

By: Nixon

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) The court shall notify the named parties to the action
16 of the hearing on or before the 21st day before the date of the
17 hearing.

18 (c) A party must file a motion to abate or dismiss an action
19 under Section 26.005 on or before the 30th day after the date the
20 court signed the order certifying the action as a class action.

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

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

27 (2) one or more class representatives failed to

1 exhaust the state agency's administrative remedy.

2 (b) The court shall specify the state agency having
3 exclusive jurisdiction and the administrative remedy in the order
4 of dismissal.

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

12 Sec. 26.005. ABATEMENT OR DISMISSAL. (a) On motion of a
13 party, a court shall abate or dismiss without prejudice an action if
14 the court determines that:

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

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

19 (3) a state agency may make findings of fact and
20 conclusions of law or issue orders that would aid the court in
21 resolving the action; or

22 (4) a state agency may order all or part of the relief
23 a claimant seeks in a contested case.

24 (b) The court shall specify in its order of abatement or
25 dismissal the name of the state agency and the agency statute or
26 rule on which it based its order.

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

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

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

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

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

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

19 (c) The period of abatement ends when:

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

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

25 Sec. 26.007. PROCEEDING AFTER ABATEMENT; DISMISSAL. (a)
26 After the abatement period, the court shall decide whether to
27 dismiss the action, proceed with the action as an individual

1 action, or proceed with the action as a class action.

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

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

6 (2) the relief granted by the state agency is an
7 adequate substitute for the relief sought by the claimant.

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

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

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

24 (1) the transfer is necessary to avoid the likelihood
25 of conflicting or inconsistent judicial decisions affecting the
26 parties to the action;

27 (2) the transfer would promote judicial economy;

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

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

5 (f) If a person seeks declaratory relief under Section
6 2001.038, Government Code, concerning the validity or
7 applicability of a state agency rule involved in a state agency's
8 decision on a matter referred to the agency by the court, the court
9 shall transfer the action to Travis County.

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

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

13 Sec. 140.001. APPLICABILITY. (a) This chapter applies to
14 an award of attorney's fees in a class action notwithstanding:

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

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

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

23 Sec. 140.002. NO RIGHT TO FEES CREATED. This chapter does
24 not create any right in the class to any award of attorney's fees
25 against the defendant.

26 Sec. 140.003. AWARD OF FEES. If a court awards a fee in a
27 class action to the attorney or attorneys for the class, the fee

1 must be awarded out of a common fund recovered for the class only as
2 provided by this chapter.

3 Sec. 140.004. DETERMINATION OF REASONABLE AND NECESSARY
4 TIME AND LABOR. The court shall determine the number of hours that
5 it considers the reasonable and necessary time and labor expended
6 by the attorney or attorneys for the class.

7 Sec. 140.005. BASE FEE. The base fee is an amount
8 determined by multiplying the following amounts:

9 (1) the number of hours determined in Section 140.004;
10 and

11 (2) an hourly fee that the court determines is not
12 greater than the fee customarily charged in the locality for
13 similar legal services.

14 Sec. 140.006. INCREASE OR DECREASE OF BASE FEE. (a) Except
15 as provided by Subsection (b), the court may increase or decrease
16 the base fee determined under Section 140.005 by applying the
17 following factors:

18 (1) the novelty and difficulty of the issues involved
19 in the action;

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

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

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

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

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

3 (1) 25 percent of the amounts collected by class
4 members out of the common fund recovered for the class; or

5 (2) four times the base fee as determined under
6 Section 140.005.

7 Sec. 140.007. ACTUAL EXPENSES AND COSTS. In addition to the
8 fee determined by the court under this chapter, the court may award
9 the attorney or attorneys representing the class all reasonable
10 expenses and costs actually incurred by the attorney on behalf of
11 the class.

