

By: Nixon, Allen, Capelo, Woolley,
Cook of Colorado, et al.

H.B. No. 4

Substitute the following for H.B. No. 4:

By: King

C.S.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; and

4 (C) has statewide jurisdiction.

5 Sec. 26.002. APPLICABILITY. This chapter applies only to
6 an action in which:

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

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

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

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

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

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

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

26 (b) The court's dismissal order must identify the state
27 agency having exclusive jurisdiction and state the administrative

1 remedy available to the claimant.

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

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

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

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

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

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

25 (b) The court's abatement or dismissal order must identify
26 the state agency and state the agency statute or rule on which the
27 order is based.

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

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

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

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

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

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

20 (c) The abatement period ends when:

21 (1) the state agency takes its final action on the
22 matters the court referred to the agency; or

23 (2) the court determines that the state agency is not
24 proceeding diligently to resolve the matters the court referred to
25 the agency.

26 Sec. 26.007. PROCEEDING AFTER ABATEMENT; DISMISSAL. (a)
27 After the abatement period ends, the court shall decide whether to

1 dismiss the action, proceed with the action as an individual
2 action, or proceed with the action as a class action.

3 (b) A court shall dismiss an action if the court determines
4 that:

5 (1) the state agency granted all or a substantial part
6 of the relief sought by the claimant; or

7 (2) the relief granted by the state agency is an
8 adequate substitute for the relief sought in the action by the
9 claimant.

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

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

22 (e) If a person seeks judicial review of a state agency's
23 decision on an issue referred to the agency by the court, the court
24 may transfer the action to a county of proper venue for the judicial
25 review if the court determines that:

26 (1) the transfer is necessary to avoid the likelihood
27 of conflicting or inconsistent judicial decisions affecting the

1 parties to the action;

2 (2) the transfer would promote judicial economy;

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

5 (4) the balance of interests of the parties to the
6 action predominates in favor of transferring the action.

7 (f) If a person seeks declaratory relief under Section
8 2001.038, Government Code, concerning the validity or
9 applicability of a state agency rule involved in a state agency's
10 decision on a matter referred to the agency by the court, the court
11 shall transfer the action to Travis County.

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

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

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

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

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

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

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

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

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

8 (b) The court shall find:

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

12 (2) the hourly rates it considers to be appropriate
13 for the services provided by the attorney or attorneys for the
14 class.

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

18 (d) To compute the base fee, the court shall multiply the
19 hours found in Subsection (b)(1) by the rates found in Subsection
20 (b)(2).

21 Sec. 140.005. INCREASE OR DECREASE OF BASE FEE. (a) Except
22 as provided by Subsection (b), the court may increase or decrease
23 the base fee determined under Section 140.004 by applying the
24 following factors:

25 (1) the novelty and difficulty of the issues involved
26 in the action;

27 (2) the skill required to properly perform the legal

1 services performed by the attorney or attorneys for the class;

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

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

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

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

10 (1) 25 percent of the amounts collected by class
11 members out of the common fund recovered for the class; or

12 (2) four times the base fee as determined under
13 Section 140.004.

14 Sec. 140.006. ACTUAL EXPENSES AND COSTS. In addition to the
15 fee determined by the court under this chapter, the court may award
16 the attorney or attorneys representing the class all reasonable
17 expenses and costs actually incurred by the attorney or attorneys
18 on behalf of the class.

19 SECTION 1.03. Sections 22.225(b) and (d), Government Code,
20 are amended to read as follows:

21 (b) Except as provided by Subsection (c) or (d), a judgment
22 of a court of appeals is conclusive on the law and facts, and a
23 petition for review [~~writ of error~~] is not allowed to [~~from~~] the
24 supreme court, in the following civil cases:

25 (1) a case appealed from a county court or from a
26 district court when, under the constitution, a county court would
27 have had original or appellate jurisdiction of the case, with the

1 exception of a probate matter or a case involving state revenue laws
2 or the validity or construction of a statute;

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

6 (3) an appeal from an interlocutory order appointing a
7 receiver or trustee or from other interlocutory appeals that are
8 allowed by law;

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

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

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

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

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

23 (1) appoints a receiver or trustee;

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

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

1 (4) grants or refuses a temporary injunction or grants
2 or overrules a motion to dissolve a temporary injunction as
3 provided by Chapter 65;

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

7 (6) denies a motion for summary judgment that is based
8 in whole or in part upon a claim against or defense by a member of
9 the electronic or print media, acting in such capacity, or a person
10 whose communication appears in or is published by the electronic or
11 print media, arising under the free speech or free press clause of
12 the First Amendment to the United States Constitution, or Article I
13 [~~1~~], Section 8, of the Texas Constitution, or Chapter 73;

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

17 (8) grants or denies a plea to the jurisdiction by a
18 governmental unit as that term is defined in Section 101.001;

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

23 (10) grants relief sought by a motion under Section
24 13.01(1), Medical Liability and Insurance Improvement Act of Texas
25 (Article 4590i, Vernon's Texas Civil Statutes).

26 (b) An interlocutory appeal under Subsection (a), other
27 than an appeal under Subsection (a)(4), stays [~~shall have the~~

1 ~~effect of staying~~] the commencement of a trial in the trial court
2 pending resolution of the appeal. An interlocutory appeal under
3 Subsection (a)(3) also stays all other proceedings in the trial
4 court pending resolution of that appeal.

5 SECTION 1.05. This article applies only to a suit commenced
6 or pending on or after the effective date of this article.

7 ARTICLE 2. SETTLEMENT

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

10 CHAPTER 42. SETTLEMENT AND RECOVERY OF LITIGATION COSTS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 42.001. DEFINITIONS. In this chapter:

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

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

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

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

23 (5) "Litigation costs" means money actually spent and
24 obligations actually incurred that are directly related to an
25 action. "Litigation costs" include:

26 (A) reasonable attorney's fees;

27 (B) court costs;

1 (C) reasonable deposition costs; and
2 (D) reasonable fees for not more than two expert
3 witnesses.

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

6 Sec. 42.002. APPLICABILITY AND EFFECT. (a) This chapter
7 does not apply to an action in which a class has been certified.

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

11 (1) brought under the Family Code;

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

13 (3) brought on behalf of a minor or person of unsound
14 mind; or

15 (4) to collect workers' compensation benefits under
16 Subtitle A, Title 5, Labor Code.

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

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

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

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

27 Sec. 42.003. ELECTION BY GOVERNMENTAL UNITS; WAIVER. (a)

1 This chapter does not apply to an action by or against a
2 governmental unit unless the governmental unit elects to seek
3 recovery of litigation costs under this chapter or elects to waive
4 immunity from liability for costs awarded under this chapter.

5 (b) To be effective as an election or waiver, the
6 governmental unit must make the election or waiver specifically and
7 affirmatively by a writing filed with the court on or before the
8 45th day after the date the governmental unit files its original
9 petition or original answer.

10 (c) An election or waiver is effective only in the action in
11 which it is filed.

12 Sec. 42.004. MODIFICATION OF TIME LIMITS. A court may
13 modify the time limits specified in this chapter by order resulting
14 from a pretrial conference conducted under Rule 166, Texas Rules of
15 Civil Procedure.

16 Sec. 42.005. SERVICE. When this chapter requires a writing
17 to be served on another party, service is adequate if it is
18 performed in a manner described in Rule 21a, Texas Rules of Civil
19 Procedure.

20 [Sections 42.006-42.050 reserved for expansion]

21 SUBCHAPTER B. AWARDING LITIGATION COSTS

22 Sec. 42.051. SETTLEMENT OFFER. (a) A defendant or a group
23 of defendants may serve on a claimant a settlement offer to settle
24 all claims in the action between that defendant or those defendants
25 and the claimant.

26 (b) The settlement offer must:

27 (1) be in writing;

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

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

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

6 (5) be served on the claimant to whom the settlement
7 offer is made.

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

11 (1) the date any of the offering defendants filed a
12 responsive pleading; or

13 (2) the date any of the offering defendants otherwise
14 appeared in the action.

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

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

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

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

26 (1) in writing; and

27 (2) served on the defendant or defendants who made the

1 settlement offer.

2 Sec. 42.053. WITHDRAWING SETTLEMENT OFFER. (a) A
3 defendant or group of defendants may withdraw a settlement offer by
4 -serving a written withdrawal on the claimant to whom the settlement
5 offer was made before the claimant accepts the settlement offer. A
6 claimant may not accept a settlement offer after it is withdrawn.

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

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

12 (1) the claimant to whom the settlement offer was made
13 rejects the settlement offer by serving a written rejection on any
14 defendant making the settlement offer; or

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

17 Sec. 42.055. AWARD OF LITIGATION COSTS. (a) In determining
18 the amount of monetary relief to be awarded to a claimant in the
19 judgment under this section, the following are excluded:

20 (1) any litigation costs awarded under this chapter;
21 and

22 (2) any attorney's fees, expenses, and costs incurred
23 by the party to whom the offer was made after the date the offer is
24 rejected.

