PLAINTIFFS. (a) In a suit in which there is ~~[where]~~ more than one
10 plaintiff, whether the plaintiffs are included by joinder, by
11 intervention, because the lawsuit was begun by more than one
12 plaintiff, or otherwise, [is—joined] each plaintiff must,
13 independently of every ~~[any]~~ other plaintiff, establish proper
14 venue. If a plaintiff cannot independently [Any person who is
15 unable to] establish proper venue, that plaintiff's part of the
16 suit, including all of that plaintiff's claims and causes of
17 action, must be transferred to a county of proper venue or
18 dismissed, as is appropriate, [may not join or maintain venue for
19 the suit as a plaintiff] unless that plaintiff ~~[the person]~~,
20 independently of every ~~[any]~~ other plaintiff, establishes that:

21 (1) joinder of that plaintiff or intervention in the
22 suit by that plaintiff is proper under the Texas Rules of Civil
23 Procedure;

24 (2) maintaining venue as to that plaintiff in the
25 county of suit does not unfairly prejudice another party to the
26 suit;

27 (3) there is an essential need to have that plaintiff's

1 ~~[the person's]~~ claim tried in the county in which the suit is
2 pending; and

3 (4) the county in which the suit is pending is a fair
4 and convenient venue for that plaintiff ~~[the person seeking to join~~
5 ~~in or maintain venue for the suit]~~ and all ~~[the]~~ persons against
6 whom the suit is brought.

7 (b) An interlocutory appeal may be taken of a trial court's
8 determination under Subsection (a) that:

9 (1) a plaintiff did or did not independently establish
10 proper venue; or

11 (2) a plaintiff that did not independently establish
12 proper venue did or did not establish the items prescribed by
13 Subsections (a)(1)-(4) ~~[A person may not intervene or join in a~~
14 ~~pending suit as a plaintiff unless the person, independently of any~~
15 ~~other plaintiff.~~

16 ~~[(1) establishes proper venue for the county in which~~
17 ~~the suit is pending; or~~

18 ~~[(2) satisfies the requirements of Subdivisions (1)~~
19 ~~through (4) of Subsection (a)].~~

20 (c) An ~~[Any person seeking intervention or joinder, who is~~
21 ~~unable to independently establish proper venue, or a party opposing~~
22 ~~intervention or joinder of such a person may contest the decision of~~
23 ~~the trial court allowing or denying intervention or joinder by~~
24 ~~taking an]~~ interlocutory appeal permitted by Subsection (b) must be
25 taken to the court of appeals district in which the trial court is
26 located under the procedures established for interlocutory
27 appeals. The appeal may be taken by a party that is affected by the

1 trial court's determination under Subsection (a). [~~The appeal must~~
2 ~~be perfected not later than the 20th day after the date the trial~~
3 ~~court signs the order denying or allowing the intervention or~~
4 ~~joinder.~~] The court of appeals shall:

5 (1) determine whether the trial court's order [~~joinder~~
6 ~~or intervention~~] is proper based on an independent determination
7 from the record and not under either an abuse of discretion or
8 substantial evidence standard; and

9 (2) render judgment [~~its decision~~] not later than the
10 120th day after the date the appeal is perfected [~~by the complaining~~
11 ~~party~~].

12 (d) An interlocutory appeal under Subsection (b) has the
13 effect of staying the commencement of trial in the trial court
14 pending resolution of the appeal.

15 SECTION 3.04. Section 71.051, Civil Practice and Remedies
16 Code, is amended by amending Subsection (a) and adding Subsection
17 (j) to read as follows:

18 (a) If [~~With respect to a plaintiff who is not a legal~~
19 ~~resident of the United States, if~~] a court of this state, on written
20 motion of a party, finds that in the interest of justice a claim or
21 action to which this section applies would be more properly heard in
22 a forum outside this state, the court shall [~~may~~] decline to
23 exercise jurisdiction under the doctrine of forum non conveniens
24 and shall [~~may~~] stay or dismiss the claim or action [~~in whole or in~~
25 ~~part~~] on any conditions that may be just.

26 (j) This section does not affect the application of the
27 common law doctrine of forum non conveniens to actions other than

1 actions for personal injury or wrongful death.

2 SECTION 3.05. Section 23.101(a), Government Code, is
3 amended to read as follows:

4 (a) The trial courts of this state shall regularly and
5 frequently set hearings and trials of pending matters, giving
6 preference to hearings and trials of the following:

7 (1) temporary injunctions;

8 (2) criminal actions, with the following actions given
9 preference over other criminal actions:

10 (A) criminal actions against defendants who are
11 detained in jail pending trial;

12 (B) criminal actions involving a charge that a
13 person committed an act of family violence, as defined by Section
14 71.01, Family Code; and

15 (C) an offense under:

16 (i) Section 21.11, Penal Code;

17 (ii) Chapter 22, Penal Code, if the victim
18 of the alleged offense is younger than 17 years of age;

19 (iii) Section 25.02, Penal Code, if the
20 victim of the alleged offense is younger than 17 years of age; or

21 (iv) Section 25.06, Penal Code;

22 (3) election contests and suits under the Election
23 Code;

24 (4) orders for the protection of the family under
25 Section 3.581, 71.11, or 71.12, Family Code;

26 (5) appeals of final rulings and decisions of the
27 Texas Workers' Compensation Commission and claims under the Federal

1 Employers' Liability Act and the Jones Act; [~~and~~]

2 (6) appeals of final orders of the commissioner of the
3 General Land Office under Section 51.3021, Natural Resources Code;
4 and

5 (7) multidistrict litigation.

6 SECTION 3.06. The following sections of the Civil Practice
7 and Remedies Code are repealed:

8 (1) 71.051(b), (c), (d), (e), (f), (g), and (h); and

9 (2) 71.052.

10 ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND
11 DESIGNATION OF RESPONSIBLE PARTIES

12 SECTION 4.01. Section 33.002(a), Civil Practice and
13 Remedies Code, is amended to read as follows:

14 (a) This [~~Except as provided by Subsections (b) and (c),~~
15 ~~this~~] chapter applies to:

16 (1) any cause of action based on tort in which a
17 defendant, settling person, or responsible third party is found
18 responsible for a percentage of the harm for which relief is sought;
19 or

20 (2) any action brought under the Deceptive Trade
21 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
22 Business & Commerce Code) in which a defendant, settling person, or
23 responsible third party is found responsible for a percentage of
24 the harm for which relief is sought.

25 SECTION 4.02. Section 33.003, Civil Practice and Remedies
26 Code, is amended to read as follows:

27 Sec. 33.003. DETERMINATION OF PERCENTAGE OF

1 RESPONSIBILITY. (a) The trier of fact, as to each cause of action
2 asserted, shall determine the percentage of responsibility, stated
3 in whole numbers, for the following persons with respect to each
4 person's causing or contributing to cause in any way the harm for
5 which recovery of damages is sought, whether by negligent act or
6 omission, by any defective or unreasonably dangerous product, by
7 other conduct or activity that violates an applicable legal
8 standard, or by any combination of these:

9 (1) each claimant;

10 (2) each defendant;

11 (3) each settling person; and

12 (4) each responsible third party who has been
13 designated [~~joined~~] under Section 33.004.

14 (b) This section does not require a submission to the jury
15 of a question regarding conduct by any person without sufficient
16 evidence to support the submission.

17 SECTION 4.03. The heading to Section 33.004, Civil Practice
18 and Remedies Code, is amended to read as follows:

19 Sec. 33.004. DESIGNATION [~~JOINER~~] OF RESPONSIBLE THIRD
20 PARTY [~~PARTIES~~].

21 SECTION 4.04. Section 33.004, Civil Practice and Remedies
22 Code, is amended by amending Subsections (a) and (b) and adding
23 Subsections (f)-(j) to read as follows:

24 (a) A [~~Except as provided in Subsections (d) and (e), prior~~
25 ~~to the expiration of limitations on the claimant's claim for~~
26 ~~damages against the defendant and on timely motion made for that~~
27 ~~purpose, a~~] defendant may seek to designate a person as [~~join~~] a

1 responsible third party by filing a motion for leave to designate
2 that person as a responsible third party [~~who has not been sued by~~
3 ~~the claimant~~]. The motion must be filed on or before the 60th day
4 before the trial date unless the court finds good cause to allow the
5 motion to be filed at a later date.

6 (b) Nothing in this section affects [~~shall affect~~] the
7 third-party practice as previously recognized in the rules and
8 statutes of this state with regard to the assertion by a defendant
9 of rights to contribution or indemnity. Nothing in this section
10 affects [~~shall affect~~] the filing of cross-claims or counterclaims.

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

15 (g) If an objection to the motion for leave is timely filed,
16 the court shall grant leave to designate the person as a responsible
17 third party unless the objecting party establishes:

18 (1) the defendant did not plead sufficient facts
19 concerning the alleged liability of the responsible person to
20 satisfy the pleading requirements of the Texas Rules of Civil
21 Procedure; and

22 (2) after having been granted leave to replead, the
23 defendant failed to plead sufficient facts concerning the alleged
24 liability of the responsible person to satisfy the pleading
25 requirements of the Texas Rules of Civil Procedure.

26 (h) By granting a motion for leave to designate a person as a
27 responsible third party, the person named in the motion is

1 designated as a responsible third party for purposes of this
2 chapter without further action by the court or any party.

3 (i) For a person whose identity is not known, the court
4 shall grant a motion for leave to designate that person as a
5 responsible third party if the court determines that the motion
6 otherwise should be granted under Subsection (f) or (g) and the
7 defendant has stated in the motion all known identifying
8 characteristics of the person. In that circumstance, the person
9 will be denominated as "Jane Doe" or "John Doe" until the person's
10 identity is known.

11 (j) The filing or granting of a motion for leave to
12 designate a person as a responsible third party or a finding of
13 fault against the person:

14 (1) does not by itself impose liability on the person;
15 and

16 (2) may not be used in any other proceeding, on the
17 basis of res judicata, collateral estoppel, or any other legal
18 theory, to impose liability on the person.

19 SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil
20 Practice and Remedies Code, are amended to read as follows:

21 (1) "Claimant" means a person [~~party~~] seeking recovery
22 of damages [~~pursuant to the provisions of Section 33.001~~],
23 including a plaintiff, counterclaimant, cross-claimant, or
24 third-party plaintiff [~~seeking recovery of damages~~]. In an action
25 in which a party seeks recovery of damages for injury to another
26 person, damage to the property of another person, death of another
27 person, or other harm to another person, "claimant" includes:

1 (A) the person who was injured, was harmed, or
2 died or whose property was damaged; and

3 (B) any person who is [~~both that other person and~~
4 ~~the party~~] seeking, has sought, or could seek recovery of damages
5 for the injury, harm, or death of that person or for the damage to
6 the property of that person [~~pursuant to the provisions of Section~~
7 ~~33.001~~].

8 (2) "Defendant" includes any person [~~party~~] from whom,
9 at the time of the submission of the case to the trier of fact, a
10 claimant seeks recovery of damages [~~pursuant to the provisions of~~
11 ~~Section 33.001 at the time of the submission of the case to the~~
12 ~~trier of fact~~].

13 (5) "Settling person" means a person who [~~at the time~~
14 ~~of submission~~] has, at any time, paid or promised to pay money or
15 anything of monetary value to a claimant [~~at any time~~] in
16 consideration of potential liability [~~pursuant to the provisions of~~
17 ~~Section 33.001~~] with respect to the personal injury, property
18 damage, death, or other harm for which recovery of damages is
19 sought.

20 (6) [~~(A)~~] "Responsible third party" means any person
21 who is alleged to have caused or contributed to causing in any way
22 the harm for which recovery of damages is sought, whether by
23 negligent act or omission, by any defective or unreasonably
24 dangerous product, by other conduct or activity that violates an
25 applicable legal standard, or by any combination of these. [~~to whom~~
26 ~~all of the following apply:~~

27 [~~(i) the court in which the action was filed~~

1 ~~could exercise jurisdiction over the person;~~

2 ~~[(ii) the person could have been, but was~~
3 ~~not, sued by the claimant; and~~

4 ~~[(iii) the person is or may be liable to the~~
5 ~~plaintiff for all or a part of the damages claimed against the named~~
6 ~~defendant or defendants.~~

7 ~~[(B)]~~ The term "responsible third party" does not
8 include a seller eligible for indemnity under Section 82.002~~[-~~

9 ~~[(i) the claimant's employer, if the~~
10 ~~employer maintained workers' compensation insurance coverage, as~~
11 ~~defined by Section 401.011(44), Labor Code, at the time of the act,~~
12 ~~event, or occurrence made the basis of the claimant's suit; or~~

13 ~~[(ii) a person or entity that is a debtor in~~
14 ~~bankruptcy proceedings or a person or entity against whom this~~
15 ~~claimant's claim has been discharged in bankruptcy, except to the~~
16 ~~extent that liability insurance or other source of third party~~
17 ~~funding may be available to pay claims asserted against the~~
18 ~~debtor].~~

19 SECTION 4.06. Section 33.013, Civil Practice and Remedies
20 Code, is amended by amending Subsections (a) and (b) and adding
21 Subsections (e) and (f) to read as follows:

22 (a) Except as provided in Subsection ~~[Subsections]~~ (b) ~~[and~~
23 ~~(c)]~~, a liable defendant is liable to a claimant only for the
24 percentage of the damages found by the trier of fact equal to that
25 defendant's percentage of responsibility with respect to the
26 personal injury, property damage, death, or other harm for which
27 the damages are allowed.

1 (b) Notwithstanding Subsection (a), each liable defendant
2 is, in addition to his liability under Subsection (a), jointly and
3 severally liable for the damages recoverable by the claimant under
4 Section 33.012 with respect to a cause of action if:

5 (1) the percentage of responsibility attributed to the
6 defendant with respect to a cause of action is greater than 50
7 percent; or

8 (2) the defendant, with the specific intent to do harm
9 to others, acted in concert with another person to engage in the
10 conduct described in the following provisions of the Penal Code and
11 in so doing proximately caused the damages legally recoverable by
12 the claimant:

13 (A) Section 19.02 (murder);

14 (B) Section 19.03 (capital murder);

15 (C) Section 20.04 (aggravated kidnapping);

16 (D) Section 22.02 (aggravated assault);

17 (E) Section 22.011 (sexual assault);

18 (F) Section 22.021 (aggravated sexual assault);

19 (G) Section 22.04 (injury to a child, elderly
20 individual, or disabled individual);

21 (H) Section 32.21 (forgery);

22 (I) Section 32.43 (commercial bribery);

23 (J) Section 32.45 (misapplication of fiduciary
24 property or property of financial institution);

25 (K) Section 32.46 (securing execution of
26 document by deception);

27 (L) Section 32.47 (fraudulent destruction,

1 removal, or concealment of writing); or

2 (M) conduct described in Chapter 31 the
3 punishment level for which is a felony of the third degree or
4 higher.

5 (e) Notwithstanding anything to the contrary stated in the
6 provisions of the Penal Code listed in Subsection (b)(2), that
7 subsection applies only if the claimant proves the defendant acted
8 or failed to act with specific intent to do harm. A defendant acts
9 with specific intent to do harm with respect to the nature of the
10 defendant's conduct and the result of the person's conduct when it
11 is the person's conscious effort or desire to engage in the conduct
12 for the purpose of doing substantial harm to others.

13 (f) The jury may not be made aware through voir dire,
14 introduction into evidence, instruction, or any other means that
15 the conduct to which Subsection (b)(2) refers is defined by the
16 Penal Code.

17 SECTION 4.07. Section 33.017, Civil Practice and Remedies
18 Code, is amended to read as follows:

19 Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY.
20 Nothing in this chapter shall be construed to affect any rights of
21 indemnity granted by [~~to a seller eligible for indemnity by Chapter~~
22 ~~82, the Texas Motor Vehicle Commission Code (Article 4413(36),~~
23 ~~Vernon's Texas Civil Statutes), or] any [~~other~~] statute, [~~nor shall~~
24 ~~it affect rights of indemnity granted~~] by contract, or by [~~at~~]
25 common law. To the extent of any conflict between this chapter and
26 any right to indemnification granted by [~~Section 82.002, the Texas~~
27 ~~Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas~~~~

1 ~~Civil Statutes), or any other]~~ statute, contract, or common law,
2 those rights of indemnification shall prevail over the provisions
3 of this chapter.