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

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

18 (1) a case appealed from a county court or from a
19 district court when, under the constitution, a county court would
20 have had original or appellate jurisdiction of the case, with the
21 exception of a probate matter or a case involving state revenue laws
22 or the validity or construction of a statute;

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

26 (3) an appeal from an interlocutory order appointing a
27 receiver or trustee or from other interlocutory appeals that are

1 allowed by law;

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

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

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

12 SECTION 1.04. Section 51.014(b), Civil Practice and
13 Remedies Code, is amended to read as follows:

14 (b) An interlocutory appeal under Subsection (a), other
15 than an appeal under Subsection (a)(4), shall have the effect of
16 staying the commencement of a trial in the trial court pending
17 resolution of the appeal. Additionally, an interlocutory appeal
18 under Subsection (a)(3) stays all other proceedings in the trial
19 court pending resolution of that appeal.

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

22 ARTICLE 2. SETTLEMENT

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

25 CHAPTER 42. SETTLEMENT AND RECOVERY OF LITIGATION COSTS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 42.001. DEFINITIONS. In this chapter:

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

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

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

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

11 (5) "Litigation costs" means money actually spent and
12 obligations actually incurred that are directly related to an
13 action. "Litigation costs" include:

14 (A) reasonable attorney's fees;

15 (B) court costs;

16 (C) reasonable deposition costs; and

17 (D) reasonable fees for not more than two expert
18 witnesses.

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

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

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

26 (1) brought under the Family Code;

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

1 (3) brought on behalf of a minor or person of unsound
2 mind; or

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

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

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

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

11 (d) A party's offer to settle or compromise that does not
12 comply with Section 42.051 or that is excluded from this chapter
13 under Subsection (a) does not entitle the party to recover
14 litigation costs under this chapter.

15 Sec. 42.003. ELECTION BY GOVERNMENTAL UNITS; WAIVER. (a)
16 This chapter does not apply to an action by or against a
17 governmental unit unless the governmental unit elects to seek
18 recovery of litigation costs under this chapter or elects to waive
19 immunity from liability for costs awarded under this chapter.

20 (b) To be effective as an election or waiver, the
21 governmental unit must make the election or waiver specifically and
22 affirmatively by a writing filed with the court on or before the
23 45th day after the date the governmental unit files its original
24 petition or original answer.

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

27 Sec. 42.004. MODIFICATION OF TIME LIMITS. A court may

1 modify the time limits specified in this chapter by order resulting
2 from a pretrial conference conducted under Rule 166, Texas Rules of
3 Civil Procedure.

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

8 [Sections 42.006-42.050 reserved for expansion]

9 SUBCHAPTER B. AWARDING LITIGATION COSTS

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

13 (b) The settlement offer must:

14 (1) be in writing;

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

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

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

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

22 (c) A defendant may not make a settlement offer under this
23 section before the 90th day after the date the defendant files a
24 responsive pleading or otherwise appears in the action.

25 (d) A defendant may not make a settlement offer under this
26 section after the 30th day before the date set for trial.

27 (e) The parties are not required to file a settlement offer

1 with the court.

2 Sec. 42.052. ACCEPTANCE OF SETTLEMENT OFFER. (a) A
3 claimant may accept a settlement offer on or before 5 p.m. on the
4 30th day after the date the claimant received the settlement offer
5 or before the deadline stated in the settlement offer, whichever is
6 later.

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

8 (1) in writing; and

9 (2) served on the defendant who made the settlement
10 offer.

11 Sec. 42.053. WITHDRAWING SETTLEMENT OFFER. (a) A
12 defendant may withdraw a settlement offer by serving a written
13 withdrawal on the claimant to whom the settlement offer was made
14 before the claimant accepts the settlement offer. A claimant may
15 not accept a settlement offer after it is withdrawn.

16 (b) If a defendant withdraws a settlement offer, that
17 settlement offer does not entitle the defendant to recover
18 litigation costs.