25 (b) Any defendant who makes a settlement offer under this
26 chapter to a claimant seeking monetary relief shall recover
27 litigation costs from the claimant if:

1 (1) the settlement offer is rejected;

2 (2) the amount of monetary relief to be awarded to the
3 claimant in the judgment is more favorable to the defendant or group
4 of defendants who made the settlement offer than the settlement
5 offer; and

6 (3) the difference between the amount of monetary
7 relief to be awarded to the claimant in the judgment and the amount
8 of the settlement offer is equal to or greater than 10 percent of
9 the amount of the settlement offer.

10 (c) Any defendant who makes a settlement offer to a claimant
11 seeking nonmonetary relief, other than injunctive relief, may
12 recover litigation costs from the claimant if:

13 (1) the settlement offer is rejected; and

14 (2) the judgment is more favorable to the defendant or
15 group of defendants who made the settlement offer than the
16 settlement offer.

17 (d) Litigation costs awarded to a defendant under this
18 section include only those litigation costs incurred by the
19 defendant who made a settlement offer after the rejection of the
20 earliest settlement offer that entitles the defendant to an award
21 of litigation costs under this section.

22 (e) Litigation costs awarded under this section shall:

23 (1) be awarded in the judgment; and

24 (2) offset the claimant's recovery against the
25 offering defendant.

26 (f) The court shall determine the amount of litigation costs
27 awarded based on written or oral evidence presented to the court.

1 In jury trials:

2 (1) the evidence must be presented outside the
3 presence of the jury; and

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

6 (g) The trial judge who presided over the trial of the case
7 shall act as the finder of fact in regard to the award of litigation
8 costs under this section. If that judge is unable to do so, the
9 local presiding judge shall appoint another judge to hear and
10 determine all issues related to the award.

11 (h) An award of litigation costs under this section may be
12 reviewed on appeal from a final judgment for abuse of discretion.

13 Sec. 42.056. LIMITATION ON LITIGATION COSTS. (a) The
14 amount of litigation costs awarded under this chapter shall not
15 exceed the claimant's total recovery in connection with the
16 transactions or occurrences giving rise to the claim.

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

21 (c) The claimant's total recovery under this section
22 includes:

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

25 (2) the amount of any money paid or to be paid to the
26 claimant by any person in consideration of actual or potential
27 liability in connection with the transactions or occurrences giving

1 rise to the claim.

2 (d) If litigation costs are awarded against a claimant under
3 this chapter, the claimant shall not be awarded any attorney's
4 fees, expenses, or costs to which the claimant would otherwise be
5 entitled under any other law that were incurred by the claimant
6 after the claimant's rejection of the earliest settlement offer
7 that entitles the defendant or group of defendants to an award of
8 litigation costs under this section.

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

12 (b) The provisions of this chapter may not be made known to
13 the jury through any means, including voir dire, introduction into
14 evidence, instruction, or argument.

15 SECTION 2.02. This article applies only to a civil action
16 described by Chapter 42, Civil Practice and Remedies Code, as added
17 by this article, commenced on or after the effective date of this
18 article. An action commenced before the effective date of this
19 article is governed by the law in effect immediately before the
20 change in law made by this article, and that law is continued in
21 effect for that purpose.

22 ARTICLE 3. VENUE; FORUM NON CONVENIENS

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

25 SUBCHAPTER F. TRANSFER OF PRETRIAL VENUE IN MULTIDISTRICT
26 LITIGATION

27 Sec. 15.151. PURPOSE. The purpose of this subchapter is to

1 facilitate the just and efficient resolution of litigation in the
2 courts of this state. To accomplish this purpose, this subchapter
3 shall be construed in harmony with federal judicial interpretation
4 of comparable federal multidistrict litigation statutes to the
5 extent consistent with this purpose.

6 Sec. 15.152. DEFINITIONS. In this subchapter:

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

9 (2) "Related" means that cases involve common material
10 issues of fact.

11 Sec. 15.153. APPLICABILITY. (a) This subchapter applies
12 to any civil action, including any class action, that is one of
13 multiple related cases pending in the district courts of this
14 state.

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

17 Sec. 15.154. TRANSFER FOR COORDINATED OR CONSOLIDATED
18 PRETRIAL PROCEEDINGS. The panel may transfer any case to which this
19 subchapter applies to any district court for the purpose of
20 allowing coordinated or consolidated pretrial proceedings in
21 related cases.

22 Sec. 15.155. INITIATION OF TRANSFER PROCEEDINGS. (a)
23 Proceedings to transfer a case under this subchapter may be
24 initiated by:

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

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

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

2 (1) the number and style of the case that is the
3 subject of the motion;

4 (2) the number and style of the related case or cases
5 with which coordinated or consolidated pretrial proceedings are
6 sought, and the court and county in which the related case or cases
7 are pending;

8 (3) the material questions of fact common to the
9 cases;

10 (4) the reasons why coordinated or consolidated
11 pretrial proceedings would promote the just and efficient conduct
12 of the cases; and

13 (5) whether the parties to the case that is the subject
14 of the motion agree to the motion.

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

17 Sec. 15.156. DETERMINATION OF TRANSFER. (a) After notice
18 to all parties in all related cases that may be subject to
19 coordinated or consolidated pretrial proceedings, and a hearing,
20 the panel shall order the transfer of any or all related cases to
21 one or more district courts for coordinated or consolidated
22 pretrial proceedings if it determines that transfer:

23 (1) is for the convenience of parties and witnesses;
24 and

25 (2) will promote the just and efficient conduct of the
26 actions.

27 (b) Any party to any case that would be affected by the

1 proceedings under this subchapter may appear at the hearing and
2 offer evidence on the propriety of coordinated or consolidated
3 pretrial proceedings in the related cases.

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

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

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

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

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

17 (b) A petition for an extraordinary writ to review an order
18 of the panel in regard to setting a transfer hearing, or to review
19 any other order of the panel made before the order either directing
20 or denying transfer is made, must be filed in the court of appeals
21 having jurisdiction over the district in which the transfer hearing
22 is to be or has been held.

23 (c) A petition for an extraordinary writ to review an order
24 directing the transfer of one or more related cases, or to review
25 any order made after the transfer order is made, must be filed in
26 the court of appeals having jurisdiction over the transferee
27 district.

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

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

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

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

15 (b) When conducting pretrial proceedings in cases
16 coordinated or consolidated for pretrial proceedings, the judge or
17 judges to whom the cases are assigned, the members of the panel, and
18 other district judges designated when needed by the panel may
19 exercise the powers of a district judge in any district, including
20 deciding motions to transfer venue and motions for summary
21 judgment.

22 Sec. 15.161. REMAND. A court to which a case is transferred
23 under this subchapter shall remand the transferred case, at or
24 before the conclusion of pretrial proceedings, to the district
25 court from which it was transferred unless it has been terminated,
26 except that the court may separate any claim, cross-claim,
27 counterclaim, or third-party claim and remand the separated claim

1 before the remainder of the case is remanded.

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

4 SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

5 Sec. 74.161. JUDICIAL PANEL. (a) The judicial panel on
6 multidistrict litigation consists of seven justices of the courts
7 of appeals designated from time to time by the chief justice of the
8 supreme court. Two panel members may not be from the same court of
9 appeals district.

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

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

16 (b) The panel may prescribe additional rules for the conduct
17 of its business not inconsistent with Subchapter F, Chapter 15,
18 Civil Practice and Remedies Code, and the rules of administration
19 for multidistrict litigation practice and procedure, as adopted by
20 the supreme court.

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

23 Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING
24 PLAINTIFFS. (a) In a suit in which there is ~~where~~ more than one
25 plaintiff, whether the plaintiffs are included by joinder, by
26 intervention, because the lawsuit was begun by more than one
27 plaintiff, or otherwise, ~~is joined~~ each plaintiff must,

1 independently of every [~~any~~] other plaintiff, establish proper
2 venue. If a plaintiff cannot independently [~~Any person who is~~
3 ~~unable to~~] establish proper venue, that plaintiff's part of the
4 suit, including all of that plaintiff's claims and causes of
5 action, must be transferred to a county of proper venue or
6 dismissed, as is appropriate, [~~may not join or maintain venue for~~
7 ~~the suit as a plaintiff~~] unless that plaintiff [~~the person~~],
8 independently of every [~~any~~] other plaintiff, establishes that:

9 (1) joinder of that plaintiff or intervention in the
10 suit by that plaintiff is proper under the Texas Rules of Civil
11 Procedure;

12 (2) maintaining venue as to that plaintiff in the
13 county of suit does not unfairly prejudice another party to the
14 suit;

15 (3) there is an essential need to have that plaintiff's
16 [~~the person's~~] claim tried in the county in which the suit is
17 pending; and

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

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

24 (1) a plaintiff did or did not independently establish
25 proper venue; or

26 (2) a plaintiff that did not independently establish
27 proper venue did or did not establish the items prescribed by

1 Subsections (a)(1)-(4) ~~[A person may not intervene or join in a~~
2 ~~pending suit as a plaintiff unless the person, independently of any~~
3 ~~other plaintiff.~~

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

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

8 (c) An ~~[Any person seeking intervention or joinder, who is~~
9 ~~unable to independently establish proper venue, or a party opposing~~
10 ~~intervention or joinder of such a person may contest the decision of~~
11 ~~the trial court allowing or denying intervention or joinder by~~
12 ~~taking an]~~ interlocutory appeal permitted by Subsection (b) must be
13 taken to the court of appeals district in which the trial court is
14 located under the procedures established for interlocutory
15 appeals. The appeal may be taken by a party that is affected by the
16 trial court's determination under Subsection (a). ~~[The appeal must~~
17 ~~be perfected not later than the 20th day after the date the trial~~
18 ~~court signs the order denying or allowing the intervention or~~
19 ~~joinder.]~~ The court of appeals shall:

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

24 (2) render judgment ~~[its decision]~~ not later than the
25 120th day after the date the appeal is perfected ~~[by the complaining~~
26 ~~party]~~.