4 SECTION 4.08. Section 417.001(b), Labor Code, is amended to
5 read as follows:

6 (b) If a benefit is claimed by an injured employee or a legal
7 beneficiary of the employee, the insurance carrier is subrogated to
8 the rights of the injured employee and may enforce the liability of
9 the third party in the name of the injured employee or the legal
10 beneficiary. The insurance carrier's subrogation interest is
11 limited to the amount of the total benefits paid or assumed by the
12 carrier to the employee or the legal beneficiary, less the amount by
13 which the court reduces the judgment based on the percentage of
14 responsibility determined by the trier of fact under Section
15 33.003, Civil Practice and Remedies Code, attributable to the
16 employer. If the recovery is for an amount greater than the amount
17 of the insurance carrier's subrogation interest [~~that paid or~~
18 ~~assumed by the insurance carrier to the employee or the legal~~
19 ~~beneficiary], the insurance carrier shall:~~

20 (1) reimburse itself and pay the costs from the amount
21 recovered; and

22 (2) pay the remainder of the amount recovered to the
23 injured employee or the legal beneficiary.

24 SECTION 4.09. The following sections of the Civil Practice
25 and Remedies Code are repealed:

26 (1) 33.002(b), (d), (e), (f), (g), and (h);

27 (2) 33.004(c), (d), and (e);

- (3) 33.011(7);
- (4) 33.012(c); and
- (5) 33.013(c).

SECTION 4.10. It is not the intent or purpose of this article to affect workers' compensation law.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Section 16.012, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.012. PRODUCTS LIABILITY[:~~MANUFACTURING EQUIPMENT~~]. (a) In this section, "claimant," ~~["(1) "Claimant,"~~

~~]"~~ "products liability action," "seller," and "manufacturer" have the meanings assigned by Section 82.001.

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

(b) Except as provided by Subsections ~~[Subsection]~~ (c) and (d), a claimant must commence a products liability action against a manufacturer or seller of a product ~~[manufacturing equipment]~~ before the end of 15 years after the date of the sale of the product ~~[equipment]~~ by the defendant.

(c) If a manufacturer or seller expressly warrants in writing ~~[represents]~~ that the product ~~[manufacturing equipment]~~ has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product ~~[equipment]~~ before the end of the number of

1 years warranted [~~represented~~] after the date of the sale of the
2 product [~~equipment~~] by that seller.

3 (d) This section does not apply to a products liability
4 action in which the claimant alleges a product caused a disease the
5 symptoms of which did not, before the end of 15 years after the date
6 of the sale of the product by the defendant, manifest themselves to
7 a degree and for a duration that would put a reasonable person on
8 notice that the person suffers some injury. This section does not
9 reduce a limitations period for a cause of action described by this
10 subsection [~~that applies to a products liability action involving~~
11 ~~manufacturing equipment~~] that accrues before the end of the
12 limitations period under this section.

13 (e) This section does not extend the limitations period
14 within which a products liability action involving the product
15 [~~manufacturing equipment~~] may be commenced under any other law.

16 (f) This section applies only to the sale and not to the
17 lease of a product [~~manufacturing equipment~~].

18 SECTION 5.02. Section 82.001(2), Civil Practice and
19 Remedies Code, is amended to read as follows:

20 (2) "Products liability action" means any action
21 against a manufacturer or seller for recovery of damages or other
22 relief for harm [~~arising out of personal injury, death, or property~~
23 ~~damage~~] allegedly caused by a defective product, whether the action
24 is based in strict tort liability, strict products liability,
25 negligence, misrepresentation, breach of express or implied
26 warranty, or any other theory or combination of theories, and
27 whether the relief sought is recovery of damages or any other legal

1 or equitable relief, including a suit for:

2 (A) injury or damage to or loss of real or
3 personal property;

4 (B) personal injury;

5 (C) wrongful death;

6 (D) economic loss; or

7 (E) declaratory, injunctive, or other equitable
8 relief.

9 SECTION 5.03. Chapter 82, Civil Practice and Remedies Code,
10 is amended by adding Sections 82.003, 82.007, 82.008, and 82.009 to
11 read as follows:

12 Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. A
13 seller that did not manufacture a product is not liable for harm
14 caused to the claimant by that product unless the claimant proves:

15 (1) that the seller altered or modified the product
16 and the claimant's harm resulted from that alteration or
17 modification;

18 (2) that:

19 (A) the seller exercised substantial control
20 over the content of a warning or instruction that accompanied the
21 product;

22 (B) the warning or instruction was inadequate;
23 and

24 (C) the claimant's harm resulted from the
25 inadequacy of the warning or instruction;

26 (3) that:

27 (A) the seller made an express factual

1 representation about an aspect of the product;

2 (B) the representation was incorrect;

3 (C) the claimant relied on the representation in
4 obtaining or using the product; and

5 (D) if the aspect of the product had been as
6 represented, the claimant would not have been harmed by the product
7 or would not have suffered the same degree of harm;

8 (4) that:

9 (A) the seller actually knew of a defect to the
10 product at the time the seller supplied the product; and

11 (B) the claimant's harm resulted from the defect;
12 or

13 (5) that the manufacturer of the product is:

14 (A) insolvent; or

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

16 Sec. 82.007. MEDICINES. (a) In a products liability action
17 alleging that an injury was caused by a failure to provide adequate
18 warnings or information with regard to a pharmaceutical product,
19 the defendant or defendants, including a health care provider,
20 manufacturer, distributor, and prescriber, are not liable with
21 respect to the allegations if:

22 (1) the warnings or information that accompanied the
23 product in its distribution were those approved by the United
24 States Food and Drug Administration for a product approved under
25 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
26 seq.), as amended, or Section 351, Public Health Service Act (42
27 U.S.C. Section 262), as amended; or

1 (2) the warnings provided were those stated in
2 monographs developed by the United States Food and Drug
3 Administration for pharmaceutical products that may be distributed
4 without an approved new drug application.

5 (b) This section does not apply if the manufacturer, before
6 or after pre-market approval or licensing of the product, withheld
7 from or misrepresented to the Food and Drug Administration required
8 information that was material and relevant to the performance of
9 the product and was causally related to the claimant's injury.

10 Sec. 82.008. EVIDENCE OF SUBSEQUENT IMPROVEMENTS AND
11 MEASURES. In a products liability action, a court may not admit,
12 except for purposes of impeachment, evidence of a subsequent
13 improvement made or measure taken with respect to the defect
14 alleged to have caused harm, or a similar product, that, if made or
15 taken before the product was supplied, would have made the
16 claimant's harm less likely.

17 Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) In
18 a products liability action brought against a product manufacturer
19 or seller, there is a rebuttable presumption that the product
20 manufacturer or seller is not liable for any injury to a claimant
21 caused by some aspect of the formulation, labeling, or design of a
22 product if the product manufacturer or seller establishes that the
23 product's formula, labeling, or design complied with mandatory
24 safety standards or regulations adopted and promulgated by the
25 federal government, or an agency of the federal government, that
26 were applicable to the product at the time of manufacture, and that
27 governed the product risk that allegedly caused harm.

1 (a-1) The claimant may rebut the presumption in Subsection
2 (a) by establishing that:

3 (1) the mandatory federal safety standards or
4 regulations applicable to the product were inadequate to protect
5 the public from unreasonable risks of injury or damage;

6 (2) the manufacturer, before or after marketing the
7 product, withheld information required by or misrepresented
8 information provided to the federal government or agency that was:

9 (A) material and relevant to the federal
10 government's or agency's determination that the mandatory safety
11 standards or regulations at issue in the action were adequate; and

12 (B) causally related to the claimant's injury; or

13 (3) with respect to the manufacturer of a motor
14 vehicle, or a component thereof, after the product was sold and
15 before the alleged injury occurred, the manufacturer learned the
16 vehicle or component part contained a defect causally related to
17 the claimant's injury and to motor vehicle safety and failed to
18 either:

19 (A) give notice to the federal government, or
20 agency of the federal government, that adopted or promulgated the
21 applicable safety standards or regulations; or

22 (B) give notice by first class mail to each
23 person registered under Texas law as the owner and whose name and
24 address are reasonably ascertainable by the manufacturer through
25 state records or other available sources, or if the registered
26 owner is not notified, to the most recent purchaser known to the
27 manufacturer.

1 (b) In a products liability action brought against a product
2 manufacturer or seller, there is a rebuttable presumption that the
3 product manufacturer or seller is not liable for any injury to a
4 claimant allegedly caused by some aspect of the formulation,
5 labeling, or design of a product if the product manufacturer or
6 seller establishes that the product was subject to pre-market
7 licensing or approval by the federal government, or an agency of the
8 federal government, that the manufacturer complied with all of the
9 government's or agency's procedures and requirements with respect
10 to pre-market licensing or approval, and that after full
11 consideration of the product's risks and benefits the product was
12 approved or licensed for sale by the government or agency. The
13 claimant may rebut this presumption by establishing that:

14 (1) the standards or procedures used in the particular
15 pre-market approval or licensing process were inadequate to protect
16 the public from unreasonable risks of injury or damage; or

17 (2) the manufacturer, before or after pre-market
18 approval or licensing of the product, withheld from or
19 misrepresented to the government or agency information that was
20 material and relevant to the performance of the product and was
21 causally related to the claimant's injury.

22 (c) This section does not extend to manufacturing flaws or
23 defects even though the product manufacturer has complied with all
24 quality control and manufacturing practices mandated by the federal
25 government or an agency of the federal government.

26 ARTICLE 6. INTEREST

27 SECTION 6.01. Section 304.003(c), Finance Code, is amended

1 to read as follows:

2 (c) The postjudgment interest rate is:

3 (1) the weekly average one-year constant maturity
4 treasury yield [~~auction rate quoted on a discount basis for 52-week~~
5 ~~treasury bills issued by the United States government~~] as most
6 recently published by the Board of Governors of the Federal Reserve
7 System [~~Federal Reserve Board~~] before the date of computation;

8 (2) five [~~10~~] percent a year if the weekly average
9 one-year constant maturity treasury yield [~~auction rate~~] described
10 by Subdivision (1) is less than five [~~10~~] percent; or

11 (3) 15 [~~20~~] percent a year if the weekly average
12 one-year constant maturity treasury yield [~~auction rate~~] described
13 by Subdivision (1) is more than 15 [~~20~~] percent.

14 SECTION 6.02. Subchapter B, Chapter 304, Finance Code, is
15 amended by adding Section 304.1045 to read as follows:

16 Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may
17 not be assessed or recovered on an award of future damages.

18 ARTICLE 7. APPEAL BONDS

19 SECTION 7.01. Section 35.006, Civil Practice and Remedies
20 Code, is amended to read as follows:

21 Sec. 35.006. STAY. (a) If the judgment debtor shows the
22 court that an appeal from the foreign judgment is pending or will be
23 taken, that the time for taking an appeal has not expired, or that a
24 stay of execution has been granted, has been requested, or will be
25 requested, and proves that the judgment debtor has furnished or
26 will furnish the security for the satisfaction of the judgment
27 required by the state in which it was rendered, the court shall stay

1 enforcement of the foreign judgment until the appeal is concluded,
2 the time for appeal expires, or the stay of execution expires or is
3 vacated.

4 (b) If the judgment debtor shows the court a ground on which
5 enforcement of a judgment of the court of this state would be
6 stayed, the court shall stay enforcement of the foreign judgment
7 for an appropriate period and require the same security for
8 suspending enforcement [~~satisfaction~~] of the judgment that is
9 required in this state in accordance with Section 52.006.

10 SECTION 7.02. Chapter 52, Civil Practice and Remedies Code,
11 is amended by adding Section 52.006 to read as follows:

12 Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a)
13 Subject to Subsection (b), when a judgment is for money, the amount
14 of security must equal the sum of:

15 (1) the amount of compensatory damages awarded in the
16 judgment;

17 (2) interest for the estimated duration of the appeal;
18 and

19 (3) costs awarded in the judgment.

20 (b) Notwithstanding any other law or rule of court, when a
21 judgment is for money, the amount of security must not exceed the
22 lesser of:

23 (1) 50 percent of the judgment debtor's net worth; or

24 (2) \$25 million.

25 (c) On a showing by the judgment debtor that the judgment
26 debtor is likely to suffer substantial economic harm if required to
27 post security in an amount required under Subsection (a) or (b), the

1 trial court shall lower the amount of the security to an amount that
2 will not cause the judgment debtor substantial economic harm.

3 (d) An appellate court may review the amount of security as
4 allowed under Rule 24, Texas Rules of Appellate Procedure, except
5 that when a judgment is for money, the appellate court may not
6 modify the amount of security to exceed the amount allowed under
7 this section.

8 SECTION 7.03. The following sections of the Civil Practice
9 and Remedies Code are repealed:

- 10 (1) 52.002;
11 (2) 52.003; and
12 (3) 52.004.

13 ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

14 SECTION 8.01. Section 545.413(g), Transportation Code, is
15 repealed.

16 ARTICLE 9. BENEVOLENT GESTURES

17 SECTION 9.01. Section 18.061(c), Civil Practice and
18 Remedies Code, is repealed.

19 SECTION 9.02. This article applies only to the
20 admissibility of a communication in a proceeding that begins on or
21 after the effective date of this article. The admissibility of a
22 communication in a proceeding that began before the effective date
23 of the article is governed by the law applicable to the
24 admissibility of the communication immediately before the
25 effective date of this article, and that law is continued in effect
26 for that purpose.

27 ARTICLE 10. HEALTH CARE

1 SECTION 10.01. Section 1.03(a), Medical Liability and
2 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
3 Civil Statutes), is amended by amending Subdivisions (3), (4), and
4 (8) and adding Subdivisions (10)-(22) to read as follows:

5 (3)(A) "Health care provider" means any person,
6 partnership, professional association, corporation, facility, or
7 institution duly licensed, certified, registered, or chartered by
8 the State of Texas to provide health care, including:

9 (i) [~~as~~] a registered nurse;

10 (ii) a [~~r~~] hospital;

11 (iii) a hospital system;

12 (iv) a [~~r~~] dentist;

13 (v) a hospice;

14 (vi) a [~~r~~] podiatrist;

15 (vii) a [~~r~~] pharmacist;

16 (viii) an emergency medical services
17 provider;

18 (ix) an assisted living facility;

19 (x) a home and community support services
20 agency;

21 (xi) an intermediate care facility for the
22 mentally retarded or a home and community-based services waiver
23 program for persons with mental retardation adopted in accordance
24 with Section 1915(c) of the federal Social Security Act (42 U.S.C.
25 Section 1396n(c)), as amended;

26 (xii) a [~~r or~~] nursing home; or

27 (xiii) a chiropractor.

1 (B) The term includes:

2 (i) [~~,~~ ~~or~~] an officer, director,
3 shareholder, member, partner, manager, owner, or affiliate of a
4 health care provider or physician; and

5 (ii) an employee, independent contractor,
6 or agent of a health care provider or physician [~~thereof~~] acting in
7 the course and scope of the [~~his~~] employment or contractual
8 relationship.

9 (4) "Health care liability claim" means a cause of
10 action against a health care provider or physician arising out of or
11 related to [~~for~~] treatment, lack of treatment, or other claimed
12 departure from accepted standards of medical care, [~~or~~] health
13 care, or safety or professional or administrative services which
14 proximately results in injury to or death of a claimant [~~the~~
15 ~~patient~~], whether the claimant's [~~patient's~~] claim or cause of
16 action sounds in tort or contract.