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

21 (1) the claimant to whom the settlement offer was made
22 rejects the settlement offer by serving a written rejection on the
23 defendant making the settlement offer; or

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

26 Sec. 42.055. AWARD OF LITIGATION COSTS. (a) A defendant
27 who makes a settlement offer to a claimant seeking monetary relief

1 shall recover litigation costs from the claimant if:

2 (1) the settlement offer is rejected;

3 (2) the court signs a judgment on the claim;

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

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

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

14 (1) the settlement offer is rejected;

15 (2) the court signs a judgment on the claim; and

16 (3) the judgment is more favorable to the defendant
17 who made the settlement offer than the settlement offer.

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

23 (d) An award of litigation costs by the court may be
24 reviewed on appeal from a final judgment for abuse of discretion by
25 the court.

26 Sec. 42.056. LIMITATION ON LITIGATION COSTS. (a) The
27 amount of litigation costs awarded to a defendant under this

1 chapter shall not exceed the claimant's total recovery in
2 connection with the transactions or occurrences giving rise to the
3 claim and includes:

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

6 (2) the amount of any money paid or to be paid to the
7 claimant by any person in consideration of potential liability in
8 connection with the transactions or occurrences giving rise to the
9 claim.

10 (b) If litigation costs are awarded against a claimant under
11 this chapter, the claimant shall not be awarded the post-settlement
12 offer portion of any litigation costs to which the claimant would
13 otherwise be entitled under Chapter 38 or other applicable law.

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

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

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

27 ARTICLE 3. VENUE; FORUM NON CONVENIENS

1 SECTION 3.01. Section 15.002(a), Civil Practice and
2 Remedies Code, is amended to read as follows:

3 (a) Except as otherwise provided by this subchapter or
4 Subchapter B, ~~C~~, or F, all lawsuits shall be brought:

5 (1) in the county in which all or a substantial part of
6 the events or omissions giving rise to the claim occurred;

7 (2) in the county of defendant's residence at the time
8 the cause of action accrued if defendant is a natural person;

9 (3) in the county of the defendant's principal office
10 in this state, if the defendant is not a natural person; or

11 (4) if Subdivisions (1), (2), and (3) do not apply, in
12 the county in which the plaintiff resided at the time of the accrual
13 of the cause of action.

14 SECTION 3.02. Chapter 15, Civil Practice and Remedies Code,
15 is amended by adding Subchapter F to read as follows:

16 SUBCHAPTER F. TRANSFER OF PRETRIAL VENUE IN MULTIDISTRICT
17 LITIGATION

18 Sec. 15.151. PURPOSE. (a) The purpose of this subchapter
19 is to facilitate the just and efficient resolution of multidistrict
20 litigation in the courts of this state.

21 (b) This subchapter shall be construed:

22 (1) to accomplish the purpose stated in Subsection
23 (a); and

24 (2) in harmony with federal judicial interpretation of
25 comparable federal multidistrict litigation statutes to the extent
26 consistent with this purpose.

27 Sec. 15.152. DEFINITION. In this subchapter, "panel" means

1 the judicial panel on multidistrict litigation authorized by
2 Subchapter H, Chapter 74, Government Code.

3 Sec. 15.153. APPLICABILITY. This subchapter does not apply
4 to any action in which this state is a complainant arising under the
5 antitrust laws.

6 Sec. 15.154. TRANSFER FOR COORDINATED OR CONSOLIDATED
7 PRETRIAL PROCEEDINGS. A proposed class action or two or more other
8 civil actions involving one or more common questions of fact
9 pending in different districts may be transferred by the panel to
10 any district for coordinated or consolidated pretrial proceedings.

11 Sec. 15.155. INITIATION OF TRANSFER. (a) Proceedings for
12 the transfer of an action under this subchapter may be initiated by:

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

14 (2) a motion filed with the panel by a party in any
15 action in which transfer for coordinated or consolidated pretrial
16 proceedings under this subchapter may be appropriate.

17 (b) A copy of the motion shall be filed in the district court
18 in which the moving party's action is pending.