27 (d) An interlocutory appeal under Subsection (b) has the

1 effect of staying the commencement of trial in the trial court
2 pending resolution of the appeal.

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

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

14 (j) This section does not affect the application of the
15 common law doctrine of forum non conveniens to actions other than
16 actions for personal injury or wrongful death.

17 SECTION 3.05. The following sections of the Civil Practice
18 and Remedies Code are repealed:

- 19 (1) 71.051(b), (c), (d), (e), (f), (g), and (h); and
20 (2) 71.052.

21 SECTION 3.06. (a) Sections 3.01 and 3.02 of this article
22 apply only to a suit commenced or pending on or after the effective
23 date of this article.

24 (b) Section 3.03 of this article applies only to a suit
25 commenced on or after the effective date of this article. A suit
26 commenced before the effective date of this article is governed by
27 the law in effect immediately before the change in law made by

1 Section 3.03 of this article, and that law is continued in effect
2 for that purpose.

3 (c) Sections 3.04 and 3.05 of this article apply only to a
4 suit commenced on or after the effective date of this article or
5 pending on the effective date of this article and in which the
6 trial, or any new trial or retrial following motion, appeal, or
7 otherwise, begins on or after that date. In a suit commenced before
8 the effective date of this article, a trial, new trial, or retrial
9 that is in progress on that date is governed with respect to the
10 subject matter of Sections 3.04 and 3.05 of this article by the
11 applicable law in effect immediately before that date, and that law
12 is continued in effect for that purpose.

13 ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND

14 DESIGNATION OF RESPONSIBLE PARTIES

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

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

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

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

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

3 Sec. 33.003. DETERMINATION OF PERCENTAGE OF
4 RESPONSIBILITY. (a) The trier of fact, as to each cause of action
5 asserted, shall determine the percentage of responsibility, stated
6 in whole numbers, for the following persons with respect to each
7 person's causing or contributing to cause in any way the harm for
8 which recovery of damages is sought, whether by negligent act or
9 omission, by any defective or unreasonably dangerous product, by
10 other conduct or activity that violates an applicable legal
11 standard, or by any combination of these:

12 (1) each claimant;

13 (2) each defendant;

14 (3) each settling person; and

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

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

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

22 Sec. 33.004. DESIGNATION [~~JOINER~~] OF RESPONSIBLE THIRD
23 PARTY [~~PARTIES~~].

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

27 (a) A [~~Except as provided in Subsections (d) and (e), prior~~

1 ~~to the expiration of limitations on the claimant's claim for~~
2 ~~damages against the defendant and on timely motion made for that~~
3 ~~purpose, a]~~ defendant may seek to designate a person as [join] a
4 responsible third party by filing a motion for leave to designate
5 that person as a responsible third party [who has not been sued by
6 the claimant]. The motion must be filed on or before the 60th day
7 before the trial date unless the court finds good cause to allow the
8 motion to be filed at a later date.

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

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

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

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

25 (2) after having been granted leave to replead, the
26 defendant failed to plead sufficient facts concerning the alleged
27 liability of the responsible person to satisfy the pleading

1 requirements of the Texas Rules of Civil Procedure.

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

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

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

17 (1) does not by itself impose liability on the person;
18 and

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

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

24 (1) "Claimant" means a person [~~party~~] seeking recovery
25 of damages [~~pursuant to the provisions of Section 33.001~~],
26 including a plaintiff, counterclaimant, cross-claimant, or
27 third-party plaintiff [~~seeking recovery of damages~~]. In an action

1 in which a party seeks recovery of damages for injury to another
2 person, damage to the property of another person, death of another
3 person, or other harm to another person, "claimant" includes:

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

6 (B) any person who is [~~both that other person and~~
7 ~~the party~~] seeking, has sought, or could seek recovery of damages
8 for the injury, harm, or death of that person or for the damage to
9 the property of that person [~~pursuant to the provisions of Section~~
10 ~~33.001~~].

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

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

23 (6) [~~(A)~~] "Responsible third party" means any person
24 who is alleged to have caused or contributed to causing in any way
25 the harm for which recovery of damages is sought, whether by
26 negligent act or omission, by any defective or unreasonably
27 dangerous product, by other conduct or activity that violates an

1 applicable legal standard, or by any combination of these. [~~to whom~~
2 ~~all of the following apply:~~

3 [~~(i) the court in which the action was filed~~
4 ~~could exercise jurisdiction over the person;~~

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

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

10 [~~(B)~~] The term "responsible third party" does not
11 include a seller eligible for indemnity under Section 82.002 [~~+~~

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

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

22 SECTION 4.06. Section 33.012(b), Civil Practice and
23 Remedies Code, is amended to read as follows:

24 (b) If the claimant has settled with one or more persons,
25 the court shall further reduce the amount of damages to be recovered
26 by the claimant with respect to a cause of action by a credit equal
27 to one of the following, as elected in accordance with Section

1 33.014:

2 (1) the sum of the dollar amounts of all settlements;
3 or

4 (2) a percentage equal to each settling person's
5 percentage of responsibility [~~dollar amount equal to the sum of the~~
6 ~~following percentages of damages found by the trier of fact:~~

7 [(A) ~~5 percent of those damages up to \$200,000;~~

8 [(B) ~~10 percent of those damages from \$200,001 to~~
9 ~~\$400,000;~~

10 [(C) ~~15 percent of those damages from \$400,001 to~~
11 ~~\$500,000; and~~

12 [(D) ~~20 percent of those damages greater than~~
13 ~~\$500,000].~~

14 SECTION 4.07. Section 33.013, Civil Practice and Remedies
15 Code, is amended by amending Subsections (a) and (b) and adding
16 Subsections (e) and (f) to read as follows:

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

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

27 (1) the percentage of responsibility attributed to the

1 defendant with respect to a cause of action is greater than 50
2 percent; or

3 (2) the defendant, with the specific intent to do harm
4 to others, acted in concert with another person to engage in the
5 conduct described in the following provisions of the Penal Code and
6 in so doing proximately caused the damages legally recoverable by
7 the claimant:

8 (A) Section 19.02 (murder);

9 (B) Section 19.03 (capital murder);

10 (C) Section 20.04 (aggravated kidnapping);

11 (D) Section 22.02 (aggravated assault);

12 (E) Section 22.011 (sexual assault);

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

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

16 (H) Section 32.21 (forgery);

17 (I) Section 32.43 (commercial bribery);

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

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

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

24 (M) conduct described in Chapter 31 the
25 punishment level for which is a felony of the third degree or
26 higher.

27 (e) Notwithstanding anything to the contrary stated in the

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

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

12 SECTION 4.08. Section 33.014, Civil Practice and Remedies
13 Code, is amended to read as follows:

14 Sec. 33.014. ELECTION OF CREDIT FOR SETTLEMENTS. If a
15 claimant has settled with one or more persons, an election must be
16 made as to which [~~dollar~~] credit is to be applied under Section
17 33.012(b). This election shall be made by [~~any defendant~~] filing a
18 written election before the issues of the action are submitted to
19 the trier of fact [~~and, when made, shall be binding on all~~
20 ~~defendants~~]. If a defendant does not make an election, that
21 defendant is [~~no defendant makes this election or if conflicting~~
22 ~~elections are made, all defendants are~~] considered to have elected
23 Subdivision (2) of Section 33.012(b).

24 SECTION 4.09. Section 33.017, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY.
27 Nothing in this chapter shall be construed to affect any rights of

1 indemnity granted by [~~to a seller eligible for indemnity by Chapter~~
2 ~~82, the Texas Motor Vehicle Commission Code (Article 4413(36),~~
3 ~~Vernon's Texas Civil Statutes), or]~~ any [~~other~~] statute, [~~nor shall~~
4 ~~it affect rights of indemnity granted~~] by contract, or by [~~at~~]
5 common law. To the extent of any conflict between this chapter and
6 any right to indemnification granted by [~~Section 82.002, the Texas~~
7 ~~Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas~~
8 ~~Civil Statutes), or any other~~] statute, contract, or common law,
9 those rights of indemnification shall prevail over the provisions
10 of this chapter.