17 (8) "Physician" means:

18 (A) an individual [~~a person~~] licensed to practice
19 medicine in this state;

20 (B) a professional association organized under
21 the Texas Professional Association Act (Article 1528f, Vernon's
22 Texas Civil Statutes) by an individual physician or group of
23 physicians;

24 (C) a partnership or limited liability
25 partnership formed by a group of physicians;

26 (D) a nonprofit health corporation certified
27 under Section 162.001, Occupations Code; or

1 (E) a company formed by a group of physicians
2 under the Texas Limited Liability Company Act (Article 1528n,
3 Vernon's Texas Civil Statutes).

4 (10) "Affiliate" means a person who directly or
5 indirectly, through one or more intermediaries, controls, is
6 controlled by, or is under common control with a specified person,
7 including any direct or indirect parent or subsidiary.

8 (11) "Claimant" means a person, including a decedent's
9 estate, seeking or who has sought recovery of damages in a health
10 care liability claim. All persons claiming to have sustained
11 damages as the result of the bodily injury or death of a single
12 person are considered a single claimant.

13 (12) "Control" means the possession, directly or
14 indirectly, of the power to direct or cause the direction of the
15 management and policies of the person, whether through ownership of
16 equity or securities, by contract, or otherwise.

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

20 (14) "Emergency medical care" means bona fide
21 emergency services provided after the sudden onset of a medical or
22 traumatic condition manifesting itself by acute symptoms of
23 sufficient severity, including severe pain, such that the absence
24 of immediate medical attention could reasonably be expected to
25 result in:

26 (A) placing the patient's health in serious
27 jeopardy;

1 (B) serious impairment to bodily functions; or

2 (C) serious dysfunction of any bodily organ or
3 part.

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

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

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

13 (18) "Noneconomic damages" means any loss or damage,
14 however characterized, for past, present, and future physical pain
15 and suffering, mental anguish and suffering, loss of consortium,
16 loss of companionship and society, disfigurement, physical
17 impairment, and any other nonpecuniary loss or damage or element of
18 loss or damage.

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

21 (20) "Professional or administrative services" means
22 those duties or services that a physician or health care provider is
23 required to provide as a condition of maintaining the physician's
24 or health care provider's license, accreditation status, or
25 certification to participate in state or federal health care
26 programs.

27 (21) "Hospice" means a hospice facility or activity to

1 which Chapter 142, Health and Safety Code, applies.

2 (22) "Hospital system" means a system of hospitals
3 located in this state that are under the common governance or
4 control of a corporate parent.

5 SECTION 10.02. Subchapter A, Medical Liability and
6 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
7 Civil Statutes), is amended by adding Sections 1.04 and 1.05 to read
8 as follows:

9 Sec. 1.04. CONFLICT WITH OTHER LAW AND RULES OF CIVIL
10 PROCEDURE. (a) In the event of a conflict between this Act and
11 another law, including a rule of procedure or evidence or court
12 rule, this Act controls to the extent of the conflict.

13 (b) Notwithstanding Subsection (a) of this section, in the
14 event of a conflict between this Act and Section 101.023, 102.003,
15 or 108.002, Civil Practice and Remedies Code, those sections of the
16 Civil Practice and Remedies Code control to the extent of the
17 conflict.

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

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

23 Sec. 1.05. SOVEREIGN IMMUNITY NOT WAIVED. This Act does not
24 waive sovereign immunity from suit or from liability.

25 SECTION 10.03. Section 4.01, Medical Liability and
26 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
27 Civil Statutes), is amended by adding Subsection (f) to read as

1 follows:

2 (f)(1) Notwithstanding the provisions of Rule 202, Texas
3 Rules of Civil Procedure, a deposition may not be taken of a
4 physician or health care provider for the purpose of investigating
5 a health care liability claim before the filing of a lawsuit unless:

6 (A) upon receipt of written notice as required
7 under this section from a patient, patient's family, or patient's
8 representative, the physician or health care provider has failed,
9 within the 10 days specified in this section, to provide complete,
10 unaltered records;

11 (B) upon providing the records as required under
12 this section, the records are incomplete, inaccurate, illegible,
13 show evidence of having been changed after the events that they
14 purport to record, or fail to comply with any applicable rules,
15 regulations, standards, policies, or guidelines for proper
16 completion of same; or

17 (C) upon providing the records as required under
18 this section, it cannot be reasonably determined from the records
19 provided what sequence of events occurred in the relevant treatment
20 or events, or cannot be reasonably determined who was present,
21 involved, participated in, or observed the events in question.

22 (2) If the physician or health care provider fails to
23 provide the records as required under this section, the patient,
24 the patient's family, or the patient's representative shall,
25 notwithstanding Section 13.01(u) of this Act, be entitled to one
26 deposition under Rule 202, Texas Rules of Civil Procedure, in
27 addition to the deposition allowed under Section 13.01(u) of this

1 Act, sufficient to provide the information needed for them to
2 appropriately evaluate any potential health care liability claim
3 and make decisions about inclusion or not of potential defendants.

4 SECTION 10.04. The heading to Subchapter G, Medical
5 Liability and Insurance Improvement Act of Texas (Article 4590i,
6 Vernon's Texas Civil Statutes), is amended to read as follows:

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

8 SECTION 10.05. Subchapter G, Medical Liability and
9 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
10 Civil Statutes), is amended by adding Sections 7.03 and 7.04 to read
11 as follows:

12 Sec. 7.03. FEDERAL OR STATE INCOME TAXES. (a)
13 Notwithstanding any other law, in a health care liability claim, if
14 any claimant seeks recovery for loss of earnings, loss of earning
15 capacity, loss of contributions of a pecuniary value, or loss of
16 inheritance, evidence to prove the loss must be presented in the
17 form of a net after-tax loss that either was or should have been
18 paid by the injured party or decedent through which the alleged loss
19 has occurred.

20 (b) In a health care liability claim, if any claimant seeks
21 recovery for loss of earnings, loss of earning capacity, loss of
22 contributions of a pecuniary value, or loss of inheritance, the
23 court shall instruct the jury whether any recovery for compensatory
24 damages sought by the claimant is subject to federal or state income
25 taxes.

26 Sec. 7.04. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY
27 MEDICAL CARE. (a) In a health care liability claim that involves a

1 claim of negligence arising from the provision of emergency medical
2 care, the court shall instruct the jury to consider, together with
3 all other relevant matters:

4 (1) whether the person providing care did not have the
5 patient's medical history or was unable to obtain a full medical
6 history, including the knowledge of preexisting medical
7 conditions, allergies, and medications;

8 (2) the lack of a preexisting physician-patient
9 relationship or health care provider-patient relationship;

10 (3) the circumstances constituting the emergency; and

11 (4) the circumstances surrounding the delivery of the
12 emergency medical care.

13 (b) The provisions of Subsection (a) of this section do not
14 apply to medical care or treatment:

15 (1) that occurs after the patient is stabilized and is
16 capable of receiving medical treatment as a nonemergency patient;
17 or

18 (2) that is unrelated to the original medical
19 emergency.

20 SECTION 10.06. The heading to Subchapter I, Medical
21 Liability and Insurance Improvement Act of Texas (Article 4590i,
22 Vernon's Texas Civil Statutes), is amended to read as follows:

23 SUBCHAPTER I. PAYMENT OF MEDICAL OR HEALTH CARE EXPENSES [~~ADVANCE~~
24 ~~PAYMENTS~~]

25 SECTION 10.07. Subchapter I, Medical Liability and
26 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
27 Civil Statutes), is amended by adding Section 9.01 to read as

1 follows:

2 Sec. 9.01. RECOVERY OF PAST MEDICAL OR HEALTH CARE
3 EXPENSES. Recovery of past medical or health care expenses in a
4 health care liability claim shall be limited to the amount actually
5 paid or incurred by or on behalf of the claimant.

6 SECTION 10.08. Section 10.01, Medical Liability and
7 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
8 Civil Statutes), is amended to read as follows:

9 Sec. 10.01. LIMITATION ON HEALTH CARE LIABILITY CLAIMS.

10 (a) Notwithstanding any other law and subject to Subsection (b) of
11 this section, no health care liability claim may be commenced
12 unless the action is filed within two years from the occurrence of
13 the breach or tort or from the date the medical or health care
14 treatment that is the subject of the claim or the hospitalization
15 for which the claim is made is completed; provided that, minors
16 under the age of 12 years shall have until their 14th birthday in
17 which to file, or have filed on their behalf, the claim. Except as
18 herein provided, this subchapter applies to all persons regardless
19 of minority or other legal disability.

20 (b) A claimant must bring a health care liability claim not
21 later than 10 years after the date of the act or omission that gives
22 rise to the claim. This subsection is intended as a statute of
23 repose so that all claims must be brought within 10 years or they
24 are time barred.

25 SECTION 10.09. Section 11.02, Medical Liability and
26 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
27 Civil Statutes), is amended by adding Subsections (e) and (f) to

1 read as follows:

2 (e) The limitation on health care liability claims
3 contained in Subsection (a) of this section includes punitive
4 damages.

5 (f) The limitation on health care liability claims
6 contained in Subsection (a) of this section shall be applied on a
7 per-claimant basis.

8 SECTION 10.10. Section 11.03, Medical Liability and
9 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
10 Civil Statutes), is amended to read as follows:

11 Sec. 11.03. LIMITATION ON NONECONOMIC DAMAGES [~~ALTERNATIVE~~
12 ~~PARTIAL LIMIT ON CIVIL LIABILITY~~]. [~~In the event that Section~~
13 ~~11.02(a) of this subchapter is stricken from this subchapter or is~~
14 ~~otherwise invalidated by a method other than through legislative~~
15 ~~means, the following shall become effective.~~]

16 In an action on a health care liability claim where final
17 judgment is rendered against a physician or health care provider,
18 the limit of civil liability for noneconomic damages of the
19 physician or health care provider shall be limited to an amount not
20 to exceed \$250,000 for each claimant, regardless of the number of
21 defendant physicians or health care providers against whom the
22 claim is asserted or the number of separate causes of action on
23 which the claim is based. This section does not apply to a health
24 care liability claim based solely on intentional denial of medical
25 treatment that a patient is otherwise qualified to receive, against
26 the wishes of a patient, or, if the patient is incompetent, against
27 the wishes of the patient's guardian, on the basis of the patient's

1 present or predicted age, disability, degree of medical dependency,
2 or quality of life unless the medical treatment is denied under
3 Chapter 166, Health and Safety Code [~~of the physician or health care~~
4 ~~provider for all past and future noneconomic losses recoverable by~~
5 ~~or on behalf of any injured person and/or the estate of such person,~~
6 ~~including without limitation as applicable past and future physical~~
7 ~~pain and suffering, mental anguish and suffering, consortium,~~
8 ~~disfigurement, and any other nonpecuniary damage, shall be limited~~
9 ~~to an amount not to exceed \$150,000].~~

10 SECTION 10.11. Subchapter K, Medical Liability and
11 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
12 Civil Statutes), is amended by adding Section 11.031 to read as
13 follows:

14 Sec. 11.031. ALTERNATIVE LIMITATION ON NONECONOMIC
15 DAMAGES. (a) In the event that Section 11.03 of this subchapter is
16 stricken from this subchapter or is otherwise to any extent
17 invalidated by a method other than through legislative means, the
18 following, subject to the provisions of this section, shall become
19 effective:

20 In an action on a health care liability claim where final
21 judgment is rendered against a physician or health care provider,
22 the limit of civil liability for all damages and losses, other than
23 economic damages, shall be limited to an amount not to exceed
24 \$250,000 for each claimant, regardless of the number of defendant
25 physicians or health care providers against whom the claim is
26 asserted or the number of separate causes of action on which the
27 claim is based.

1 (b) Effective before September 1, 2005, Subsection (a) of
2 this section applies to any physician or health care provider that
3 provides evidence of financial responsibility in the following
4 amounts in effect for any act or omission to which this subchapter
5 applies:

6 (1) at least \$100,000 for each health care liability
7 claim and at least \$300,000 in aggregate for all health care
8 liability claims occurring in an insurance policy year, calendar
9 year, or fiscal year for a physician participating in an approved
10 residency program;

11 (2) at least \$200,000 for each health care liability
12 claim and at least \$600,000 in aggregate for all health care
13 liability claims occurring in an insurance policy year, calendar
14 year, or fiscal year for a physician or health care provider, other
15 than a hospital; and

16 (3) at least \$500,000 for each health care liability
17 claim and at least \$1.5 million in aggregate for all health care
18 liability claims occurring in an insurance policy year, calendar
19 year, or fiscal year for a hospital.

20 (c) Effective September 1, 2005, Subsection (a) of this
21 section applies to any physician or health care provider that
22 provides evidence of financial responsibility in the following
23 amounts in effect for any act or omission to which this subchapter
24 applies:

25 (1) at least \$100,000 for each health care liability
26 claim and at least \$300,000 in aggregate for all health care
27 liability claims occurring in an insurance policy year, calendar

1 year, or fiscal year for a physician participating in an approved
2 residency program;

3 (2) at least \$300,000 for each health care liability
4 claim and at least \$900,000 in aggregate for all health care
5 liability claims occurring in an insurance policy year, calendar
6 year, or fiscal year for a physician or health care provider, other
7 than a hospital; and

8 (3) at least \$750,000 for each health care liability
9 claim and at least \$2.25 million in aggregate for all health care
10 liability claims occurring in an insurance policy year, calendar
11 year, or fiscal year for a hospital.

12 (d) Effective September 1, 2007, Subsection (a) of this
13 section applies to any physician or health care provider that
14 provides evidence of financial responsibility in the following
15 amounts in effect for any act or omission to which this subchapter
16 applies:

17 (1) at least \$100,000 for each health care liability
18 claim and at least \$300,000 in aggregate for all health care
19 liability claims occurring in an insurance policy year, calendar
20 year, or fiscal year for a physician participating in an approved
21 residency program;

22 (2) at least \$500,000 for each health care liability
23 claim and at least \$1 million in aggregate for all health care
24 liability claims occurring in an insurance policy year, calendar
25 year, or fiscal year for a physician or health care provider, other
26 than a hospital; and

27 (3) at least \$1 million for each health care liability

1 claim and at least \$3 million in aggregate for all health care
2 liability claims occurring in an insurance policy year, calendar
3 year, or fiscal year for a hospital.

4 (e) Evidence of financial responsibility may be established
5 at the time of judgment by providing proof of:

6 (1) the purchase of a contract of insurance or other
7 plan of insurance authorized by this state;

8 (2) the purchase of coverage from a trust organized
9 and operating under Article 21.49-4, Insurance Code;

10 (3) the purchase of coverage or another plan of
11 insurance provided by or through a risk retention group or
12 purchasing group authorized under applicable laws of this state or
13 under the Product Liability Risk Retention Act of 1981 (15 U.S.C.
14 Section 3901 et seq.), as amended, or the Liability Risk Retention
15 Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any
16 other contract or arrangement for transferring and distributing
17 risk relating to legal liability for damages, including cost or
18 defense, legal costs, fees, and other claims expenses; or

19 (4) the maintenance of financial reserves in or an
20 irrevocable letter of credit from a federally insured financial
21 institution that has its main office or a branch office in this
22 state.

23 (f) This section does not apply to a health care liability
24 claim based solely on intentional denial of medical treatment that
25 a patient is otherwise qualified to receive, against the wishes of a
26 patient, or, if the patient is incompetent, against the wishes of
27 the patient's guardian, on the basis of the patient's present or

1 predicted age, disability, degree of medical dependency, or quality
2 of life unless the medical treatment is denied under Chapter 166,
3 Health and Safety Code.

4 SECTION 10.12. Section 11.04, Medical Liability and
5 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
6 Civil Statutes), is amended to read as follows:

7 Sec. 11.04. ADJUSTMENT OF LIABILITY LIMIT [~~LIMITS~~]. When
8 there is an increase or decrease in the consumer price index with
9 respect to the amount of that index on the effective date of this
10 subchapter, ~~[each of]~~ the liability limit [~~limits~~] prescribed in
11 Section 11.02(a) [~~or in Section 11.03~~] of this subchapter~~[, as~~
12 ~~applicable,~~] shall be increased or decreased, as applicable, by a
13 sum equal to the amount of such limit multiplied by the percentage
14 increase or decrease in the consumer price index between the
15 effective date of this subchapter and the time at which damages
16 subject to such limit [~~limits~~] are awarded by final judgment or
17 settlement.