19 Sec. 15.156. NOTICE. (a) The panel shall give notice to
20 the parties in all actions in which transfers for coordinated or
21 consolidated pretrial proceedings are contemplated.

22 (b) The notice must specify the time and place of any
23 hearing to determine whether the transfer will be made.

24 Sec. 15.157. DETERMINATION OF TRANSFER. (a) The panel
25 shall order a transfer if it determines that the transfer:

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

27 and

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

3 (b) The panel shall base its determination on a record of
4 the hearing at which material evidence may be offered by any party
5 to an action pending in any district that would be affected by the
6 proceedings under this subchapter.

7 (c) The panel shall support a transfer order by findings of
8 fact and conclusions of law based on the record.

9 Sec. 15.158. REMAND. The panel shall remand each
10 transferred action at or before the conclusion of pretrial
11 proceedings to the district from which it was transferred unless it
12 has been terminated, except that the panel may separate any claim,
13 cross claim, counterclaim, or third-party claim and remand the
14 separated claim before the remainder of the action is remanded.

15 Sec. 15.159. ASSIGNMENT. (a) On request of the panel, a
16 district judge may be assigned temporarily for service in the
17 transferee district by the chief justice of the supreme court or by
18 the presiding judge of the administrative judicial region in
19 accordance with Subchapter C, Chapter 74, Government Code.

20 (b) The panel may, with the consent of the transferee
21 district court, assign a judge or judges of the transferee
22 district.

23 Sec. 15.160. CONDUCTING THE PROCEEDINGS. The coordinated
24 or consolidated pretrial proceedings shall be conducted by a judge
25 or judges to whom the actions are assigned by the panel. The judge
26 or judges to whom the action is assigned, the members of the panel,
27 and other district judges designated when needed by the panel may

1 exercise the powers of a district judge in any district for the
2 purpose of conducting pretrial deposition in coordinated or
3 consolidated pretrial proceedings.

4 Sec. 15.161. FILING OF ORDERS. (a) An order of the panel to
5 set a hearing and any other order of the panel issued before the
6 order either directing or denying transfer shall be filed in the
7 office of the clerk of the district court in which a transfer
8 hearing is to be or has been held.

9 (b) A transfer order and any other order of the panel made
10 after the transfer order shall be filed in the office of the clerk
11 of the district court of the transferee district and is effective
12 when filed.

13 (c) The clerk of the transferee district shall immediately
14 transmit a certified copy of a transfer order by the panel to the
15 clerk of the district court from which the action is being
16 transferred.

17 (d) An order denying transfer shall be filed in each
18 district in which there is a case pending in which the motion for
19 transfer has been made.

20 Sec. 15.162. REVIEW. (a) A proceeding for review of any
21 order of the panel may only be by extraordinary writ.

22 (b) A petition for an extraordinary writ to review an order
23 of the panel to set a transfer hearing and any other order of the
24 panel issued before the transfer order either directing or denying
25 transfer may be filed only in the court of appeals having
26 jurisdiction over the district in which a hearing is to be or has
27 been held.

1 (c) A petition for an extraordinary writ to receive an order
2 to transfer or any order issued after transfer may be filed only in
3 the court of appeals having jurisdiction over the transferred
4 district.

5 (d) An order of the panel denying a motion to transfer for
6 consolidated or coordinated proceedings may not be appealed or
7 reviewed.

8 SECTION 3.03. Chapter 74, Government Code, is amended by
9 adding Subchapter H to read as follows:

10 SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

11 Sec. 74.161. JUDICIAL PANEL. (a) The judicial panel on
12 multidistrict litigation consists of seven justices of the courts
13 of appeals designated from time to time by the chief justice of the
14 supreme court. Two panel members may not be from the same court of
15 appeals district.

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

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

22 (b) The panel may prescribe additional rules for the conduct
23 of its business not inconsistent with Subchapter F, Chapter 15,
24 Civil Practice and Remedies Code, and the rules of judicial
25 administration.