11 SECTION 4.10. Section 417.001(b), Labor Code, is amended to
12 read as follows:

13 (b) If a benefit is claimed by an injured employee or a legal
14 beneficiary of the employee, the insurance carrier is subrogated to
15 the rights of the injured employee and may enforce the liability of
16 the third party in the name of the injured employee or the legal
17 beneficiary. The insurance carrier's subrogation interest is
18 limited to the amount of the total benefits paid or assumed by the
19 carrier to the employee or the legal beneficiary, less the amount by
20 which the court reduces the judgment based on the percentage of
21 responsibility determined by the trier of fact under Section
22 33.003, Civil Practice and Remedies Code, attributable to the
23 employer. If the recovery is for an amount greater than the amount
24 of the insurance carrier's subrogation interest [~~that paid or~~
25 ~~assumed by the insurance carrier to the employee or the legal~~
26 ~~beneficiary~~], the insurance carrier shall:

27 (1) reimburse itself and pay the costs from the amount

1 recovered; and

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

4 SECTION 4.11. The following sections of the Civil Practice
5 and Remedies Code are repealed:

6 (1) 33.002(b), (d), (e), (f), (g), and (h);

7 (2) 33.004(c), (d), and (e);

8 (3) 33.011(7);

9 (4) 33.012(c); and

10 (5) 33.013(c).

11 SECTION 4.12. (a) Except as provided by Subsection (b) of
12 this section, this article applies only to a suit commenced or
13 pending on or after the effective date of this article.

14 (b) This article does not apply to a suit in which the trial
15 on the merits commenced on or before the effective date of this
16 article; that suit is governed by the law in effect immediately
17 before the change in law made by this article, and that law is
18 continued in effect for that purpose.

19 ARTICLE 5. PRODUCTS LIABILITY

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

22 Sec. 16.012. PRODUCTS LIABILITY [~~MANUFACTURING~~
23 ~~EQUIPMENT~~]. (a) In this section:

24 (1) "Claimant," [~~products liability action,~~]
25 "seller," and "manufacturer" have the meanings assigned by Section
26 82.001.

27 (2) "Products liability action" means any action

1 against a manufacturer or seller relating to an alleged defective
2 product, whether the action is based in strict tort liability,
3 strict products liability, negligence, misrepresentation, breach
4 of express or implied warranty, or any other theory or combination
5 of theories, and whether the relief sought is the recovery of
6 damages or to obtain any other legal or equitable relief, including
7 a suit for:

8 (A) injury, damage, or loss to real or personal
9 property;

10 (B) personal injury;

11 (C) wrongful death;

12 (D) economic loss; or

13 (E) declaratory, injunctive, or other equitable
14 relief. [~~"Manufacturing equipment" means equipment and machinery~~
15 ~~used in the manufacturing, processing, or fabrication of tangible~~
16 ~~personal property but does not include agricultural equipment or~~
17 ~~machinery.]~~

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

23 (c) If a manufacturer or seller expressly warrants in
24 writing [~~represents~~] that the product [~~manufacturing equipment~~]
25 has a useful safe life of longer than 15 years, a claimant must
26 commence a products liability action against that manufacturer or
27 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 reduce a limitations period that~~
4 ~~applies to a products liability action involving manufacturing~~
5 ~~equipment that accrues before the end of the limitations period~~
6 ~~under this section.~~]

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

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

12 SECTION 5.02. Chapter 82, Civil Practice and Remedies Code,
13 is amended by adding Sections 82.003, 82.007, 82.008, and 82.009 to
14 read as follows:

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

18 (1) that the seller altered or modified the product
19 and the claimant's harm resulted from that alteration or
20 modification;

21 (2) that:

22 (A) the seller exercised substantial control
23 over the content of a warning or instruction that accompanied the
24 product;

25 (B) the warning or instruction was inadequate;
26 and

27 (C) the claimant's harm resulted from the

1 inadequacy of the warning or instruction;

2 (3) that:

3 (A) the seller made an express factual
4 representation about an aspect of the product;

5 (B) the representation was incorrect;

6 (C) the claimant relied on the representation in
7 obtaining or using the product; and

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

11 (4) that:

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

14 (B) the claimant's harm resulted from the defect.

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

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

27 (2) the warnings provided were those stated in

1 monographs developed by the United States Food and Drug
2 Administration for pharmaceutical products that may be distributed
3 without an approved new drug application.

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

11 Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) A
12 product manufacturer, distributor, or seller is not liable for any
13 injury to a claimant allegedly caused by some aspect of the
14 formulation, labeling, or design of a product if the product
15 manufacturer, distributor, or seller proves by a preponderance of
16 the evidence that the product's formula, labeling, or design
17 complied with mandatory safety standards or regulations adopted and
18 promulgated by the state or federal government, or an agency of the
19 state or federal government, that were applicable to the product at
20 the time of manufacture, and that governed the product risk that
21 caused harm, unless the claimant proves by clear and convincing
22 evidence that the mandatory state or federal safety standards or
23 regulations applicable to the product were grossly inadequate to
24 protect the public from unreasonable risks of injury or damage.

25 (b) A product manufacturer, distributor, or seller is not
26 liable for any injury to a claimant allegedly caused by some aspect
27 of the formulation, labeling, or design of a product if the product

1 manufacturer, distributor, or seller proves by a preponderance of
2 the evidence that the product was subject to premarket licensing or
3 approval by an agency of the state or federal government, that the
4 manufacturer complied with all of the agency's procedures and
5 requirements with respect to premarket licensing or approval, and
6 that after full consideration of the product's risks and benefits
7 the product was approved or licensed for sale by the agency, unless
8 the claimant proves by clear and convincing evidence that:

9 (1) the standards or procedures used in the particular
10 premarket approval or licensing process were grossly inadequate to
11 protect the public from unreasonable risks of injury or damage; or

12 (2) the manufacturer, before or after premarket
13 approval or licensing of the product, withheld from or
14 misrepresented to the agency required information that was material
15 and relevant to the performance of the product and was causally
16 related to the claimant's injury.

17 (c) This section does not extend to manufacturing flaws or
18 defects even though the product manufacturer has complied with all
19 quality control and manufacturing practices mandated by the agency.

20 SECTION 5.03. (a) Section 5.01 of this article applies only
21 to a suit commenced on or after the effective date of this article.
22 A suit commenced before the effective date of this article is
23 governed by the law in effect immediately before the change in law
24 made by Section 5.01 of this article, and that law is continued in
25 effect for that purpose.

26 (b) Section 5.02 of this article applies only to a suit
27 commenced on or after the effective date of this article or pending

1 on the effective date of this article and in which the trial, or any
2 new trial or retrial following motion, appeal, or otherwise, begins
3 on or after that date. In a suit commenced before the effective
4 date of this article, a trial, new trial, or retrial that is in
5 progress on that date is governed with respect to the subject matter
6 of Section 5.02 of this article by the applicable law in effect
7 immediately before that date, and that law is continued in effect
8 for that purpose.

9 ARTICLE 6. INTEREST

10 SECTION 6.01. Section 304.003(c), Finance Code, is amended
11 to read as follows:

12 (c) The postjudgment interest rate is:

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

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

21 (3) 15 [~~20~~] percent a year if the weekly average
22 one-year constant maturity treasury yield [~~auction rate~~] described
23 by Subdivision (1) is more than 15 [~~20~~] percent.

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

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

1 SECTION 6.03. This article applies only to a suit in which a
2 judgment is signed on or after the effective date of this article,
3 without regard to whether the suit commenced before, on, or after
4 that date.

5 ARTICLE 7. APPEAL BONDS

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

8 Sec. 35.006. STAY. (a) If the judgment debtor shows the
9 court that an appeal from the foreign judgment is pending or will be
10 taken, that the time for taking an appeal has not expired, or that a
11 stay of execution has been granted, has been requested, or will be
12 requested, and proves that the judgment debtor has furnished or
13 will furnish the security for the satisfaction of the judgment
14 required by the state in which it was rendered, the court shall stay
15 enforcement of the foreign judgment until the appeal is concluded,
16 the time for appeal expires, or the stay of execution expires or is
17 vacated.

18 (b) If the judgment debtor shows the court a ground on which
19 enforcement of a judgment of the court of this state would be
20 stayed, the court shall stay enforcement of the foreign judgment
21 for an appropriate period and require the same security for
22 suspending enforcement [~~satisfaction~~] of the judgment that is
23 required in this state in accordance with Section 52.006.

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

26 Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a)
27 Subject to Subsection (b), when a judgment is for money, the amount

1 of security must equal the sum of:

2 (1) the amount of compensatory damages awarded in the
3 judgment;

4 (2) interest for the estimated duration of the appeal;
5 and

6 (3) costs awarded in the judgement.

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

10 (1) 50 percent of the judgment debtor's net worth; or

11 (2) \$25 million.