18 SECTION 10.13. Subchapter L, Medical Liability and
19 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
20 Civil Statutes), is amended by adding Section 12.02 to read as
21 follows:

22 Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY
23 MEDICAL CARE. In a suit involving a health care liability claim
24 against a physician or health care provider for injury to or death
25 of a patient arising out of the provision of emergency medical care,
26 the person bringing the suit may prove that the treatment or lack of
27 treatment by the physician or health care provider departed from

1 accepted standards of medical care or health care only if the person
2 shows by clear and convincing evidence that the physician or health
3 care provider did not use the degree of care and skill that is
4 reasonably expected of an ordinarily prudent physician or health
5 care provider in the same or similar circumstances.

6 SECTION 10.14. The heading to Section 13.01, Medical
7 Liability and Insurance Improvement Act of Texas (Article 4590i,
8 Vernon's Texas Civil Statutes), is amended to read as follows:

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

10 SECTION 10.15. Section 13.01, Medical Liability and
11 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
12 Civil Statutes), is amended by amending Subsections (a), (b), (i),
13 (j), (k), and (l) and adding Subsections (s), (t), and (u) to read
14 as follows:

15 (a) In a health care liability claim, a claimant shall, not
16 later than the 90th day after the date the claim was [~~is~~] filed,
17 serve on each party or the party's attorney one or more expert
18 reports, with a curriculum vitae of each expert listed in the[+]

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

22 [~~(2) place cash in an escrow account in the amount of~~
23 ~~\$5,000 for each physician or health care provider named in the~~
24 ~~action, or~~

25 [~~(3) file an expert~~] report for each physician or
26 health care provider against whom a liability claim is asserted
27 [~~with respect to whom a cost bond has not been filed and cash in lieu~~

1 ~~of the bond has not been deposited under Subdivision (1) or (2) of~~
2 ~~this subsection].~~

3 (b) If, as to a defendant physician or health care provider,
4 an expert report~~[, cost bond, or cash in lieu of bond]~~ has not been
5 served ~~[filed or deposited]~~ within the period specified by
6 Subsection (a) ~~[or (h)]~~ of this section, the court, on the motion of
7 the affected physician or health care provider, shall enter an
8 order that:

9 (1) awards to the affected physician or health care
10 provider reasonable attorney's fees and costs of court incurred by
11 the physician or health care provider ~~[requires the filing of a~~
12 ~~\$7,500 cost bond with respect to the physician or health care~~
13 ~~provider not later than the 21st day after the date of the order]~~;
14 and

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

21 (i) Notwithstanding any other provision of this section, a
22 claimant may satisfy any requirement of this section for serving
23 ~~[filing]~~ an expert report by serving ~~[filing]~~ reports of separate
24 experts regarding different physicians or health care providers or
25 regarding different issues arising from the conduct of a physician
26 or health care provider, such as issues of liability and causation.
27 Nothing in this section shall be construed to mean that a single

1 expert must address all liability and causation issues with respect
2 to all physicians or health care providers or with respect to both
3 liability and causation issues for a physician or health care
4 provider.

5 (j) Nothing in this section shall be construed to require
6 the serving [~~filing~~] of an expert report regarding any issue other
7 than an issue relating to liability or causation.

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

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

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

14 (3) shall not be referred to by any party [~~a defendant~~]
15 during the course of the action for any purpose.

16 (l) A court shall grant a motion challenging the adequacy of
17 an expert report only if it appears to the court, after hearing,
18 that the report does not represent an objective [~~a~~] good faith
19 effort to comply with the definition of an expert report in
20 Subsection (r)(6) of this section.

21 (s) Until a claimant has served the expert report and
22 curriculum vitae, as required by Subsection (a) of this section,
23 all discovery in a health care liability claim is stayed except for
24 the acquisition of the patient's medical records, medical or
25 psychological studies, or tissue samples through:

26 (1) written discovery as defined in Rule 192.7, Texas
27 Rules of Civil Procedure;

1 (2) depositions on written questions under Rule 200,
2 Texas Rules of Civil Procedure; and

3 (3) discovery from nonparties under Rule 205, Texas
4 Rules of Civil Procedure.

5 (t) If an expert report is used by the claimant in the course
6 of the action for any purpose other than to meet the service
7 requirement of Subsection (a) of this section, the restrictions
8 imposed by Subsection (k) of this section on use of the expert
9 report by any party are waived.

10 (u) Notwithstanding any other provision of this section,
11 after a claim is filed all claimants, collectively, may take not
12 more than one deposition before the expert report is served as
13 required by Subsection (a) of this section.

14 SECTION 10.16. Section 13.01(r)(5), Medical Liability and
15 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
16 Civil Statutes), is amended to read as follows:

17 (5) "Expert" means:

18 (A) with respect to a person giving opinion
19 testimony regarding whether a physician departed from accepted
20 standards of medical care, an expert qualified to testify under the
21 requirements of Section 14.01(a) of this Act; ~~[or]~~

22 (B) with respect to a person giving opinion
23 testimony regarding whether ~~[about]~~ a ~~[nonphysician]~~ health care
24 provider departed from accepted standards of health care, an expert
25 qualified to testify under the requirements of Section 14.02 of
26 this Act;

27 (C) with respect to a person giving opinion

1 testimony about the causal relationship between the injury, harm,
2 or damages claimed and the alleged departure from the applicable
3 standard of care in any health care liability claim, a physician who
4 is otherwise qualified to render opinions on that causal
5 relationship under the Texas Rules of Evidence;

6 (D) with respect to a person giving opinion
7 testimony about the causal relationship between the injury, harm,
8 or damages claimed and the alleged departure from the applicable
9 standard of care for a dentist, a dentist who is otherwise qualified
10 to render opinions on that causal relationship under the Texas
11 Rules of Evidence; or

12 (E) with respect to a person giving opinion
13 testimony about the causal relationship between the injury, harm,
14 or damages claimed and the alleged departure from the applicable
15 standard of care for a podiatrist, a podiatrist who is otherwise
16 qualified to render opinions on that causal relationship under the
17 Texas Rules of Evidence [~~who has knowledge of accepted standards of~~
18 ~~care for the diagnosis, care, or treatment of the illness, injury,~~
19 ~~or condition involved in the claim].~~

20 SECTION 10.17. Sections 14.01(e) and (g), Medical Liability
21 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
22 Texas Civil Statutes), are amended to read as follows:

23 (e) A pretrial objection to the qualifications of a witness
24 under this section must be made not later than the later of the 21st
25 day after the date the objecting party receives a copy of the
26 witness's curriculum vitae or the 21st day after the date of the
27 witness's deposition. If circumstances arise after the date on

1 which the objection must be made that could not have been reasonably
2 anticipated by a party before that date and that the party believes
3 in good faith provide a basis for an objection to a witness's
4 qualifications, and if an objection was not made previously, this
5 subsection does not prevent the party from making an objection as
6 soon as practicable under the circumstances. The court shall
7 conduct a hearing to determine whether the witness is qualified as
8 soon as practicable after the filing of an objection and, if
9 possible, before trial. If the objecting party is unable to object
10 in time for the hearing to be conducted before the trial, the
11 hearing shall be conducted outside the presence of the jury. This
12 subsection does not prevent a party from examining or
13 cross-examining a witness at trial about the witness's
14 qualifications.

15 (g) In this subchapter [~~section~~], "physician" means a
16 person who is:

17 (1) licensed to practice medicine in one or more
18 states in the United States; or

19 (2) a graduate of a medical school accredited by the
20 Liaison Committee on Medical Education or the American Osteopathic
21 Association only if testifying as a defendant and that testimony
22 relates to that defendant's standard of care, the alleged departure
23 from that standard of care, or the causal relationship between the
24 alleged departure from that standard of care and the injury, harm,
25 or damages claimed.

26 SECTION 10.18. Subchapter N, Medical Liability and
27 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas

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

3 Sec. 14.02. QUALIFICATIONS OF EXPERT WITNESS IN SUIT
4 AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section,
5 "practicing health care" includes:

6 (1) training health care providers in the same field
7 as the defendant health care provider at an accredited educational
8 institution; or

9 (2) serving as a consulting health care provider and
10 being licensed, certified, or registered in the same field as the
11 defendant health care provider.

12 (b) In a suit involving a health care liability claim
13 against a health care provider, a person may qualify as an expert
14 witness on the issue of whether the health care provider departed
15 from accepted standards of care only if the person:

16 (1) is practicing health care in the same field of
17 practice as the defendant health care provider at the time the
18 testimony is given or was practicing that type of health care at the
19 time the claim arose;

20 (2) has knowledge of accepted standards of care for
21 health care providers for the diagnosis, care, or treatment of the
22 illness, injury, or condition involved in the claim; and

23 (3) is qualified on the basis of training or
24 experience to offer an expert opinion regarding those accepted
25 standards of health care.

26 (c) In determining whether a witness is qualified on the
27 basis of training or experience, the court shall consider whether,

1 at the time the claim arose or at the time the testimony is given,
2 the witness:

3 (1) is certified by a Texas licensing agency or a
4 national professional certifying agency, or has other substantial
5 training or experience, in the area of health care relevant to the
6 claim; and

7 (2) is actively practicing health care in rendering
8 health care services relevant to the claim.

9 (d) The court shall apply the criteria specified in
10 Subsections (a), (b), and (c) of this section in determining
11 whether an expert is qualified to offer expert testimony on the
12 issue of whether the defendant health care provider departed from
13 accepted standards of health care but may depart from those
14 criteria if, under the circumstances, the court determines that
15 there is good reason to admit the expert's testimony. The court
16 shall state on the record the reason for admitting the testimony if
17 the court departs from the criteria.

18 (e) This section does not prevent a health care provider who
19 is a defendant, or an employee of the defendant health care
20 provider, from qualifying as an expert.

21 (f) A pretrial objection to the qualifications of a witness
22 under this section must be made not later than the later of the 21st
23 day after the date the objecting party receives a copy of the
24 witness's curriculum vitae or the 21st day after the date of the
25 witness's deposition. If circumstances arise after the date on
26 which the objection must be made that could not have been reasonably
27 anticipated by a party before that date and that the party believes

1 in good faith provide a basis for an objection to a witness's
2 qualifications, and if an objection was not made previously, this
3 subsection does not prevent the party from making an objection as
4 soon as practicable under the circumstances. The court shall
5 conduct a hearing to determine whether the witness is qualified as
6 soon as practicable after the filing of an objection and, if
7 possible, before trial. If the objecting party is unable to object
8 in time for the hearing to be conducted before the trial, the
9 hearing shall be conducted outside the presence of the jury. This
10 subsection does not prevent a party from examining or
11 cross-examining a witness at trial about the witness's
12 qualifications.

13 Sec. 14.03. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION
14 IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by
15 Subsections (b) and (c) of this section, in a suit involving a
16 health care liability claim against a physician or health care
17 provider, a person may qualify as an expert witness on the issue of
18 the causal relationship between the alleged departure from accepted
19 standards of care and the injury, harm, or damages claimed only if
20 the person is a physician and is otherwise qualified to render
21 opinions on that causal relationship under the Texas Rules of
22 Evidence.

23 (b) In a suit involving a health care liability claim
24 against a dentist, a person may qualify as an expert witness on the
25 issue of the causal relationship between the alleged departure from
26 accepted standards of care and the injury, harm, or damages claimed
27 if the person is a dentist and is otherwise qualified to render

1 opinions on that causal relationship under the Texas Rules of
2 Evidence.

3 (c) In a suit involving a health care liability claim
4 against a podiatrist, a person may qualify as an expert witness on
5 the issue of the causal relationship between the alleged departure
6 from accepted standards of care and the injury, harm, or damages
7 claimed if the person is a podiatrist and is otherwise qualified to
8 render opinions on that causal relationship under the Texas Rules
9 of Evidence.

10 (d) A pretrial objection to the qualifications of a witness
11 under this section must be made not later than the later of the 21st
12 day after the date the objecting party receives a copy of the
13 witness's curriculum vitae or the 21st day after the date of the
14 witness's deposition. If circumstances arise after the date on
15 which the objection must be made that could not have been reasonably
16 anticipated by a party before that date and that the party believes
17 in good faith provide a basis for an objection to a witness's
18 qualifications, and if an objection was not made previously, this
19 subsection does not prevent the party from making an objection as
20 soon as practicable under the circumstances. The court shall
21 conduct a hearing to determine whether the witness is qualified as
22 soon as practicable after the filing of an objection and, if
23 possible, before trial. If the objecting party is unable to object
24 in time for the hearing to be conducted before the trial, the
25 hearing shall be conducted outside the presence of the jury. This
26 subsection does not prevent a party from examining or
27 cross-examining a witness at trial about the witness's

1 qualifications.

2 SECTION 10.19. Section 16.01, Medical Liability and
3 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
4 Civil Statutes), is amended to read as follows:

5 Sec. 16.01. APPLICATION OF OTHER LAW. Notwithstanding
6 Chapter 304, Finance Code [~~Articles 1E.101, 1E.102, and~~
7 ~~1E.104-1E.108, Title 79, Revised Statutes~~], prejudgment interest
8 in a judgment on a health care liability claim shall be awarded in
9 accordance with this subchapter.

10 SECTION 10.20. Sections 16.02(b) and (c), Medical Liability
11 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
12 Texas Civil Statutes), are amended to read as follows:

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

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

24 SECTION 10.21. The Medical Liability and Insurance
25 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
26 Statutes) is amended by adding Subchapters R, S, and T to read as
27 follows:

1 SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

2 Sec. 18.01. DEFINITIONS. In this subchapter:

3 (1) "Future damages" means damages that are incurred
4 after the date of judgment for:

5 (A) medical, health care, or custodial care
6 services;

7 (B) physical pain and mental anguish,
8 disfigurement, or physical impairment;

9 (C) loss of consortium, companionship, or
10 society; or

11 (D) loss of earnings.

12 (2) "Future loss of earnings" means the following
13 losses incurred after the date of the judgment:

14 (A) loss of income, wages, or earning capacity
15 and other pecuniary losses; and

16 (B) loss of inheritance.

17 (3) "Periodic payments" means the payment of money or
18 its equivalent to the recipient of future damages at defined
19 intervals.

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

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

1 health care liability claim be paid in whole or in part in periodic
2 payments rather than by a lump-sum payment.

3 (b) The court shall make a specific finding of the dollar
4 amount of periodic payments that will compensate the claimant for
5 the future damages.

6 (c) The court shall specify in its judgment ordering the
7 payment of future damages by periodic payments the:

8 (1) recipient of the payments;

9 (2) dollar amount of the payments;

10 (3) interval between payments; and

11 (4) number of payments or the period of time over which
12 payments must be made.

13 Sec. 18.04. RELEASE. The entry of an order for the payment
14 of future damages by periodic payments constitutes a release of the
15 health care liability claim filed by the claimant.

16 Sec. 18.05. FINANCIAL RESPONSIBILITY. (a) As a condition
17 to authorizing periodic payments of future damages, the court shall
18 require a defendant who is not adequately insured to provide
19 evidence of financial responsibility in an amount adequate to
20 assure full payment of damages awarded by the judgment.

21 (b) The judgment must provide for payments to be funded by:

22 (1) an annuity contract issued by a company licensed
23 to do business as an insurance company;

24 (2) an obligation of the United States;

25 (3) applicable and collectible liability insurance
26 from one or more qualified insurers; or

27 (4) any other satisfactory form of funding approved by

1 the court.

2 (c) On termination of periodic payments of future damages,
3 the court shall order the return of the security, or as much as
4 remains, to the defendant.

5 Sec. 18.06. DEATH OF RECIPIENT. (a) On the death of the
6 recipient, money damages awarded for loss of future earnings
7 continue to be paid to the estate of the recipient of the award
8 without reduction.