26 SECTION 3.04. Section 15.003, Civil Practice and Remedies
27 Code, is amended to read as follows:

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

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

16 (2) maintaining venue in the county of suit does not
17 unfairly prejudice another party to the suit;

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

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

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

27 (1) a plaintiff did or did not independently establish

1 proper venue; or

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

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

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

11 (c) An [~~Any person seeking intervention or joinder, who is~~
12 ~~unable to independently establish proper venue, or a party opposing~~
13 ~~intervention or joinder of such a person may contest the decision of~~
14 ~~the trial court allowing or denying intervention or joinder by~~
15 ~~taking an~~] interlocutory appeal permitted by Subsection (b) must be
16 taken to the court of appeals district in which the trial court is
17 located under the procedures established for interlocutory
18 appeals. The appeal may be taken by a party that is affected by the
19 trial court's determination under Subsection (a). The appeal must
20 be perfected not later than the 20th day after the date the trial
21 court signs the order transferring or refusing to transfer venue or
22 dismissing or refusing to dismiss the case as to the plaintiff that
23 could not establish proper venue or finding that the items
24 prescribed by Subsections (a)(1)-(4) have or have not been
25 established [~~denying or allowing the intervention or joinder~~]. The
26 court of appeals shall:

27 (1) determine whether the trial court's determination

1 ~~[joinder or intervention]~~ is proper based on an independent
2 determination from the record and not under either an abuse of
3 discretion or substantial evidence standard; and

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

6 SECTION 3.05. Section 71.051, Civil Practice and Remedies
7 Code, is amended by amending Subsection (a) and adding Subsection
8 (j) to read as follows:

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

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

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

22 (1) 71.051(b), (c), (d), (e), (f), (g), and (h); and

23 (2) 71.052.

24 SECTION 3.07. (a) Sections 3.01-3.03 of this article apply
25 only to a suit commenced or pending on or after the effective date
26 of this Act.

27 (b) Section 3.04 of this article applies only to a suit

1 commenced on or after the effective date of this Act. A suit
2 commenced before the effective date of this Act is governed by the
3 law in effect immediately before the change in law made by Section
4 3.04 of this article, and that law is continued in effect for that
5 purpose.

6 (c) Sections 3.05 and 3.06 of this article apply only to a
7 suit commenced on or after the effective date of this Act or pending
8 on the effective date of this Act and in which the trial, or any new
9 trial or retrial following motion, appeal, or otherwise, begins on
10 or after that date. In a suit commenced before the effective date
11 of this Act, a trial, new trial, or retrial that is in progress on
12 that date is governed with respect to the subject matter of Sections
13 3.05 and 3.06 of this article by the applicable law in effect
14 immediately before that date, and that law is continued in effect
15 for that purpose.

16 ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND

17 DESIGNATION OF RESPONSIBLE PARTIES

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

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

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

26 (2) any action brought under the Deceptive Trade
27 Practices-Consumer Protection Act (Subchapter E, Chapter 17,

1 Business & Commerce Code) in which a defendant, settling person, or
2 responsible third party is found responsible for a percentage of
3 the harm for which relief is sought.

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

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

- 15 (1) each claimant;
16 (2) each defendant;
17 (3) each settling person; and
18 (4) each responsible third party who has been
19 designated [~~joined~~] under Section 33.004.