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

17 (d) An appellate court may review the amount of security as
18 allowed under Rule 24, Texas Rules of Appellate Procedure, except
19 that when a judgment is for money, the appellate court may not
20 modify the amount of security to exceed the amount allowed under
21 this section.

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

24 (1) 52.002;

25 (2) 52.003; and

26 (3) 52.004.

27 SECTION 7.04. This article applies only to a suit in which a

1 judgment is signed on or after the effective date of this article,
2 without regard to whether the suit commenced before, on, or after
3 that date.

4 ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

5 SECTION 8.01. Section 545.413(g), Transportation Code, is
6 repealed.

7 SECTION 8.02. (a) Except as provided by Subsection (b) of
8 this section, this article applies only to a suit commenced or
9 pending on or after the effective date of this article.

10 (b) This article does not apply to a suit in which the trial
11 on the merits commenced on or before the effective date of this
12 article.

13 ARTICLE 9. RESERVED

14 ARTICLE 10. HEALTH CARE

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

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

- 23 (i) [as] a registered nurse;
24 (ii) a [] hospital;
25 (iii) a nonprofit hospital system;
26 (iv) a [] dentist;
27 (v) a hospice;

1 (vi) a [r] podiatrist;
2 (vii) a [r] pharmacist;
3 (viii) an emergency medical services
4 provider;

5 (ix) an assisted living facility;
6 (x) a home and community support services
7 agency;

8 (xi) an intermediate care facility for the
9 mentally retarded or a home and community-based services waiver
10 program for persons with mental retardation adopted in accordance
11 with Section 1915(c) of the federal Social Security Act (42 U.S.C.
12 Section 1396n(c)), as amended; [r] or

13 (xii) a nursing home.

14 (B) The term includes:

15 (i) [~~r~~] an officer, director,
16 shareholder, member, partner, manager, owner, or affiliate of a
17 health care provider or physician; and

18 (ii) an employee, independent contractor,
19 or agent of a health care provider or physician [~~thereof~~] acting in
20 the course and scope of the [his] employment or contractual
21 relationship.

22 (4) "Health care liability claim" means a cause of
23 action against a health care provider or physician arising out of or
24 related to [~~for~~] treatment, lack of treatment, or other claimed
25 departure from accepted standards of medical care, [~~or~~] health
26 care, or safety or professional or administrative services practice
27 or procedure which proximately results in injury to or death of a

1 claimant [~~the patient~~], whether the claimant's [~~patient's~~] claim or
2 cause of action sounds in tort or contract.

3 (8) "Physician" means:

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

6 (B) a professional association organized under
7 the Texas Professional Association Act (Article 1528f, Vernon's
8 Texas Civil Statutes) by an individual physician or group of
9 physicians;

10 (C) a partnership or limited liability
11 partnership formed by a group of physicians;

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

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

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

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

26 (12) "Control" means the possession, directly or
27 indirectly, of the power to direct or cause the direction of the

1 management and policies of the person, whether through ownership of
2 equity or securities, by contract, or otherwise.

3 (13) "Economic damages" means compensatory damages
4 for any pecuniary loss or damage. The term does not include
5 noneconomic damages.

6 (14) "Emergency medical care" means bona fide
7 emergency services provided after the sudden onset of a medical or
8 traumatic condition manifesting itself by acute symptoms of
9 sufficient severity, including severe pain, such that the absence
10 of immediate medical attention could reasonably be expected to
11 result in:

12 (A) placing the patient's health in serious
13 jeopardy;

14 (B) serious impairment to bodily functions; or

15 (C) serious dysfunction of any bodily organ or
16 part.

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

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

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

26 (18) "Noneconomic damages" means any loss or damage,
27 however characterized, for past, present, and future physical pain

1 and suffering, mental anguish and suffering, loss of consortium,
2 loss of companionship and society, disfigurement, physical
3 impairment, and any other nonpecuniary loss or damage or element of
4 loss or damage.

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

7 (20) "Professional or administrative services" means
8 those duties or services that a physician or health care provider is
9 required to provide as a condition of maintaining the physician's
10 or health care provider's license, accreditation status, or
11 certification to participate in state or federal health care
12 programs.

13 (21) "Hospice" means a hospice facility or activity to
14 which Chapter 142, Health and Safety Code, applies.

15 (22) "Hospital system" means a system of local
16 nonprofit hospitals and nonprofit entities created by the hospital
17 or its parent entity to further the charitable purposes of the
18 hospital under the common governance of a single corporate parent
19 that are located within a radius of not more than 125 linear miles
20 from the corporate parent.

21 SECTION 10.02. Subchapter A, Medical Liability and
22 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
23 Civil Statutes), is amended by adding Section 1.04 to read as
24 follows:

25 Sec. 1.04. CONFLICT WITH OTHER LAW AND RULES OF CIVIL
26 PROCEDURE. (a) In the event of a conflict between this Act and
27 another law, including a rule of procedure or evidence or court

1 rule, this Act controls to the extent of the conflict.

2 (b) Notwithstanding Section 22.004, Government Code, and
3 except as otherwise provided by this Act, the supreme court may not
4 amend or adopt rules in conflict with this Act.

5 (c) The district courts and statutory county courts in a
6 county may not adopt local rules in conflict with this Act.

7 SECTION 10.03. Section 4.01, Medical Liability and
8 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
9 Civil Statutes), is amended by adding Subsection (f) to read as
10 follows:

11 (f) Notwithstanding the provisions of Rule 202, Texas Rules
12 of Civil Procedure, a deposition may not be taken of a physician or
13 health care provider for the purpose of investigating a health care
14 liability claim before the filing of a lawsuit.

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

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

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

23 Sec. 7.03. FEDERAL OR STATE INCOME TAXES. (a)
24 Notwithstanding any other law, in a health care liability claim, if
25 any claimant seeks recovery for loss of earnings, loss of earning
26 capacity, loss of contributions of a pecuniary value, or loss of
27 inheritance, evidence to prove the loss must be presented in the

1 form of a net after-tax loss that either was or should have been
2 paid by the injured party or decedent through which the alleged loss
3 has occurred.

4 (b) In a health care liability claim, if any claimant seeks
5 recovery for loss of earnings, loss of earning capacity, loss of
6 contributions of a pecuniary value, or loss of inheritance, the
7 court shall instruct the jury whether any recovery for compensatory
8 damages sought by the claimant is subject to federal or state income
9 taxes.

10 Sec. 7.04. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY
11 MEDICAL CARE. (a) In a health care liability claim that involves a
12 claim of negligence arising from the provision of emergency medical
13 care, the court shall instruct the jury to consider, together with
14 all other relevant matters:

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

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

21 (3) the circumstances constituting the emergency; and

22 (4) the circumstances surrounding the delivery of the
23 emergency medical care.

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

26 (1) that occurs after the patient is stabilized and is
27 capable of receiving medical treatment as a nonemergency patient;

1 or
2 (2) that is unrelated to the original medical
3 emergency.

4 SECTION 10.06. The heading to Subchapter I, 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 I. PAYMENT OF MEDICAL OR HEALTH CARE EXPENSES [~~ADVANCE~~
8 ~~PAYMENTS~~]

9 SECTION 10.07. Subchapter I, Medical Liability and
10 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
11 Civil Statutes), is amended by adding Section 9.01 to read as
12 follows:

13 Sec. 9.01. RECOVERY OF MEDICAL OR HEALTH CARE EXPENSES.
14 Recovery of medical or health care expenses in a health care
15 liability claim shall be limited to the amount actually paid or
16 incurred by or on behalf of the claimant.

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

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

21 (a) Notwithstanding any other law and subject to Subsection (b) of
22 this section, no health care liability claim may be commenced
23 unless the action is filed within two years from the occurrence of
24 the breach or tort or from the date the medical or health care
25 treatment that is the subject of the claim or the hospitalization
26 for which the claim is made is completed; provided that, minors
27 under the age of 12 years shall have until their 14th birthday in

1 which to file, or have filed on their behalf, the claim. Except as
2 herein provided, this subchapter applies to all persons regardless
3 of minority or other legal disability.

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

9 SECTION 10.09. Section 11.02, Medical Liability and
10 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
11 Civil Statutes), is amended by adding Subsections (e) and (f) to
12 read as follows:

13 (e) The limitation on health care liability claims
14 contained in Subsection (a) of this section includes punitive
15 damages.