9 (b) Periodic payments, other than future loss of earnings,
10 terminate on the death of the recipient.

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

15 (d) Following the satisfaction or termination of any
16 obligations specified in the judgment for periodic payments, any
17 obligation of the defendant physician or health care provider to
18 make further payments ends and any security given reverts to the
19 defendant.

20 Sec. 18.07. AWARD OF ATTORNEY'S FEES. For purposes of
21 computing the award of attorney's fees when the claimant is awarded
22 a recovery that will be paid in periodic payments, the court shall:

23 (1) place a total value on the payments based on the
24 claimant's projected life expectancy; and

25 (2) reduce the amount in Subdivision (1) to present
26 value.

27 SUBCHAPTER S. ATTORNEY'S FEES

1 Sec. 19.01. DEFINITION. In this subchapter, "recovered"
2 means the net sum recovered after deducting any disbursements or
3 costs incurred in connection with prosecution or settlement of the
4 claim. Costs of medical or health care services incurred by the
5 claimant and the attorney's office overhead costs or charges are
6 not deductible disbursements or costs.

7 Sec. 19.02. APPLICABILITY. The limitations in this
8 subchapter apply without regard to whether:

9 (1) the recovery is by settlement, arbitration, or
10 judgment; or

11 (2) the person for whom the recovery is sought is an
12 adult, a minor, or an incapacitated person.

13 Sec. 19.03. PERIODIC PAYMENTS. If periodic payments are
14 recovered by the claimant, the court shall place a total value on
15 these payments based on the claimant's projected life expectancy
16 and then reduce this amount to present value for purposes of
17 computing the award of attorney's fees.

18 SUBCHAPTER T. DECLARATORY JUDGMENTS; INJUNCTIONS; APPEALS

19 Sec. 20.01. APPLICABILITY. This subchapter applies only to
20 an amendment to this Act that is effective on or after January 1,
21 2003.

22 Sec. 20.02. DECLARATORY JUDGMENT. The constitutionality
23 and other validity under the state or federal constitution of all or
24 any part of an amendment to this Act may be determined in an action
25 for declaratory judgment in a district court in Travis County under
26 Chapter 37, Civil Practice and Remedies Code, if it is alleged that
27 the amendment or a part of the amendment affects the rights, status,

1 or legal relation of a party in a civil action with respect to any
2 other party in the civil action.

3 Sec. 20.03. ACCELERATED APPEAL. (a) An appeal of a
4 declaratory judgment or order, however characterized, of a district
5 court, including an appeal of the judgment of an appellate court,
6 holding or otherwise determining, under Section 20.02 of this
7 subchapter, that all or any part of an amendment to this Act is
8 constitutional or unconstitutional, or otherwise valid or invalid,
9 under the state or federal constitution is an accelerated appeal.

10 (b) If the judgment or order is interlocutory, an
11 interlocutory appeal may be taken from the judgment or order and is
12 an accelerated appeal.

13 Sec. 20.04. INJUNCTIONS. A district court in Travis County
14 may grant or deny a temporary or otherwise interlocutory injunction
15 or a permanent injunction on the grounds of the constitutionality
16 or unconstitutionality, or other validity or invalidity, under the
17 state or federal constitution of all or any part of an amendment to
18 this Act.

19 Sec. 20.05. DIRECT APPEAL. (a) There is a direct appeal to
20 the supreme court from an order, however characterized, of a trial
21 court granting or denying a temporary or otherwise interlocutory
22 injunction or a permanent injunction on the grounds of the
23 constitutionality or unconstitutionality, or other validity or
24 invalidity, under the state or federal constitution of all or any
25 part of any amendment to this Act.

26 (b) The direct appeal is an accelerated appeal.

27 (c) This section exercises the authority granted by Section

1 3-b, Article V, Texas Constitution.

2 Sec. 20.06. STANDING OF AN ASSOCIATION OR ALLIANCE TO SUE.

3 (a) An association or alliance has standing to sue for and obtain
4 the relief described by Subsection (b) of this section if it is
5 alleged that:

6 (1) the association or alliance has more than one
7 member who has standing to sue in the member's own right;

8 (2) the interests the association or alliance seeks to
9 protect are germane to a purpose of the association or alliance; and

10 (3) the claim asserted and declaratory relief
11 requested by the association or alliance relate to all or a
12 specified part of the amendment involved in the action being found
13 constitutional or unconstitutional on its face, or otherwise found
14 valid or invalid on its face, under the state or federal
15 constitution.

16 (b) The association or alliance has standing:

17 (1) to sue for and obtain a declaratory judgment under
18 Section 20.02 of this subchapter in an action filed and maintained
19 by the association or alliance;

20 (2) to appeal or otherwise be a party to an appeal
21 under Section 20.03 of this subchapter;

22 (3) to sue for and obtain an order under Section 20.04
23 of this subchapter granting or denying a temporary or otherwise
24 interlocutory injunction or a permanent injunction in an action
25 filed and maintained by the association or alliance; and

26 (4) to appeal or otherwise be a party to an appeal
27 under Section 20.05 of this subchapter.

1 Sec. 20.07. RULES FOR APPEALS. An appeal under this
2 subchapter, including an interlocutory, accelerated, or direct
3 appeal, is governed, as applicable, by the Texas Rules of Appellate
4 Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3,
5 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

6 SECTION 10.22. Section 84.003, Civil Practice and Remedies
7 Code, is amended by adding Subdivision (6) to read as follows:

8 (6) "Hospital system" means a system of hospitals
9 located in this state that are under the common governance or
10 control of a corporate parent.

11 SECTION 10.23. Section 84.003, Civil Practice and Remedies
12 Code, is amended by adding Subdivision (7) to read as follows:

13 (7) "Person responsible for the patient" means:

14 (A) the patient's parent, managing conservator,
15 or guardian;

16 (B) the patient's grandparent;

17 (C) the patient's adult brother or sister;

18 (D) another adult who has actual care, control,
19 and possession of the patient and has written authorization to
20 consent for the patient from the parent, managing conservator, or
21 guardian of the patient;

22 (E) an educational institution in which the
23 patient is enrolled that has written authorization to consent for
24 the patient from the parent, managing conservator, or guardian of
25 the patient; or

26 (F) any other person with legal responsibility
27 for the care of the patient.

1 SECTION 10.24. Section 84.004, Civil Practice and Remedies
2 Code, is amended by adding Subsection (f) to read as follows:

3 (f) Subsection (c) applies even if:

4 (1) the patient is incapacitated due to illness or
5 injury and cannot sign the acknowledgment statement required by
6 that subsection; or

7 (2) the patient is a minor or is otherwise legally
8 incompetent and the person responsible for the patient is not
9 reasonably available to sign the acknowledgment statement required
10 by that subsection.

11 SECTION 10.25. Chapter 84, Civil Practice and Remedies
12 Code, is amended by adding Section 84.0065 to read as follows:

13 Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a)
14 Except as provided by Section 84.007, in any civil action brought
15 against a hospital or hospital system, or its employees, officers,
16 directors, or volunteers, for damages based on an act or omission by
17 the hospital or hospital system, or its employees, officers,
18 directors, or volunteers, the liability of the hospital or hospital
19 system is limited to money damages in a maximum amount of \$500,000
20 for any act or omission resulting in death, damage, or injury to a
21 patient if the patient or, if the patient is a minor or is otherwise
22 legally incompetent, the person responsible for the patient, signs
23 a written statement that acknowledges:

24 (1) that the hospital is providing care that is not
25 administered for or in expectation of compensation; and

26 (2) the limitations on the recovery of damages from
27 the hospital in exchange for receiving the health care services.

1 (b) Subsection (a) applies even if:

2 (1) the patient is incapacitated due to illness or
3 injury and cannot sign the acknowledgment statement required by
4 that subsection; or

5 (2) the patient is a minor or is otherwise legally
6 incompetent and the person responsible for the patient is not
7 reasonably available to sign the acknowledgment statement required
8 by that subsection.

9 SECTION 10.26. Article 5.15-1, Insurance Code, is amended
10 by adding Section 11 to read as follows:

11 Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude
12 or otherwise limit coverage for physicians or health care providers
13 under a vendor's endorsement issued to a manufacturer, as that term
14 is defined by Section 82.001, Civil Practice and Remedies Code. A
15 physician or health care provider shall be considered a vendor for
16 purposes of coverage under a vendor's endorsement or a
17 manufacturer's general liability or products liability policy.

18 SECTION 10.27. The following provisions are repealed:

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

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

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

1 (4) Section 242.0372, Health and Safety Code.

2 SECTION 10.28. (a) The Legislature of the State of Texas
3 finds that:

4 (1) the number of health care liability claims
5 (frequency) has increased since 1995 inordinately;

6 (2) the filing of legitimate health care liability
7 claims in Texas is a contributing factor affecting medical
8 professional liability rates;

9 (3) the amounts being paid out by insurers in
10 judgments and settlements (severity) have likewise increased
11 inordinately in the same short period of time;

12 (4) the effect of the above has caused a serious public
13 problem in availability of and affordability of adequate medical
14 professional liability insurance;

15 (5) the situation has created a medical malpractice
16 insurance crisis in Texas;

17 (6) this crisis has had a material adverse effect on
18 the delivery of medical and health care in Texas, including
19 significant reductions of availability of medical and health care
20 services to the people of Texas and a likelihood of further
21 reductions in the future;

22 (7) the crisis has had a substantial impact on the
23 physicians and hospitals of Texas and the cost to physicians and
24 hospitals for adequate medical malpractice insurance has
25 dramatically risen in price, with cost impact on patients and the
26 public;

27 (8) the direct cost of medical care to the patient and

1 public of Texas has materially increased due to the rising cost of
2 malpractice insurance protection for physicians and hospitals in
3 Texas;

4 (9) the crisis has increased the cost of medical care
5 both directly through fees and indirectly through additional
6 services provided for protection against future suits or claims,
7 and defensive medicine has resulted in increasing cost to patients,
8 private insurers, and Texas and has contributed to the general
9 inflation that has marked health care in recent years;

10 (10) satisfactory insurance coverage for adequate
11 amounts of insurance in this area is often not available at any
12 price;

13 (11) the combined effect of the defects in the
14 medical, insurance, and legal systems has caused a serious public
15 problem both with respect to the availability of coverage and to the
16 high rates being charged by insurers for medical professional
17 liability insurance to some physicians, health care providers, and
18 hospitals; and

19 (12) the adoption of certain modifications in the
20 medical, insurance, and legal systems, the total effect of which is
21 currently undetermined, will have a positive effect on the rates
22 charged by insurers for medical professional liability insurance.

23 (b) Because of the conditions stated in Subsection (a) of
24 this section, it is the purpose of this article to improve and
25 modify the system by which health care liability claims are
26 determined in order to:

27 (1) reduce excessive frequency and severity of health

1 care liability claims through reasonable improvements and
2 modifications in the Texas insurance, tort, and medical practice
3 systems;

4 (2) decrease the cost of those claims and ensure that
5 awards are rationally related to actual damages;

6 (3) do so in a manner that will not unduly restrict a
7 claimant's rights any more than necessary to deal with the crisis;

8 (4) make available to physicians, hospitals, and other
9 health care providers protection against potential liability
10 through the insurance mechanism at reasonably affordable rates;

11 (5) make affordable medical and health care more
12 accessible and available to the citizens of Texas;

13 (6) make certain modifications in the medical,
14 insurance, and legal systems in order to determine whether or not
15 there will be an effect on rates charged by insurers for medical
16 professional liability insurance;

17 (7) make certain modifications to the liability laws
18 as they relate to health care liability claims only and with an
19 intention of the legislature to not extend or apply such
20 modifications of liability laws to any other area of the Texas legal
21 system or tort law;

22 (8) encourage offering services by physicians and
23 hospitals, particularly those involving high risk, that will
24 benefit, in particular, high-cost and low-income groups because
25 lower malpractice insurance rates increase the willingness of
26 physicians and hospitals to provide treatments that carry a
27 relatively high risk of failure but offer the only real prospect of

1 success for seriously ill patients;

2 (9) encourage quality of care and discourage defensive
3 medicine;

4 (10) decrease malpractice insurance premiums, which
5 are a significant part of overall health care cost, and, as the cost
6 savings are reflected in health insurance premiums, make health
7 insurance benefit programs more affordable to businesses,
8 particularly small businesses, and increase employee participation
9 in health insurance programs offered by their employers;

10 (11) discourage unnecessary services and encourage
11 fewer tests, procedures, and visits so that the direct financial
12 cost to the patient will be reduced as well as time, travel, and
13 other indirect costs;

14 (12) support health care insurance for employers and
15 employees because malpractice insurance is a component of the
16 overhead costs that providers must take into account in negotiating
17 reimbursement rates with commercial insurers and employers that pay
18 all or a portion of the premiums for their employees will save money
19 and may make the difference in whether an employer can afford to
20 maintain current health insurance benefits for its employees;

21 (13) reduce the time required for plaintiffs to obtain
22 awards;

23 (14) reduce malpractice pressure and, as a result,
24 increase the supply of physicians, especially obstetricians and
25 other impacted specialists;

26 (15) contribute to the viability of community
27 hospitals by lowering malpractice insurance premiums;

1 (16) free funds in the operating budgets of
2 self-insured hospitals, allowing the hospital to treat more
3 patients;

4 (17) reduce or eliminate the incentive for physicians
5 to go without insurance;

6 (18) lower costs for teaching and safety-net hospitals
7 as well as nonprofit community clinics;

8 (19) decrease the costs for health care facilities
9 that self-insure; and

10 (20) allow the Texas Medicaid program to save
11 resources that can be used to provide additional health care goods
12 and services.

13 SECTION 10.29. (a) Subchapter S, Medical Liability and
14 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
15 Civil Statutes), as added by this article, applies only to an
16 attorney's fee agreement or contract that is entered into on or
17 after January 1, 2004. An attorney's fee agreement or contract
18 entered into before January 1, 2004, is governed by the law in
19 effect immediately before the effective date of this article, and
20 that law is continued in effect for that purpose.

21 (b) This article does not make any change in law with
22 respect to the adjustment under Section 11.04, Medical Liability
23 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
24 Texas Civil Statutes), of the liability limit prescribed in Section
25 11.02(a) of that Act, and that law is continued in effect only for
26 that liability limit.

27 ARTICLE 10A. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR

1 PHYSICIANS AND HEALTH CARE PROVIDERS

2 SECTION 10A.01. Chapter 5, Insurance Code, is amended by
3 adding Subchapter R to read as follows:

4 SUBCHAPTER R. RATES FOR PROFESSIONAL LIABILITY INSURANCE
5 FOR PHYSICIANS AND HEALTH CARE PROVIDERS

6 Art. 5.161. FINDINGS. The legislature finds that:

7 (1) the cost of professional liability insurance for
8 physicians and health care providers, as defined by Section
9 1.03(a), Medical Liability and Insurance Improvement Act of Texas
10 (Article 4590i, Vernon's Texas Civil Statutes), has been a
11 significant factor in the reduced availability of health care in
12 this state;

13 (2) legislation under consideration by the Regular
14 Session of the 78th Legislature should eliminate or significantly
15 reduce the cost of claims under policies of professional liability
16 insurance for physicians and health care providers, and legislation
17 by future legislatures may have the same effect;

18 (3) while the monetary effect of these legislative
19 changes can be actuarially determined within a reasonable degree of
20 certainty, insurers will delay implementation of rate reductions
21 until they have data evidencing actual loss experience;

22 (4) delay in implementation of rate reductions will
23 result in a windfall for the insurers benefited by the changes
24 described by this article, and this benefit should be passed on to
25 insureds; and

26 (5) legislative action in the public interest and
27 within the police power of the state is required to eliminate

1 unnecessary delays to pass these benefits on to the insured
2 physicians and health care providers of this state.