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

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

22 Sec. 11.03. LIMITATION ON NONECONOMIC DAMAGES [~~ALTERNATIVE~~
23 ~~PARTIAL LIMIT ON CIVIL LIABILITY~~]. [~~In the event that Section~~
24 ~~11.02(a) of this subchapter is stricken from this subchapter or is~~
25 ~~otherwise invalidated by a method other than through legislative~~
26 ~~means, the following shall become effective:]~~

27 In an action on a health care liability claim where final

1 judgment is rendered against a physician or health care provider,
2 the limit of civil liability for noneconomic damages of the
3 physician or health care provider shall be limited to an amount not
4 to exceed \$250,000 for each claimant, regardless of the number of
5 defendant physicians or health care providers against whom the
6 claim is asserted or the number of separate causes of action on
7 which the claim is based [~~of the physician or health care provider~~
8 ~~for all past and future noneconomic losses recoverable by or on~~
9 ~~behalf of any injured person and/or the estate of such person,~~
10 ~~including without limitation as applicable past and future physical~~
11 ~~pain and suffering, mental anguish and suffering, consortium,~~
12 ~~disfigurement, and any other nonpecuniary damage, shall be limited~~
13 ~~to an amount not to exceed \$150,000].~~

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

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

24 In an action on a health care liability claim where final
25 judgment is rendered against a physician or health care provider,
26 the limit of civil liability for all damages and losses, other than
27 economic damages, shall be limited to an amount not to exceed

1 \$250,000 for each claimant, regardless of the number of defendant
2 physicians or health care providers against whom the claim is
3 asserted or the number of separate causes of action on which the
4 claim is based.

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

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

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

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

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

1 applies:

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

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

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

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

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

26 (2) at least \$500,000 for each health care liability
27 claim and at least \$1 million in aggregate for all health care

1 liability claims occurring in an insurance policy year, calendar
2 year, or fiscal year for a physician or health care provider, other
3 than a hospital; and

4 (3) at least \$1 million for each health care liability
5 claim and at least \$3 million in aggregate for all health care
6 liability claims occurring in an insurance policy year, calendar
7 year, or fiscal year for a hospital.

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

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

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

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

23 (4) the maintenance of financial reserves in or an
24 irrevocable letter of credit from a federally insured financial
25 institution that has its main office or a branch office in this
26 state.

27 SECTION 10.12. Section 11.04, Medical Liability and

1 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
2 Civil Statutes), is amended to read as follows:

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

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

18 Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY
19 MEDICAL CARE. In a suit involving a health care liability claim
20 against a physician or health care provider for injury to or death
21 of a patient arising out of the provision of emergency medical care,
22 the person bringing the suit may prove that the treatment or lack of
23 treatment by the physician or health care provider departed from
24 accepted standards of medical care or health care only if the person
25 shows by clear and convincing evidence that the physician or health
26 care provider did not use the degree of care and skill that is
27 reasonably expected of an ordinarily prudent physician or health

1 care provider in the same or similar circumstances.

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

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

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

11 (a) In a health care liability claim, a claimant shall, not
12 later than the 180th [~~90th~~] day after the date the claim is filed,
13 serve on each party or the party's attorney one or more expert
14 reports, with a curriculum vitae of each expert listed in the[+

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

18 [~~(2) place cash in an escrow account in the amount of~~
19 ~~\$5,000 for each physician or health care provider named in the~~
20 ~~action, or~~

21 [~~(3) file an expert~~] report for each physician or
22 health care provider against whom a liability claim is asserted
23 [~~with respect to whom a cost bond has not been filed and cash in lieu~~
24 ~~of the bond has not been deposited under Subdivision (1) or (2) of~~
25 ~~this subsection].~~

26 (b) If, as to a defendant physician or health care provider,
27 an expert report[~~, cost bond, or cash in lieu of bond~~] has not been

1 served [~~filed or deposited~~] within the period specified by
2 Subsection (a) [~~or (h)~~] of this section, the court, on the motion of
3 the affected physician or health care provider, shall enter an
4 order that:

5 (1) awards to the affected physician or health care
6 provider reasonable attorney's fees and costs of court incurred by
7 the physician or health care provider [~~requires the filing of a~~
8 ~~\$7,500 cost bond with respect to the physician or health care~~
9 ~~provider not later than the 21st day after the date of the order~~];
10 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (5) "Expert" means:

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

14 (B) with respect to a person giving opinion
15 testimony regarding whether ~~[about]~~ a ~~[nonphysician]~~ health care
16 provider departed from accepted standards of health care, an expert
17 qualified to testify under the requirements of Section 14.02 of
18 this Act;

19 (C) with respect to a person giving opinion
20 testimony about the causal relationship between the injury, harm,
21 or damages claimed and the alleged departure from the applicable
22 standard of care in any health care liability claim, a physician who
23 is otherwise qualified to render opinions on that causal
24 relationship under the Texas Rules of Evidence;

25 (D) with respect to a person giving opinion
26 testimony about the causal relationship between the injury, harm,
27 or damages claimed and the alleged departure from the applicable

1 standard of care for a dentist, a dentist who is otherwise qualified
2 to render opinions on that causal relationship under the Texas
3 Rules of Evidence; or

4 (E) with respect to a person giving opinion
5 testimony about the causal relationship between the injury, harm,
6 or damages claimed and the alleged departure from the applicable
7 standard of care for a podiatrist, a podiatrist who is otherwise
8 qualified to render opinions on that causal relationship under the
9 Texas Rules of Evidence [~~who has knowledge of accepted standards of~~
10 ~~care for the diagnosis, care, or treatment of the illness, injury,~~
11 ~~or condition involved in the claim~~].

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

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

1 possible, before trial. If the objecting party is unable to object
2 in time for the hearing to be conducted before the trial, the
3 hearing shall be conducted outside the presence of the jury. This
4 subsection does not prevent a party from examining or
5 cross-examining a witness at trial about the witness's
6 qualifications.

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

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

11 (2) a graduate of a medical school accredited by the
12 Liaison Committee on Medical Education or the American Osteopathic
13 Association only if testifying as a defendant and that testimony
14 relates to that defendant's standard of care, the alleged departure
15 from that standard of care, or the causal relationship between the
16 alleged departure from that standard of care and the injury, harm,
17 or damages claimed.

18 SECTION 10.18. Subchapter N, Medical Liability and
19 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
20 Civil Statutes), is amended by adding Sections 14.02 and 14.03 to
21 read as follows:

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

25 (1) training health care providers in the same field
26 as the defendant health care provider at an accredited educational
27 institution; or

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

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

8 (1) is practicing health care in the same field of
9 practice as the defendant health care provider at the time the
10 testimony is given or was practicing that type of health care at the
11 time the claim arose;

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

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

18 (c) In determining whether a witness is qualified on the
19 basis of training or experience, the court shall consider whether,
20 at the time the claim arose or at the time the testimony is given,
21 the witness:

22 (1) is certified by a Texas licensing agency or a
23 national professional certifying agency, or has other substantial
24 training or experience, in the area of health care relevant to the
25 claim; and

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

1 (d) The court shall apply the criteria specified in
2 Subsections (a), (b), and (c) of this section in determining
3 whether an expert is qualified to offer expert testimony on the
4 issue of whether the defendant health care provider departed from
5 accepted standards of health care but may depart from those
6 criteria if, under the circumstances, the court determines that
7 there is good reason to admit the expert's testimony. The court
8 shall state on the record the reason for admitting the testimony if
9 the court departs from the criteria.

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

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

1 hearing shall be conducted outside the presence of the jury. This
2 subsection does not prevent a party from examining or
3 cross-examining a witness at trial about the witness's
4 qualifications.

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

15 (b) In a suit involving a health care liability claim
16 against a dentist, a person may qualify as an expert witness on the
17 issue of the causal relationship between the alleged departure from
18 accepted standards of care and the injury, harm, or damages claimed
19 if the person is a dentist and is otherwise qualified to render
20 opinions on that causal relationship under the Texas Rules of
21 Evidence.

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

1 of Evidence.

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

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

24 Sec. 16.01. APPLICATION OF OTHER LAW. Notwithstanding
25 Chapter 304, Finance Code [Articles 1E.101, 1E.102, and
26 1E.104-1E.108, Title 79, Revised Statutes], prejudgment interest
27 in a judgment on a health care liability claim shall be awarded in

1 accordance with this subchapter.

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

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

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

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

20 SUBCHAPTER Q. COLLATERAL SOURCE BENEFITS

21 Sec. 17.01. DEFINITION. In this subchapter, "collateral
22 source benefit" means a benefit paid or payable to or on behalf of a
23 claimant under:

24 (1) the Social Security Act (42 U.S.C. Section 301 et
25 seq.), and its subsequent amendments;

26 (2) a state or federal income replacement, disability,
27 workers' compensation, or other law that provides partial or full

1 income replacement; or

2 (3) any insurance policy, other than a life insurance
3 policy, including:

4 (A) an accident, health, or sickness insurance
5 policy; and

6 (B) a disability insurance policy.

7 Sec. 17.02. ADMISSIBILITY OF EVIDENCE OF COLLATERAL SOURCE
8 BENEFITS. A defendant physician or health care provider may
9 introduce evidence in a health care liability claim of any amount
10 payable to the claimant as a collateral benefit. If a defendant
11 physician or health care provider introduces evidence of a
12 collateral source benefit, the claimant may introduce evidence of
13 any amount the claimant has paid to secure the right to the benefit.