3 Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter
4 applies to any insurer that is authorized to engage in business in
5 this state and that is authorized to write professional liability
6 insurance for physicians and health care providers, including:

7 (1) a Lloyd's plan;
8 (2) a reciprocal or interinsurance exchange;
9 (3) the joint underwriting association established
10 under Article 21.49-3 of this code; and

11 (4) a self-insurance trust established under Article
12 21.49-4 of this code.

13 (b) It is the intent of the legislature that all insurers,
14 as defined by this article, pass through the savings that accrue
15 from the changes described by Article 5.161 of this code to their
16 policyholders on a prospective basis. To monitor compliance with
17 this legislative directive, the commissioner may require
18 information in rate filings, special data calls, informational
19 hearings, and any other means consistent with other provisions of
20 this code applicable to the affected insurers. Information
21 provided under this subsection is privileged and confidential to
22 the same extent as the information is privileged and confidential
23 under this code or other laws for other insurers described by this
24 article licensed and writing the same line of insurance in this
25 state.

26 (c) This subchapter applies only to professional liability
27 insurance for physicians and health care providers.

1 Art. 5.163. EQUITABLE RATE REDUCTION

2 Sec. 1. HEARING. (a) Not later than September 1 of each
3 year, the commissioner shall hold a rulemaking hearing under
4 Chapter 2001, Government Code, to determine the percentage of
5 equitable reductions in insurance rates required on an individual
6 basis of each insurer writing professional liability insurance for
7 physicians and health care providers.

8 (b) Not later than October 1 of each year, the commissioner
9 shall issue rules mandating the appropriate rate reductions to
10 rates for professional liability insurance for physicians and
11 health care providers and developed without consideration of the
12 effect of the changes described by Article 5.161 of this code.

13 (c) The commissioner shall set the percentage of the rate
14 reduction for professional liability insurance for physicians and
15 health care providers and may set different rate reductions for
16 different types of policies. The commissioner's order establishing
17 the rate reductions must be based on the evidence adduced at the
18 rulemaking hearing, including the adequacy of the rate at the time
19 of the hearing. Rates resulting from the rate reductions imposed by
20 this article must comply with Section 3(d), Article 5.15-1, of this
21 code.

22 (d) The rate reductions adopted under this section are
23 applicable to each policy or coverage delivered, issued for
24 delivery, or renewed on and after January 1, 2004, and to each
25 policy or coverage delivered, issued for delivery, or renewed on
26 and after the 90th day after the date of each subsequent rule
27 adopted under this section. An insurer, as defined by Article 5.162

1 of this code, shall apply the rate reduction to the rates used by
2 the insurer.

3 (e) Any rule or order of the commissioner that determines,
4 approves, or sets a rate reduction under this section and is
5 appealed or challenged remains in effect during the pendency of the
6 appeal or challenge. During the pendency of the appeal or
7 challenge, an insurer shall use rates that reflect the rate
8 reduction provided in the order being appealed or challenged. The
9 rate reduction is lawful and valid during the appeal or challenge.

10 Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by
11 Subsection (b) of this section, a rate filed under Articles 5.13-2
12 and 5.15-1 of this code for professional liability insurance for
13 physicians and health care providers on and after January 1, 2004,
14 and a rate filed under those articles on and after the 90th day
15 following the effective date of a subsequent rule adopted under
16 Section 1(b) of this article, shall reflect each rate reduction
17 imposed under Section 1 of this article.

18 (b) Notwithstanding Articles 5.13-2 and 5.15-1 of this
19 code, the commissioner shall, after notice and opportunity for
20 hearing, disapprove a filed rate, without regard to whether the
21 rate complies with Articles 5.13-2 and 5.15-1 of this code, if the
22 commissioner finds that the filed rate does not reflect the rate
23 reduction imposed under Section 1 of this article. A proceeding
24 under this section is a contested case under Chapter 2001,
25 Government Code.

26 (c) The commissioner may approve a filed rate that reflects
27 less than the full amount of the rate reduction imposed by Section 1

1 of this article if the commissioner determines based on a
2 preponderance of the evidence presented by an insurer that:

3 (1) the actual or anticipated loss experience for the
4 insurer's rating classifications is or will be different than the
5 presumptive rate reduction;

6 (2) the insurer will be financially unable to continue
7 writing in a particular line of insurance;

8 (3) the rate reduction required under this article
9 would likely result in placing the insurer in a hazardous financial
10 condition described by Section 2, Article 1.32, of this code; or

11 (4) the resulting rates for the insurer would be
12 unreasonable or confiscatory to the insurer.

13 Sec. 3. DURATION OF REDUCTION. Unless the commissioner
14 grants relief under Section 2 of this article, each rate reduction
15 required under Section 1 of this article remains in effect for the
16 period specified in the commissioner's rule or order.

17 Sec. 4. MODIFICATION. The commissioner may, by bulletin or
18 directive, based on the evidence accumulated by the commissioner
19 before the bulletin or directive is issued, modify a rate reduction
20 mandated by the commissioner under this article if a final,
21 unappealable judgment of a court with appropriate jurisdiction
22 stays the effect of, enjoins, or otherwise modifies or declares
23 unconstitutional any legislation described by Article 5.161 of this
24 code on which the commissioner based the rate reduction.

25 Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of
26 this code, a rulemaking hearing under this article shall be held
27 before the commissioner or the commissioner's designee. The

1 rulemaking procedures established by this section do not apply to
2 any other rate promulgation proceeding.

3 Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a
4 commissioner's order issued before May 1, 2003, is not subject to
5 the rate reductions required by this article before January 1,
6 2004.

7 Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner
8 shall assemble information, conduct hearings, and take other
9 appropriate measures to assess and evaluate changes in the
10 marketplace resulting from the implementation of this article and
11 to report findings and recommendations to the legislature.

12 Art. 5.164. CONTINGENT ROLLBACK. (a) If a \$250,000 cap on
13 noneconomic damages in all health care liability claims, without
14 exception, becomes constitutional by voter approval of an amendment
15 to the Texas Constitution or is determined to be constitutional by
16 the supreme court, an insurer, as defined by Article 5.162 of this
17 code, that delivers, issues for delivery, or renews a policy of
18 professional liability insurance for physicians or health care
19 providers in this state on or after the 30th day after the effective
20 date of the constitutional amendment or the date the cap was
21 determined to be constitutional may not charge more for the policy
22 than 85 percent of the amount the insurer charged that insured for
23 the same coverage immediately before the effective date of the
24 constitutional amendment or the date that the cap was determined to
25 be constitutional, or, if the insurer did not insure that insured
26 immediately before that date, 85 percent of the amount the insurer
27 would have charged that insured, provided that the rate was

1 adequate and not artificially inflated prior to the determination
2 of constitutionality. An insurer may petition the commissioner for
3 an exception to the rate reduction. A proceeding under this article
4 is a contested case under Chapter 2001, Government Code. The
5 commissioner shall not grant the exception unless the insurer
6 proves by a preponderance of the evidence that the rate reduction is
7 confiscatory. If the insurer meets this evidentiary burden, the
8 commissioner may grant the exception only to the extent that the
9 reduction is confiscatory. The contingent rate rollback required
10 by this article does not apply to a policy or coverage delivered,
11 issued for delivery, or renewed for a public hospital in this state.

12 (b) If the commissioner makes no determination as to a rate
13 reduction in accordance with Section 1, Article 5.163, then an
14 insurer may not charge an insured for professional liability
15 insurance for physicians and health care providers issued or
16 renewed on or after the second anniversary of the 30th day after the
17 effective date of the constitutional amendment containing a
18 \$250,000 cap on noneconomic damages in all health care liability
19 claims or the date the cap was determined to be constitutional and
20 before the third anniversary of the 30th day after the effective
21 date of the constitutional amendment or the date the cap was
22 determined to be constitutional an amount that exceeds 80 percent
23 of the amount the insurer charged or would have charged the insured
24 for the same coverage.

25 (c) If the commissioner makes no determination as to a rate
26 reduction in accordance with Section 1, Article 5.163, then an
27 insurer may not charge an insured for professional liability

1 insurance for physicians and health care providers issued or
2 renewed on or after the third anniversary of the 30th day after the
3 effective date of the constitutional amendment containing a
4 \$250,000 cap on noneconomic damages in all health care liability
5 claims or the date the cap was determined to be constitutional and
6 before the fourth anniversary of the 30th day after the effective
7 date of the constitutional amendment or the date the cap was
8 determined to be constitutional an amount that exceeds 75 percent
9 of the amount the insurer charged or would have charged the insured
10 for the same coverage.

11 Art. 5.165. FILING OF RATE INFORMATION WITH DEPARTMENT;
12 REPORT TO LEGISLATURE

13 Sec. 1. PURPOSE. The purpose of this article is to require
14 insurers writing professional liability insurance for physicians
15 and health care providers in this state to annually file with the
16 commissioner of insurance rates and supporting data, including
17 current rates and estimated rates to be charged in the year
18 following the filing date for the purpose of the preparation of a
19 summary report for submission to each legislature and the
20 determination by the commissioner of equitable rate reductions
21 under Article 5.163 of this code. Information submitted under this
22 article must be sufficient for the commissioner to determine the
23 extent of equitable rate reductions under Article 5.163 of this
24 code. The commissioner's report shall contain a review of the
25 rates, presented in a manner that protects the identity of
26 individual insurers:

27 (1) to inform the legislature as to whether the rates

1 are just, adequate, and reasonable and not excessive or unfairly
2 discriminatory; and

3 (2) to assist in the determination of the most
4 effective and efficient regulatory system for professional
5 liability insurance for physicians and health care providers in
6 Texas.

7 Sec. 2. DEFINITIONS. In this article:

8 (1) "Insurer" means an insurer described by Article
9 5.162 of this code.

10 (2) "Supplementary rating information" means any
11 manual, rating schedule, plan of rules, rating rules,
12 classification systems, territory codes and descriptions, rating
13 plans, and other similar information used by the insurer to
14 determine the applicable premium for an insured. The term includes
15 factors and relativities, such as increased limits factors,
16 classification relativities, deductible relativities, premium
17 discount, and other similar factors and rating plans such as
18 experience, schedule, and retrospective rating.

19 (3) "Security" or "securities" has the meaning
20 assigned by Section 4, The Securities Act (Article 581-4, Vernon's
21 Texas Civil Statutes).

22 Sec. 3. RATE INFORMATION. (a) Insurers must file rates for
23 professional liability insurance for physicians and health care
24 providers and supporting information with the commissioner in
25 accordance with the requirements determined by the commissioner
26 under this article.

27 (b) Filings made by each insurer must be sufficient to

1 respond to the commissioner's request for information under this
2 article and must provide both current rates and estimated rates for
3 the year following the required filing date of this article based on
4 information reasonably known to the insurer at the time of filing.

5 (c) The insurer shall file, in a format specified by the
6 commissioner, including an electronic format:

7 (1) all rates for professional liability insurance for
8 physicians and health care providers, supplementary rating
9 information, underwriting guidelines, reasonable and pertinent
10 supporting information for risks written in the state, and all
11 applicable rating manuals;

12 (2) actuarial support, including all statistics,
13 data, or other information to support the rates, supplementary
14 rating information, and underwriting guidelines used by the
15 insurer;

16 (3) the policy fees, service fees, and other fees that
17 are charged under Article 21.35B of this code;

18 (4) information on the insurer's losses from
19 investments in securities, whether publicly or privately traded,
20 including investments in the securities of companies required by
21 any oversight agency to restate earnings within the 24 months
22 preceding the filing date, possessed and used by the insurer to
23 determine premiums or underwriting for professional liability
24 insurance for physicians and health care providers, as this
25 information relates to the rates described by Section 1 of this
26 article;

27 (5) information on the insurer's costs of reinsurance

1 possessed and used by the insurer to determine premiums or
2 underwriting for professional liability insurance for physicians
3 and health care providers, as this information relates to the rates
4 described by Section 1 of this article;

5 (6) a complete explanation, and an electronic copy, of
6 all computer models used by the insurer not protected by a contract
7 with a third party; and

8 (7) a complete explanation of any changes to
9 underwriting guidelines, rates, and supplementary rating
10 information since the last filing under this article.

11 (d) The commissioner shall determine the date on which the
12 filing is due.

13 (e) The commissioner may require additional information as
14 provided by Section 4 of this article.

15 (f) The commissioner shall issue an order specifying the
16 information that insurers must file to comply with this article and
17 the date on which the filing is due.

18 (g) The commissioner is not required to hold a hearing
19 before issuing the order required under Subsection (f) of this
20 section.

21 (h) The commissioner shall notify an affected insurer of the
22 order requiring the rate filing information under this section on
23 the day the order is issued.

24 Sec. 4. ADDITIONAL INFORMATION. After the initial rate
25 submission under Section 3 of this article, the commissioner may
26 require an insurer to provide additional, reasonable information
27 for purposes of the clarification or completeness of the initial

1 rate submission.

2 Sec. 5. USE OF FILED RATE INFORMATION. (a) Information
3 filed by an insurer with the department under this article that is
4 confidential under a law that applied to the insurer before the
5 effective date of this article remains confidential and is not
6 subject to disclosure under Chapter 552, Government Code, except
7 that the information may be disclosed as provided by Section
8 552.008, Government Code, relating to information for legislative
9 purposes. Information disclosed pursuant to Section 552.008,
10 Government Code, shall be provided in a commonly used electronic
11 format, including in spreadsheet or comma-delimited format, if so
12 requested. The information may not be released to the public except
13 in summary form in the report required under Section 6 of this
14 article.

15 (b) Subsection (a) of this section does not preclude the use
16 of information filed under this article as evidence in prosecuting
17 a violation of this code. Confidential information described by
18 Subsection (a) of this section that is used in prosecuting a
19 violation is subject to a protective order until all appeals of the
20 case have been exhausted. If an insurer is found, after the
21 exhaustion of all appeals, to have violated this code, a copy of the
22 confidential information used as evidence of the violation is no
23 longer presumed to be confidential.

24 Sec. 6. REPORT. (a) The commissioner shall, on a date
25 determined by the commissioner, submit a report to the governor,
26 the lieutenant governor, the speaker of the house of
27 representatives, and the members of the legislature on the

1 information collected from the filings required under this article.
2 The report may be created based on a sample of the information
3 provided under Section 3 of this article.

4 (b) The report required under this section shall provide a
5 summary review of the rates currently charged and estimated to be
6 charged over the year following the date of the report, presented in
7 a manner that protects the identity of individual insurers:

8 (1) to inform the legislature as to whether the rates
9 are just, adequate, and reasonable and not excessive or unfairly
10 discriminatory; and

11 (2) to assist the legislature in the determination of
12 the most effective and efficient regulatory system for professional
13 liability insurance for physicians and health care providers in
14 this state.

15 Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner
16 shall notify the governor, the lieutenant governor, the speaker of
17 the house of representatives, and the members of the legislature of
18 the names of the insurers that the commissioner requested to make
19 the rate filings under this article and the names of the insurers
20 that did not respond in whole or in part to the commissioner's
21 request. This notification shall be made by separate letter on the
22 fourth day following the date on which the commissioner determines
23 the filing is due under Section 3(f) of this article.

24 Sec. 8. APPLICATION OF CERTAIN LAW. Chapter 40 of this code
25 does not apply to an action of the commissioner under Section 3(f)
26 of this article.

27 Sec. 9. FAILURE TO COMPLY. An insurer that fails to comply

1 with any request for information issued by the commissioner under
2 this article is subject, after notice and opportunity for hearing,
3 to sanctions as provided by Chapters 82 and 84 of this code.

4 SECTION 10A.02. The commissioner of insurance shall
5 commence a hearing under Section 1, Article 5.163, Insurance Code,
6 as added by this article, on September 1, 2003, and shall issue
7 rules mandating any appropriate rate reductions under Section 1,
8 Article 5.163, Insurance Code, not later than October 1, 2003.

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

11 SECTION 11.01. Sections 108.002(a) and (b), Civil Practice
12 and Remedies Code, are amended to read as follows:

13 (a) Except in an action arising under the constitution or
14 laws of the United States, a public servant [~~, other than a provider~~
15 ~~of health care as that term is defined in Section 108.002(c),~~] is
16 not personally liable for damages in excess of \$100,000 arising
17 from personal injury, death, or deprivation of a right, privilege,
18 or immunity if:

19 (1) the damages are the result of an act or omission by
20 the public servant in the course and scope of the public servant's
21 office, employment, or contractual performance for or service on
22 behalf of a state agency, institution, department, or local
23 government; and

24 (2) for the amount not in excess of \$100,000, the
25 public servant is covered:

26 (A) by the state's obligation to indemnify under
27 Chapter 104;

1 (B) by a local government's authorization to
2 indemnify under Chapter 102;

3 (C) by liability or errors and omissions
4 insurance; or

5 (D) by liability or errors and omissions coverage
6 under an interlocal agreement.

7 (b) Except in an action arising under the constitution or
8 laws of the United States, a public servant [~~, other than a provider~~
9 ~~of health care as that term is defined in Section 108.002(c),~~] is
10 not liable for damages in excess of \$100,000 for property damage if:

11 (1) the damages are the result of an act or omission by
12 the public servant in the course and scope of the public servant's
13 office, employment, or contractual performance for or service on
14 behalf of a state agency, institution, department, or local
15 government; and

16 (2) for the amount not in excess of \$100,000, the
17 public servant is covered:

18 (A) by the state's obligation to indemnify under
19 Chapter 104;

20 (B) by a local government's authorization to
21 indemnify under Chapter 102;

22 (C) by liability or errors and omissions
23 insurance; or

24 (D) by liability or errors and omissions coverage
25 under an interlocal agreement.

26 SECTION 11.02. Chapter 261, Health and Safety Code, is
27 amended by adding Subchapter C to read as follows:

1 SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

2 Sec. 261.051. DEFINITION. In this subchapter, "municipal
3 hospital management contractor" means a nonprofit corporation,
4 partnership, or sole proprietorship that manages or operates a
5 hospital or provides services under contract with a municipality.

6 Sec. 261.052. LIABILITY OF MUNICIPAL HOSPITAL MANAGEMENT
7 CONTRACTOR. A municipal hospital management contractor and any
8 employee of the contractor are, while performing services under the
9 contract for the benefit of the hospital, employees of the
10 municipality for the purposes of Chapters 101, 102, and 108, Civil
11 Practice and Remedies Code.

12 SECTION 11.03. Section 285.071, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 285.071. DEFINITION. In this chapter, "hospital
15 district management contractor" means a nonprofit corporation,
16 partnership, or sole proprietorship that manages a hospital or
17 provides services [~~as a part of a rural health network as defined~~
18 ~~under 42 U.S.C. Section 1395i-4(g)] under contract with a hospital~~
19 ~~district that was created by general or special law [and that has a~~
20 ~~population under 50,000].~~

21 SECTION 11.04. Section 108.002(c), Civil Practice and
22 Remedies Code, is repealed.

23 ARTICLE 12. JUROR QUALIFICATION

24 SECTION 12.01. Section 62.105, Government Code, is amended
25 to read as follows:

26 Sec. 62.105. DISQUALIFICATION FOR PARTICULAR JURY. (a) A
27 person is disqualified to serve as a petit juror in a particular

1 case if the person [~~he~~]:

2 (1) is a witness in the case;

3 (2) is interested, directly or indirectly, in the
4 subject matter of the case;

5 (3) is related by consanguinity or affinity within the
6 third degree, as determined under Chapter 573, to a party in the
7 case;

8 (4) has a bias or prejudice in favor of or against a
9 party in the case; or

10 (5) has served as a petit juror in a former trial of
11 the same case or in another case involving the same questions of
12 fact.

13 (b)(1) In an action seeking damages for personal injury or
14 death, a person's answer in voir dire that the person could not
15 award a certain sum of money damages based on a hypothetical set of
16 circumstances does not, in and of itself, establish a bias or
17 prejudice in favor of or against a party in the action that warrants
18 disqualification under Subsection (a)(4).

19 (2) In this section, "side" has the same meaning as in
20 Rule 233, Texas Rules of Civil Procedure, or its successor.

21 (A) In any civil action to be tried before a jury,
22 the trial court shall allow each side voir dire, as follows:

23 (i) in Level 1 cases, as defined by Rule
24 190.2, Texas Rules of Civil Procedure, at least one hour;

25 (ii) in Level 2 cases, as defined by Rule
26 190.3, Texas Rules of Civil Procedure, at least two hours; and

27 (iii) in Level 3 cases, as defined by Rule

1 190.4, Texas Rules of Civil Procedure, at least three hours.

2 (B) The time allocated in this subsection shall
3 not include time consumed in making preemptory challenges or
4 challenges for cause to jurors or in making or responding to
5 objections.

6 (C) The supreme court may adopt rules consistent
7 with the provisions of this section. To the extent that any rule
8 conflicts with the provisions of this section, this section
9 controls.

10 ARTICLE 13. EXEMPLARY DAMAGES

11 SECTION 13.01. Section 41.001(1), Civil Practice and
12 Remedies Code, is amended to read as follows:

13 (1) "Claimant" means a person [~~party~~], including a
14 plaintiff, counterclaimant, cross-claimant, or third-party
15 plaintiff, seeking or who has sought recovery of exemplary damages.
16 In a cause of action in which a party seeks recovery of exemplary
17 damages related to injury to another person, damage to the property
18 of another person, death of another person, or other harm to another
19 person, "claimant" includes both that other person and the party
20 seeking recovery of exemplary damages.

21 SECTION 13.02. Section 41.008(b), Civil Practice and
22 Remedies Code, is amended to read as follows:

23 (b) Exemplary damages awarded against a defendant to a
24 claimant may not exceed an amount equal to the greater of:

25 (1)(A) two times the amount of economic damages to be
26 awarded in the judgment; plus

27 (B) an amount equal to any noneconomic damages to

1 be awarded in the judgment [~~found by the jury~~], not to exceed
2 \$750,000; or

3 (2) \$200,000.

4 ARTICLE 14. ASSIGNMENT OF JUDGES

5 SECTION 14.01. Subchapter B, Chapter 74, Government Code,
6 is amended by adding Section 74.0241 to read as follows:

7 Sec. 74.0241. ASSIGNMENT OF JUDGES FOR HEALTH CARE
8 LIABILITY CLAIMS. (a) In this section, "health care liability
9 claim" has the meaning assigned by Section 1.03, Medical Liability
10 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
11 Texas Civil Statutes).

12 (b) Notwithstanding any other law or rule, and on motion of
13 a party to a health care liability claim, the supreme court shall
14 assign a judge for the health care liability claim and any action or
15 suit that includes the claim. A motion to assign a judge must be
16 made:

17 (1) by a party asserting a claim not later than 30 days
18 following the appearance of any defendant; or

19 (2) by a party against whom the claim is asserted
20 concurrently with or before the filing of the movant's answer.

21 (b-1) Any judge assigned under this section may not have
22 been defeated in the general election immediately preceding the
23 assignment under this section.

24 (b-2) Any judge assigned under this section may not have
25 retired before the end of the applicable election term immediately
26 preceding the assignment under this section.

27 (c) The supreme court shall provide each party to the health

1 care liability claim and any action or suit that includes the claim
2 a list of the judges from whom the assigned judge will be selected.

3 (d) Within a period specified by the supreme court, each of
4 the following groups of parties may file with the supreme court a
5 written objection to one of the judges on the list provided under
6 Subsection (c) who is not a regular judge in the county in which the
7 suit is pending:

8 (1) all of the parties asserting the claim;

9 (2) all of the parties against whom the claim is
10 asserted; and

11 (3) all other parties in the case.

12 (e) After the period specified for filing an objection under
13 Subsection (d) has expired, no further objection may be made. The
14 supreme court shall assign one judge on the list who has not been
15 timely objected to under Subsection (d) to serve as the assigned
16 judge for the health care liability claim and any action or suit
17 that includes the claim.

18 (f) Notwithstanding any other law or rule, the supreme court
19 has authority to issue any rule necessary or appropriate to
20 implement this section.

21 ARTICLE 15. CLAIMS AGAINST SCHOOL DISTRICT TRUSTEES AND EMPLOYEES
22 OF ELEMENTARY AND SECONDARY SCHOOLS

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

25 Sec. 11.064. CIVIL IMMUNITY. A member of the board of
26 trustees of a school district is considered to be a professional
27 employee of the district for purposes of Subchapter B, Chapter 22.

1 SECTION 15.02. Subchapter B, Chapter 22, Education Code, is
2 amended by amending Section 22.051 and adding Sections
3 22.0511-22.0516 to read as follows:

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

6 (1) a superintendent, principal, teacher, substitute
7 teacher, supervisor, social worker, counselor, nurse, and
8 teacher's aide employed by a school district;

9 (2) a teacher employed by a company that contracts
10 with a school district to provide the teacher's services to the
11 district;

12 (3) a student in an education preparation program
13 participating in a field experience or internship;

14 (4) a school bus driver certified in accordance with
15 standards and qualifications adopted by the Department of Public
16 Safety; and

17 (5) any other person employed by a school district
18 whose employment requires certification and the exercise of
19 discretion.

20 Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL~~
21 ~~EMPLOYEES~~]. (a) A professional employee of a school district is
22 not personally liable for any act that is incident to or within the
23 scope of the duties of the employee's position of employment and
24 that involves the exercise of judgment or discretion on the part of
25 the employee, except in circumstances in which a professional
26 employee uses excessive force in the discipline of students or
27 negligence resulting in bodily injury to students.

1 (b) This section does not apply to the operation, use, or
2 maintenance of any motor vehicle[~~-~~.

3 [~~(c) In this section, "professional employee" includes:~~

4 [~~(1) a superintendent, principal, teacher,~~
5 ~~supervisor, social worker, counselor, nurse, and teacher's aide;~~

6 [~~(2) a student in an education preparation program~~
7 ~~participating in a field experience or internship;~~

8 [~~(3) a school bus driver certified in accordance with~~
9 ~~standards and qualifications adopted by the Department of Public~~
10 ~~Safety; and~~

11 [~~(4) any other person whose employment requires~~
12 ~~certification and the exercise of discretion].~~

13 Sec. 22.0512. PROTECTION UNDER FEDERAL LAW. (a) In this
14 section, "school" and "teacher" have the meanings assigned by 20
15 U.S.C. Section 6733 and its subsequent amendments.

16 (b) In addition to the immunity provided by Section 22.0511
17 and other state law, a teacher is entitled to any immunity and other
18 protections afforded under the Paul D. Coverdell Teacher Protection
19 Act of 2001 (20 U.S.C. Section 6731 et seq.) and its subsequent
20 amendments.

21 (c) This section may not be construed as limiting or
22 abridging any immunity or protection afforded a teacher under state
23 law.

24 Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th
25 day before the date a person files an action against a professional
26 employee of a school district involving an act that is incident to
27 or within the scope of duties of the employee's position of

1 employment, the person must give written notice to the employee of
2 the claim, reasonably describing the act from which the claim
3 arises.

4 (b) A professional employee of a school district against
5 whom an action is pending who did not receive written notice as
6 required by Subsection (a) may file a plea in abatement not later
7 than the 30th day after the date the employee files an original
8 answer in the court in which the action is pending.

9 (c) The court shall abate the action if the court, after a
10 hearing, finds that the employee is entitled to an abatement
11 because notice was not provided as required by this section.

12 (d) An abatement under Subsection (c) continues until the
13 90th day after the date written notice is given to the employee as
14 provided by Subsection (a).

15 Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file
16 an action against a professional employee of a school district
17 involving an act that is incident to or within the scope of duties
18 of the employee's position of employment unless the person has
19 exhausted any remedies provided by the school district for
20 resolving the complaint.

21 Sec. 22.0515. ALTERNATIVE DISPUTE RESOLUTION. A court in
22 which an action is brought against a professional employee of a
23 school district involving an act that is incident to or within the
24 scope of duties of the employee's position of employment may refer
25 the case to an alternative dispute resolution procedure as
26 described by Chapter 154, Civil Practice and Remedies Code.

27 Sec. 22.0516. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST

1 PROFESSIONAL EMPLOYEE. In an action against a professional
2 employee of a school district involving an act that is incident to
3 or within the scope of duties of the employee's position of
4 employment and brought against the employee in the employee's
5 individual capacity, the employee is entitled to recover attorney's
6 fees and court costs from the plaintiff if the employee is immune
7 from liability under this subchapter.

8 SECTION 15.03. Section 22.053(a), Education Code, is
9 amended to read as follows:

10 (a) A volunteer who is serving as a direct service volunteer
11 of a school district is immune from civil liability to the same
12 extent as a professional employee of a school district under
13 Section 22.0511 [~~22.051~~].

14 SECTION 15.04. Section 30.024(c), Education Code, is
15 amended to read as follows:

16 (c) In addition to any other federal and state statutes
17 limiting the liability of employees at the school, Sections
18 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
19 to professional employees and volunteers of the school.

20 SECTION 15.05. Section 30.055(c), Education Code, is
21 amended to read as follows:

22 (c) In addition to any other federal and state statutes
23 limiting the liability of employees at the school, Sections
24 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
25 to professional employees and volunteers of the school.

26 SECTION 15.06. Section 105.301(e), Education Code, is
27 amended to read as follows:

1 (e) The academy is not subject to the provisions of this
2 code, or to the rules of the Texas Education Agency, regulating
3 public schools, except that:

4 (1) professional employees of the academy are entitled
5 to the limited liability of an employee under Sections 22.0511,
6 22.0512, and [Section 22.051 or] 22.052;

7 (2) a student's attendance at the academy satisfies
8 compulsory school attendance requirements; and

9 (3) for each student enrolled, the academy is entitled
10 to allotments from the foundation school program under Chapter 42
11 as if the academy were a school district, except that the academy
12 has a local share applied that is equivalent to the local fund
13 assignment of the Denton Independent School District.

14 SECTION 15.07. This article applies only to an action for
15 damages involving conduct that occurs on or after September 1,
16 2003. An action for damages involving conduct that occurs before
17 September 1, 2003, is governed by the law in effect on the date the
18 conduct occurs, and the former law is continued in effect for that
19 purpose.

20 ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

21 SECTION 16.01. Subchapter B, Chapter 32, Human Resources
22 Code, is amended by adding Section 32.060 to read as follows:

23 Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO
24 NURSING INSTITUTIONS. (a) The following are not admissible as
25 evidence in a civil action:

26 (1) any finding by the department that an institution
27 licensed under Chapter 242, Health and Safety Code, has violated a

1 standard for participation in the medical assistance program under
2 this chapter; and

3 (2) the fact of the assessment of a monetary penalty
4 against an institution under Section 32.021 or the payment of the
5 penalty by an institution.

6 (b) This section does not apply in an enforcement action in
7 which the state or an agency or political subdivision of the state
8 is a party.

9 (c) Notwithstanding any other provision of this section,
10 evidence described by Subsection (a) is admissible as evidence in a
11 civil action only if:

12 (1) the evidence relates to a material violation of a
13 standard or assessment of a monetary penalty with respect to:

14 (A) the particular incident that is the basis of
15 the claim being brought;

16 (B) an incident comparable to the incident that
17 is the basis of the claim in the civil action; or

18 (C) the particular individual whose personal
19 injury is the basis of the claim being brought in the civil action;
20 and

21 (2) the violation of the standard or the violation
22 that resulted in the assessment of a monetary penalty is a proximate
23 cause of the injury that is the basis of the claim being brought in
24 the civil action.

25 SECTION 16.02. Subchapter A, Chapter 242, Health and Safety
26 Code, is amended by adding Section 242.017 to read as follows:

27 Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL

1 ACTIONS. (a) The following are not admissible as evidence in a
2 civil action:

3 (1) any finding by the department that an institution
4 has violated this chapter or a rule adopted under this chapter; and

5 (2) the fact of the assessment of a penalty against an
6 institution under this chapter or the payment of the penalty by an
7 institution.