14 Sec. 17.03. MAINTENANCE OF COVERAGE DURING CLAIM. (a)
15 During the pendency of a health care liability claim, if the
16 claimant has a policy of insurance that provides health benefits or
17 income disability coverage and the claimant is unwilling or unable
18 to pay the costs of renewing or continuing that policy of insurance
19 in force, the defendant physician or health care provider may
20 tender to the claimant the cost of maintaining the insurance
21 coverage.

22 (b) On receipt of the tender, the claimant shall continue
23 the policy in force.

24 Sec. 17.04. SUBROGATION. The payer of collateral benefits
25 introduced under this subchapter may not recover any amount against
26 the claimant and is not subrogated to any rights or claims of the
27 claimant, unless authorized by a federal law.

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 Sec. 19.04. LIMITATION ON ATTORNEY CONTINGENCY FEE
19 AGREEMENTS. (a) An attorney may not contract for or collect a
20 contingency fee for representing any person seeking damages in
21 connection with a health care liability claim in excess of 33-1/3
22 percent of the amount recovered.

23 (b) This section has no effect if Section 11.03 of this Act
24 is stricken from this Act or is otherwise to any extent invalidated
25 by a method other than through legislative means.

26 Sec. 19.05. ALTERNATIVE LIMIT ON ATTORNEY CONTINGENCY FEES.

27 (a) If Section 11.03 of this Act is stricken from this Act or is

1 otherwise to any extent invalidated by a method other than through
2 legislative means, this section is effective.

3 (b) An attorney may not contract for or collect a
4 contingency fee for representing any person seeking damages in
5 connection with a health care liability claim that exceeds the
6 following limits:

7 (1) 40 percent of the first \$50,000 recovered;

8 (2) 33.3 percent of the next \$50,000 recovered;

9 (3) 25 percent of the next \$500,000 recovered; and

10 (4) 15 percent of any additional amount recovered.

11 SUBCHAPTER T. DECLARATORY JUDGMENTS; INJUNCTIONS; APPEALS

12 Sec. 20.01. APPLICABILITY. This subchapter applies only to
13 an amendment to this Act that is effective on or after January 1,
14 2003.

15 Sec. 20.02. DECLARATORY JUDGMENT. The constitutionality
16 and other validity under the state or federal constitution of all or
17 any part of an amendment to this Act may be determined in an action
18 for declaratory judgment in a district court in Travis County under
19 Chapter 37, Civil Practice and Remedies Code, if it is alleged that
20 the amendment or a part of the amendment affects the rights, status,
21 or legal relation of a party in a civil action with respect to any
22 other party in the civil action.

23 Sec. 20.03. ACCELERATED APPEAL. (a) An appeal of a
24 declaratory judgment or order, however characterized, of a district
25 court, including an appeal of the judgment of an appellate court,
26 holding or otherwise determining, under Section 20.02 of this
27 subchapter, that all or any part of an amendment to this Act is

1 constitutional or unconstitutional, or otherwise valid or invalid,
2 under the state or federal constitution is an accelerated appeal.

3 (b) If the judgment or order is interlocutory, an
4 interlocutory appeal may be taken from the judgment or order and is
5 an accelerated appeal.

6 Sec. 20.04. INJUNCTIONS. A district court in Travis County
7 may grant or deny a temporary or otherwise interlocutory injunction
8 or a permanent injunction on the grounds of the constitutionality
9 or unconstitutionality, or other validity or invalidity, under the
10 state or federal constitution of all or any part of an amendment to
11 this Act.

12 Sec. 20.05. DIRECT APPEAL. (a) There is a direct appeal to
13 the supreme court from an order, however characterized, of a trial
14 court granting or denying a temporary or otherwise interlocutory
15 injunction or a permanent injunction on the grounds of the
16 constitutionality or unconstitutionality, or other validity or
17 invalidity, under the state or federal constitution of all or any
18 part of any amendment to this Act.

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

20 (c) This section exercises the authority granted by Section
21 3-b, Article V, Texas Constitution.

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

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

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

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

3 (3) the claim asserted and declaratory relief
4 requested by the association or alliance relate to all or a
5 specified part of the amendment involved in the action being found
6 constitutional or unconstitutional on its face, or otherwise found
7 valid or invalid on its face, under the state or federal
8 constitution.

9 (b) The association or alliance has standing:

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

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

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

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

21 Sec. 20.07. RULES FOR APPEALS. An appeal under this
22 subchapter, including an interlocutory, accelerated, or direct
23 appeal, is governed, as applicable, by the Texas Rules of Appellate
24 Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3,
25 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

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

1 (6) "Person responsible for the patient" means:

2 (A) the patient's parent, managing conservator,
3 or guardian;

4 (B) the patient's grandparent;

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

6 (D) another adult who has actual care, control,
7 and possession of the patient and has written authorization to
8 consent for the patient from the parent, managing conservator, or
9 guardian of the patient;

10 (E) an educational institution in which the
11 patient is enrolled that has written authorization to consent for
12 the patient from the parent, managing conservator, or guardian of
13 the patient; or

14 (F) any other person with legal responsibility
15 for the care of the patient.

16 SECTION 10.23. Section 84.004(c), Civil Practice and
17 Remedies Code, is amended to read as follows:

18 (c) Except as provided by Subsection (d) and Section 84.007,
19 a volunteer health care provider [~~who is serving as a direct service~~
20 ~~volunteer of a charitable organization~~] is immune from civil
21 liability for any act or omission resulting in death, damage, or
22 injury to a patient if:

23 (1) [~~the volunteer was acting in good faith and in the~~
24 ~~course and scope of the volunteer's duties or functions within the~~
25 ~~organization,~~

26 [~~2~~] the volunteer commits the act or omission in the
27 course of providing health care services to the patient;

1 (2) [~~(3)~~] the services provided are within the scope
2 of the license of the volunteer; and

3 (3) [~~(4)~~] before the volunteer provides health care
4 services, the patient or, if the patient is a minor or is otherwise
5 legally incompetent, the person responsible for the patient
6 [~~patient's parent, managing conservator, legal guardian, or other~~
7 ~~person with legal responsibility for the care of]~~ signs a written
8 statement that acknowledges:

9 (A) that the volunteer is providing care that is
10 not administered for or in expectation of compensation; and

11 (B) the limitations on the recovery of damages
12 from the volunteer in exchange for receiving the health care
13 services.

14 SECTION 10.24. Chapter 84, Civil Practice and Remedies
15 Code, is amended by adding Section 84.0065 to read as follows:

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

27 (1) that the hospital is providing care that is not

1 administered for or in expectation of compensation; and

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

4 SECTION 10.25. Section 88.002, Civil Practice and Remedies
5 Code, is amended by adding Subsection (1) to read as follows:

6 (1) This chapter does not create liability on the part of
7 physicians or health care providers for medical care or health care
8 services performed or furnished or that should have been performed
9 or furnished for, to, or on behalf of a patient.

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

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

19 SECTION 10.27. The following provisions are repealed:

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

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

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

1 Statutes); and

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

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

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

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

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

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

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

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

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

1 (8) the direct cost of medical care to the patient and
2 public of Texas has materially increased due to the rising cost of
3 malpractice insurance protection for physicians and hospitals in
4 Texas;

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

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

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

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

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

1 (1) reduce excessive frequency and severity of health
2 care liability claims through reasonable improvements and
3 modifications in the Texas insurance, tort, and medical practice
4 systems;

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

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

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

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

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

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

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

1 relatively high risk of failure but offer the only real prospect of
2 success for seriously ill patients;

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

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

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

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

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

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

27 (15) contribute to the viability of community

1 hospitals by lowering malpractice insurance premiums;

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

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

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

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

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

14 SECTION 10.29. (a) Except as provided by Sections 10.30
15 and 10.31 of this article, the changes in law made by this article
16 to the Medical Liability and Insurance Improvement Act of Texas
17 (Article 4590i, Vernon's Texas Civil Statutes) apply to a cause of
18 action that accrues on or after January 1, 2004. Except as provided
19 by this section and Sections 10.30 and 10.31 of this article, a
20 cause of action that accrues before January 1, 2004, is governed by
21 the law in effect immediately before the effective date of this
22 article, and that law is continued in effect for that purpose.

23 (b) Subchapter S, Medical Liability and Insurance
24 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
25 Statutes), as added by this article, applies only to an attorney's
26 fee agreement or contract that is entered into on or after January
27 1, 2004. An attorney's fee agreement or contract entered into

1 before January 1, 2004, is governed by the law in effect immediately
2 before the effective date of this article, and that law is continued
3 in effect for that purpose.

4 (c) This article does not make any change in law with
5 respect to the adjustment under Section 11.04, Medical Liability
6 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
7 Texas Civil Statutes), of the liability limit prescribed in Section
8 11.02(a) of that Act, and that law is continued in effect only for
9 that liability limit.

10 SECTION 10.30. (a) This section applies only if this
11 article takes effect September 1, 2003.

12 (b) All changes in law made by this article to the Medical
13 Liability and Insurance Improvement Act of Texas (Article 4590i,
14 Vernon's Texas Civil Statutes), other than Subchapter S, added by
15 this article, also apply to a health care liability claim that is
16 included in an action or suit filed on or after September 1, 2003,
17 and to that action or suit.