8 (b) This section does not apply in an enforcement action in
9 which the state or an agency or political subdivision of the state
10 is a party.

11 (c) Notwithstanding any other provision of this section,
12 evidence described by Subsection (a) is admissible as evidence in a
13 civil action only if:

14 (1) the evidence relates to a material violation of
15 this chapter or a rule adopted under this chapter or assessment of a
16 monetary penalty with respect to:

17 (A) the particular incident that is the basis of
18 the claim being brought in the civil action; or

19 (B) the particular individual whose personal
20 injury is the basis of the claim being brought in the civil action;
21 and

22 (2) the violation of the chapter or rule or the
23 violation that resulted in the assessment of a monetary penalty is a
24 proximate cause of the injury that is the basis of the claim being
25 brought in the civil action.

26 SECTION 16.03. The following laws are repealed:

27 (1) Sections 32.021(i) and (k), Human Resources Code;

1 and

2 (2) Section 242.050, Health and Safety Code, as added
3 by Chapter 1284, Acts of the 77th Legislature, Regular Session,
4 2001.

5 SECTION 16.04. (a) Except as provided by Subsection (b) of
6 this section, this article applies only to a suit commenced or
7 pending on or after the effective date of this article.

8 (b) This article does not apply to a suit in which the trial
9 on the merits commenced on or before the effective date of this
10 article; that suit is governed by the law in effect immediately
11 before the change in law made by this article, and that law is
12 continued in effect for that purpose.

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

15 SECTION 17.01. Title 6, Civil Practice and Remedies Code,
16 is amended by adding Chapter 149 to read as follows:

17 CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING
18 TO CERTAIN MERGERS OR CONSOLIDATIONS

19 Sec. 149.001. DEFINITIONS. In this chapter:

20 (1) "Asbestos claim" means any claim, wherever or
21 whenever made, for damages, losses, indemnification, contribution,
22 or other relief arising out of, based on, or in any way related to
23 asbestos, including:

24 (A) property damage caused by the installation,
25 presence, or removal of asbestos;

26 (B) the health effects of exposure to asbestos,
27 including any claim for:

1 (i) personal injury or death;
2 (ii) mental or emotional injury;
3 (iii) risk of disease or other injury; or
4 (iv) the costs of medical monitoring or
5 surveillance; and

6 (C) any claim made by or on behalf of any person
7 exposed to asbestos, or a representative, spouse, parent, child, or
8 other relative of the person.

9 (2) "Corporation" means a corporation for profit,
10 including:

11 (A) a domestic business corporation organized
12 under the laws of this state; or

13 (B) a foreign corporation organized under laws
14 other than the laws of this state that has a certificate of
15 authority to transact business in this state or is doing business in
16 this state.

17 (3) "Successor asbestos-related liabilities" means
18 any liabilities, whether known or unknown, asserted or unasserted,
19 absolute or contingent, accrued or unaccrued, liquidated or
20 unliquidated, or due or to become due, that are related in any way
21 to asbestos claims that were assumed or incurred by a corporation as
22 a result of or in connection with a merger or consolidation, or the
23 plan of merger or consolidation related to the merger or
24 consolidation, with or into another corporation or that are related
25 in any way to asbestos claims based on the exercise of control or
26 the ownership of stock of the corporation before the merger or
27 consolidation. The term includes liabilities that, after the time

1 of the merger or consolidation for which the fair market value of
2 total gross assets is determined under Section 149.004, were or are
3 paid or otherwise discharged, or committed to be paid or otherwise
4 discharged, by or on behalf of the corporation, or by or on behalf
5 of a transferor, in connection with settlements, judgments, or
6 other discharges in this state or another jurisdiction.

7 (4) "Transferor" means a corporation from which
8 successor asbestos-related liabilities are assumed or incurred.

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

12 (b) The limitation in Section 149.003 does not apply to:

13 (1) workers' compensation benefits paid by or on
14 behalf of an employer to an employee under the Texas Workers'
15 Compensation Act, Subtitle A, Title 5, Labor Code, or comparable
16 workers' compensation law of another jurisdiction;

17 (2) any claim against a corporation that does not
18 constitute a successor asbestos-related liability;

19 (3) an insurance corporation, as that term is used in
20 the Insurance Code; or

21 (4) any obligations under the National Labor Relations
22 Act (29 U.S.C. Section 151 et seq.), as amended, or under any
23 collective bargaining agreement.

24 Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED
25 LIABILITIES. (a) Except as provided by Subsection (b), the
26 cumulative successor asbestos-related liabilities of a corporation
27 are limited to the fair market value of the total gross assets of

1 the transferor determined as of the time of the merger or
2 consolidation and any policies of insurance. The corporation does
3 not have any responsibility for successor asbestos-related
4 liabilities in excess of this limitation.

5 (b) If the transferor had assumed or incurred successor
6 asbestos-related liabilities in connection with a prior merger or
7 consolidation with a prior transferor, the cumulative successor
8 asbestos-related liabilities of a corporation are limited to the
9 fair market value of the total gross assets of the prior transferor,
10 determined as of the time of the earlier merger or consolidation.

11 Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS
12 ASSETS. (a) A corporation may establish the fair market value of
13 total gross assets for the purpose of the limitation under Section
14 149.003 through any method reasonable under the circumstances,
15 including:

16 (1) by reference to the going concern value of the
17 assets or to the purchase price attributable to or paid for the
18 assets in an arm's-length transaction; or

19 (2) in the absence of other readily available
20 information from which fair market value can be determined, by
21 reference to the value of the assets recorded on a balance sheet.

22 (b) Total gross assets include intangible assets.

23 Sec. 149.005. ADJUSTMENT. (a) The fair market value of
24 total gross assets at the time of a merger or consolidation
25 increases annually at a rate equal to the sum of:

26 (1) the prime rate as listed in the first edition of
27 the Wall Street Journal published for each calendar year since the

1 merger or consolidation; and

2 (2) one percent.

3 (b) The rate in Subsection (a) is not compounded.

4 (c) The adjustment of fair market value of total gross
5 assets continues as provided under Subsection (a) until the date
6 the adjusted value is exceeded by the cumulative amounts of
7 successor asbestos-related liabilities paid or committed to be paid
8 by or on behalf of the corporation, or by or on behalf of a
9 transferor, after the time of the merger or consolidation for which
10 the fair market value of total gross assets is determined.

11 Sec. 149.006. SCOPE OF CHAPTER. The courts in this state
12 shall apply, to the fullest extent permissible under the United
13 States Constitution, this state's substantive law, including the
14 limitation under this chapter, to the issue of successor
15 asbestos-related liabilities.

16 SECTION 17.02. Chapter 149, Civil Practice and Remedies
17 Code, as added by this article, applies to all asbestos claims,
18 including existing asbestos claims, and all litigation, including
19 existing litigation, in the courts of this state, without regard to
20 whether a suit was commenced before, on, or after the effective date
21 of this article.

22 ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

23 SECTION 18.01. Sections 84.004(a) and (c), Civil Practice
24 and Remedies Code, are amended to read as follows:

25 (a) Except as provided by Subsection (d) and Section 84.007,
26 a volunteer [~~who is serving as an officer, director, or trustee~~] of
27 a charitable organization is immune from civil liability for any

1 act or omission resulting in death, damage, or injury if the
2 volunteer was acting in the course and scope of the volunteer's
3 ~~[his]~~ duties or functions ~~[as an officer, director, or trustee]~~
4 within the organization.

5 (c) Except as provided by Subsection (d) and Section 84.007,
6 a volunteer health care provider ~~[who is serving as a direct service~~
7 ~~volunteer of a charitable organization]~~ is immune from civil
8 liability for any act or omission resulting in death, damage, or
9 injury to a patient if:

10 (1) ~~[the volunteer was acting in good faith and in the~~
11 ~~course and scope of the volunteer's duties or functions within the~~
12 ~~organization;~~

13 ~~[(2)]~~ the volunteer commits the act or omission in the
14 course of providing health care services to the patient;

15 (2) ~~[(3)]~~ the services provided are within the scope
16 of the license of the volunteer; and

17 (3) ~~[(4)]~~ before the volunteer provides health care
18 services, the patient or, if the patient is a minor or is otherwise
19 legally incompetent, the person responsible for ~~[patient's parent,~~
20 ~~managing conservator, legal guardian, or other person with legal~~
21 ~~responsibility for the care of]~~ the patient signs a written
22 statement that acknowledges:

23 (A) that the volunteer is providing care that is
24 not administered for or in expectation of compensation; and

25 (B) the limitations on the recovery of damages
26 from the volunteer in exchange for receiving the health care
27 services.

1 SECTION 18.02. Section 84.007(a), Civil Practice and
2 Remedies Code, is amended to read as follows:

3 (a) This chapter does not apply to an act or omission that is
4 intentional, wilfully [~~or wantonly~~] negligent, or done with
5 conscious indifference or reckless disregard for the safety of
6 others.

7 SECTION 18.03. The following provisions of the Civil
8 Practice and Remedies Code are repealed:

- 9 (1) Section 84.003(4); and
10 (2) Section 84.004(b).

11 SECTION 18.04. This article applies only to a cause of
12 action that accrues on or after the effective date of this article.
13 An action that accrued before the effective date of this article is
14 governed by the law applicable to the action immediately before the
15 effective date of this article, and that law is continued in effect
16 for that purpose.

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

19 SECTION 19.01. FINDINGS AND PURPOSE. (a) The legislature
20 finds that:

21 (1) 80 percent of the area of this state is currently
22 protected by volunteer fire departments;

23 (2) concern regarding personal liability arising out
24 of services rendered by volunteer fire fighters on behalf of
25 volunteer fire departments deters individuals from offering their
26 services as volunteer fire fighters;

27 (3) the diminishing number of volunteer fire fighters

1 leads to increased costs and less service to areas of this state
2 that are served by volunteer fire departments; and

3 (4) it is in the public interest of the citizens of
4 this state to encourage the continued level of service provided by
5 volunteer fire departments.

6 (b) The purpose of this article is to reduce the exposure to
7 liability of:

8 (1) a volunteer fire department while involved in or
9 providing an emergency response; and

10 (2) a volunteer fire fighter while acting as a member
11 of a volunteer fire department.

12 SECTION 19.02. AMENDMENT. Chapter 78, Civil Practice and
13 Remedies Code, is amended by adding Subchapter C to read as follows:

14 SUBCHAPTER C. FIRE-FIGHTING SERVICES

15 Sec. 78.101. DEFINITIONS. In this subchapter:

16 (1) "Emergency response" means a response involving
17 fire protection or prevention, rescue, emergency medical, or
18 hazardous material response services.

19 (2) "Volunteer fire department" means a nonprofit
20 organization that is:

21 (A) operated by its members;

22 (B) exempt from the state sales tax under Section
23 151.310, Tax Code, or the state franchise tax under Section
24 171.083, Tax Code; and

25 (C) organized to provide an emergency response.

26 (3) "Volunteer fire fighter" means a member of a
27 volunteer fire department.

1 Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY
2 RESPONSE. This subchapter applies only to damages for personal
3 injury, death, or property damage, other than property damage to
4 which Subchapter A applies, arising from an error or omission of:

5 (1) a volunteer fire department while involved in or
6 providing an emergency response; or

7 (2) a volunteer fire fighter while involved in or
8 providing an emergency response as a member of a volunteer fire
9 department.

10 Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A
11 volunteer fire department is:

12 (1) liable for damages described by Section 78.102
13 only to the extent that a county providing the same or similar
14 services would be liable under Chapter 101; and

15 (2) entitled to the exclusions, exceptions, and
16 defenses applicable to a county under Chapter 101 and other
17 statutory or common law.

18 Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A
19 volunteer fire fighter is:

20 (1) liable for damages described by Section 78.102
21 only to the extent that an employee providing the same or similar
22 services for a county would be liable; and

23 (2) entitled to the exclusions, exceptions,
24 immunities, and defenses applicable to an employee of a county
25 under Chapter 101 and other statutory or common law.

26 SECTION 19.03. TRANSITION. Subchapter C, Chapter 78, Civil
27 Practice and Remedies Code, as added by this article, applies only

1 to a cause of action that accrues on or after the effective date of
2 this article. An action that accrues before the effective date of
3 this article is governed by the law applicable to the action
4 immediately before the effective date of this article, and that law
5 is continued in effect for that purpose.

6 ARTICLE 20. CERTAIN PROVISIONS IN CONTRACTS

7 SECTION 20.01. Title 6, Civil Practice and Remedies Code,
8 is amended by adding Chapter 145 to read as follows:

9 CHAPTER 145. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

10 Sec. 145.001. DEFINITION. In this chapter, "construction
11 contract" means a contract or agreement made and entered into by a
12 contractor, construction manager, subcontractor, supplier, or
13 equipment lessor, concerning construction, alteration, or repair.

14 Sec. 145.002. AGREEMENT VOID AND UNENFORCEABLE. (a)
15 Except as provided by Subsection (b), a covenant, promise, or
16 agreement contained in a construction contract, or in an agreement
17 collateral to or affecting a construction contract, is void and
18 unenforceable to the extent that it indemnifies a person against
19 all or any portion of loss or liability for damage that:

20 (1) is caused by or results from the sole, joint, or
21 concurrent negligence of the indemnitee, its agent, employee, or
22 another independent contractor directly responsible to the
23 indemnitee; and

24 (2) arises from:

25 (A) personal injury or death;

26 (B) property damage;

27 (C) a fine, penalty, administrative action, or

1 other action assessed by a governmental entity directly against the
2 indemnitee, its agent or employee, or an independent contractor
3 directly responsible to the indemnitee; or

4 (D) any other loss, damage, or expense that
5 arises from an occurrence described by Paragraph (A), (B), or (C).

6 (b) A covenant, promise, or agreement, contained in a
7 construction contract, or in an agreement collateral to or
8 affecting a construction contract, may provide for a person to
9 indemnify, hold harmless, or defend another person against loss or
10 liability for damage that is caused by or results from the sole,
11 joint, or concurrent negligence of the indemnitee or its agent or
12 employee and arises from the bodily injury or death of an employee
13 of:

14 (1) the indemnitor;

15 (2) the indemnitor's subcontractor, supplier, or
16 equipment lessor;

17 (3) any lower-tier subcontractor, supplier, or
18 equipment lessor of the indemnitor's subcontractor; or

19 (4) any independent contractor directly responsible
20 to a person described in Subdivisions (1)-(3).

21 Sec. 145.003. CERTAIN LAWS AND CONTRACTS UNAFFECTED. (a)
22 This chapter does not affect the validity and enforceability of:

23 (1) an insurance contract;

24 (2) benefits and protections under the workers'
25 compensation laws of this state; or

26 (3) any statutory right of contribution.

27 (b) This chapter does not affect a contract covered by

1 Section 2252.902, Government Code.

2 Sec. 145.004. WAIVER PROHIBITED. This chapter may not be
3 waived by contract or otherwise.

4 SECTION 20.02. (a) This article applies to:

5 (1) a contract entered into or renewed on or after the
6 effective date of this article; and

7 (2) any specific, terminable performance of a specific
8 job or activity begun under a contract after the effective date of
9 this article regardless of whether the contract was entered into or
10 renewed before the effective date of this article.

11 (b) A contract entered into or renewed before the effective
12 date of this article and any job or activity under the contract
13 begun before the effective date of this article is governed by the
14 law in effect immediately before the effective date of this
15 article, and that law is continued in effect for that purpose.

16 ARTICLE 21. EFFECTIVE DATE

17 SECTION 21.01. (a) All articles of this Act, other than
18 Article 10, take effect September 1, 2003.

19 (b) Article 10 of this Act takes effect immediately if this
20 Act receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, Article 10 of this Act takes effect September 1, 2003.

24 (c) Except as otherwise provided in Articles 10, 15, 18, 19,
25 and 20, this Act applies only to a civil action commenced on or
26 after the effective date of this Act. An action commenced before
27 the effective date of this Act is governed by the law in effect

1 immediately before the change in law made by this Act, and that law
2 is continued in effect for that purpose.