18 (c) If written notice of a health care liability claim is
19 given by certified mail, return receipt requested, in compliance
20 with Section 4.01(a), Medical Liability and Insurance Improvement
21 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), on or
22 after June 1, 2003, and before September 1, 2003, the giving of that
23 notice constitutes, for purposes of this section, the filing, as of
24 the date of depositing that notice in the mail, of an action or suit
25 that includes that claim against each physician or health care
26 provider to whom that notice is given.

27 SECTION 10.31. (a) This section applies only if this

1 article takes effect immediately.

2 (b) All changes in law made by this article to the Medical
3 Liability and Insurance Improvement Act of Texas (Article 4590i,
4 Vernon's Texas Civil Statutes), other than Subchapter S, added by
5 this article, also apply to a health care liability claim that is
6 included in an action or suit filed on or after the 60th day after
7 the effective date of this article, and to that action or suit.

8 (c) If written notice of a health care liability claim is
9 given by certified mail, return receipt requested, in compliance
10 with Section 4.01(a), Medical Liability and Insurance Improvement
11 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), on or
12 after the effective date of this article, and before the 60th day
13 after the effective date of this article, the giving of that notice
14 constitutes, for purposes of this section, the filing, as of the
15 date of depositing that notice in the mail, of an action or suit
16 that includes that claim against each physician or health care
17 provider to whom that notice is given.

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

19 LOCAL GOVERNMENT

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

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

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

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

8 (A) by the state's obligation to indemnify under
9 Chapter 104;

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

12 (C) by liability or errors and omissions
13 insurance; or

14 (D) by liability or errors and omissions coverage
15 under an interlocal agreement.

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

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

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

27 (A) by the state's obligation to indemnify under

1 Chapter 104;

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

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

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

8 SECTION 11.02. Section 285.071, Health and Safety Code, is
9 amended to read as follows:

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

17 SECTION 11.03. Section 108.002(c), Civil Practice and
18 Remedies Code, is repealed.

19 SECTION 11.04. This article applies to a suit filed on or
20 after the effective date of this article.

21 ARTICLE 12. JUROR QUALIFICATION

22 SECTION 12.01. Section 62.105, Government Code, is amended
23 to read as follows:

24 Sec. 62.105. DISQUALIFICATION FOR PARTICULAR JURY. (a) A
25 person is disqualified to serve as a petit juror in a particular
26 case if the person [~~he~~]:

27 (1) is a witness in the case;

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

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

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

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

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

17 SECTION 12.02. (a) Except as provided by Subsection (b) of
18 this section, this article applies only to a suit commenced or
19 pending on or after the effective date of this article.

20 (b) This article does not apply to a suit in which the trial
21 on the merits commenced on or before the effective date of this
22 article; that suit is governed by the law in effect immediately
23 before the change in law made by this article, and that law is
24 continued in effect for that purpose.

25 ARTICLE 13. EXEMPLARY DAMAGES

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

1 (1) "Claimant" means a person [~~party~~], including a
2 plaintiff, counterclaimant, cross-claimant, or third-party
3 plaintiff, seeking or who has sought recovery of exemplary damages.
4 In a cause of action in which a party seeks recovery of exemplary
5 damages related to injury to another person, damage to the property
6 of another person, death of another person, or other harm to another
7 person, "claimant" includes both that other person and the party
8 seeking recovery of exemplary damages.

9 SECTION 13.02. Sections 41.008(b) and (c), Civil Practice
10 and Remedies Code, are amended to read as follows:

11 (b) Exemplary damages awarded against a defendant to a
12 claimant may not exceed an amount equal to the greater of:

13 (1)(A) two times the amount of economic damages to be
14 awarded in the judgment; plus

15 (B) an amount equal to any noneconomic damages to
16 be awarded in the judgment [~~found by the jury~~], not to exceed
17 \$750,000; or

18 (2) \$200,000.

19 (c) Subsection (b) does not apply to a cause of action
20 against a defendant from whom a plaintiff seeks recovery of
21 exemplary damages based on conduct for which the defendant has been
22 convicted of [~~described as~~] a felony in the following sections or
23 chapter of the Penal Code if, except for Sections 49.07 and 49.08,
24 the conduct was committed knowingly or intentionally:

25 (1) Section 19.02 (murder);

26 (2) Section 19.03 (capital murder);

27 (3) Section 20.04 (aggravated kidnapping);

- 1 (4) Section 22.02 (aggravated assault);
- 2 (5) Section 22.011 (sexual assault);
- 3 (6) Section 22.021 (aggravated sexual assault);
- 4 (7) Section 22.04 (injury to a child, elderly
- 5 individual, or disabled individual);
- 6 (8) Section 32.21 (forgery);
- 7 (9) Section 32.43 (commercial bribery);
- 8 (10) Section 32.45 (misapplication of fiduciary
- 9 property or property of financial institution);
- 10 (11) Section 32.46 (securing execution of document by
- 11 deception);
- 12 (12) Section 32.47 (fraudulent destruction, removal,
- 13 or concealment of writing);
- 14 (13) Chapter 31 (theft) the punishment level for which
- 15 is a felony of the third degree or higher;
- 16 (14) Section 49.07 (intoxication assault); or
- 17 (15) Section 49.08 (intoxication manslaughter).

18 SECTION 13.03. (a) Except as provided by Subsection (b) of
19 this section, this article applies only to a suit commenced or
20 pending on or after the effective date of this article.

21 (b) This article does not apply to a suit in which the trial
22 on the merits commenced on or before the effective date of this
23 article; that suit is governed by the law in effect immediately
24 before the change in law made by this article, and that law is
25 continued in effect for that purpose.

26 ARTICLE 14. ASSIGNMENT OF JUDGES

27 SECTION 14.01. Subchapter B, Chapter 74, Government Code,

1 is amended by adding Section 74.0241 to read as follows:

2 Sec. 74.0241. ASSIGNMENT OF JUDGES FOR HEALTH CARE
3 LIABILITY CLAIMS. (a) In this section, "health care liability
4 claim" has the meaning assigned by Section 1.03, Medical Liability
5 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
6 Texas Civil Statutes).

7 (b) Notwithstanding any other law or rule, and on motion of
8 a party to a health care liability claim, the supreme court shall
9 assign a judge for the health care liability claim and any action or
10 suit that includes the claim.

11 (c) The supreme court shall provide each party to the health
12 care liability claim and any action or suit that includes the claim
13 a list of the judges from whom the assigned judge will be selected.

14 (d) Within a period specified by the supreme court, each of
15 the following groups of parties may file with the supreme court a
16 written objection to one of the judges on the list provided under
17 Subsection (c) who is not a regular judge in the county in which the
18 suit is pending:

19 (1) all of the parties asserting the claim;

20 (2) all of the parties against whom the claim is
21 asserted; and

22 (3) all other parties in the case.

23 (e) After the period specified for filing an objection under
24 Subsection (d) has expired, no further objection may be made. The
25 supreme court shall assign one judge on the list who has not been
26 timely objected to under Subsection (d) to serve as the assigned
27 judge for the health care liability claim and any action or suit

1 that includes the claim.

2 (f) Notwithstanding any other law or rule, the supreme court
3 has authority to issue any rule necessary or appropriate to
4 implement this section.

5 SECTION 14.02. (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 15. PUBLIC SCHOOL TEACHERS

14 SECTION 15.01. Section 22.051, Education Code, is amended
15 by adding Subsection (a-1) and amending Subsections (b) and (c) to
16 read as follows:

17 (a-1) A teacher employed by a school district is not
18 personally liable for any act that is incident to or within the
19 scope of the duties of the teacher's position of employment. This
20 subsection does not apply to any act that constitutes a criminal
21 offense, including sexual misconduct.

22 (b) Subsection (a) [~~This section~~] does not apply to the
23 operation, use, or maintenance of any motor vehicle.

24 (c) In this section, "professional employee" includes:

25 (1) a superintendent, principal, [~~teacher,~~]
26 supervisor, social worker, counselor, nurse, and teacher's aide;

27 (2) a student in an education preparation program

1 participating in a field experience or internship;

2 (3) a school bus driver certified in accordance with
3 standards and qualifications adopted by the Department of Public
4 Safety; and

5 (4) any other person, except a teacher, whose
6 employment requires certification and the exercise of discretion.

7 SECTION 15.02. This article applies only to a cause of
8 action that accrues on or after the effective date of this article.
9 An action that accrued before the effective date of this article is
10 governed by the law applicable to the action immediately before the
11 effective date of this article, and that law is continued in effect
12 for that purpose.

13 ARTICLE 16. EFFECTIVE DATE

14 SECTION 16.01. (a) All articles of this Act, other than
15 Article 10, take effect September 1, 2003.

16 (b) Article 10 of this Act takes effect immediately if this
17 Act receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, Article 10 of this Act takes effect September 1, 2003.

21 (c) The articles of this Act apply as provided by each
22 article.