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

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

25 Sec. 33.004. DESIGNATION [~~JOINER~~] OF RESPONSIBLE THIRD
26 PARTY [~~PARTIES~~].

27 SECTION 4.04. Section 33.004, Civil Practice and Remedies

1 Code, is amended by amending Subsections (a) and (b) and adding
2 Subsections (f), (g), (h), (i), and (j) to read as follows:

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

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

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

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

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

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

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

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

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

20 (1) does not by itself impose liability on the person;
21 and

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

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

27 (1) "Claimant" means a person [~~party~~] seeking recovery

1 of damages [~~pursuant to the provisions of Section 33.001~~],
2 including a plaintiff, counterclaimant, cross-claimant, or
3 third-party plaintiff [~~seeking recovery of damages~~]. In an action
4 in which a party seeks recovery of damages for injury to another
5 person, damage to the property of another person, death of another
6 person, or other harm to another person, "claimant" includes:

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

9 (B) any person who is [~~both that other person and~~
10 ~~the party~~] seeking, has sought, or could seek recovery of damages
11 for the injury, harm, or death of that person or for the damage to
12 the property of that person [~~pursuant to the provisions of Section~~
13 ~~33.001~~].

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

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

26 (6) [~~(A)~~] "Responsible third party" means any person
27 who is alleged to have caused or contributed to cause in any way the

1 harm for which recovery of damages is sought, whether by negligent
2 act or omission, by any defective or unreasonably dangerous
3 product, by other conduct or activity that violates an applicable
4 legal standard, or by any combination of these. [~~to whom all of the~~
5 ~~following apply:~~

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

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

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

13 [~~(B)~~] The term "responsible third party" does not
14 include a seller eligible for indemnity under Section 82.002
15 unless there is alleged against the seller a claim for relief based
16 on the seller's negligence, intentional misconduct, or other act or
17 omission, such as negligently modifying or altering a product, for
18 which the seller is independently liable to the claimant [+

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

23 [~~(ii) a person or entity that is a debtor in~~
24 ~~bankruptcy proceedings or a person or entity against whom this~~
25 ~~claimant's claim has been discharged in bankruptcy, except to the~~
26 ~~extent that liability insurance or other source of third party~~
27 ~~funding may be available to pay claims asserted against the~~

1 ~~debtor~~].

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

4 (b) If the claimant has settled with one or more persons,
5 the court shall further reduce the amount of damages to be recovered
6 by the claimant with respect to a cause of action by a percentage
7 equal to each settling person's percentage of responsibility
8 ~~[credit equal to one of the following, as elected in accordance with~~
9 ~~Section 33.014:~~

10 ~~[(1) the sum of the dollar amounts of all settlements,~~
11 ~~or~~

12 ~~[(2) a dollar amount equal to the sum of the following~~
13 ~~percentages of damages found by the trier of fact:~~

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

15 ~~[(B) 10 percent of those damages from \$200,001 to~~
16 ~~\$400,000;~~

17 ~~[(C) 15 percent of those damages from \$400,001 to~~
18 ~~\$500,000; and~~

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

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

24 (a) Except as provided in Subsection ~~[Subsections]~~ (b) ~~[and~~
25 ~~(c)]~~, a liable defendant is liable to a claimant only for the
26 percentage of the damages awarded in the judgment ~~[found by the~~
27 ~~trier of fact]~~ equal to that defendant's percentage of

1 responsibility with respect to the personal injury, property
2 damage, death, or other harm for which the damages are allowed.

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

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

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

15 (A) Section 19.02 (murder);

16 (B) Section 19.03 (capital murder);

17 (C) Section 20.04 (aggravated kidnapping);

18 (D) Section 22.02 (aggravated assault);

19 (E) Section 22.011 (sexual assault);

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

21 (G) Section 22.04 (injury to child, elderly
22 individual, or disabled individual);

23 (H) Section 32.21 (forgery);

24 (I) Section 32.43 (commercial bribery);

25 (J) Section 32.45 (misapplication of fiduciary
26 property or property of financial institution);

27 (K) Section 32.46 (securing execution of

1 document by deception);

2 (L) Section 32.47 (fraudulent destruction,
3 removal, or concealment of writing); or

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

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

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

19 SECTION 4.08. Section 33.015(a), Civil Practice and
20 Remedies Code, is amended to read as follows:

21 (a) If a defendant who is jointly and severally liable under
22 Section 33.013 pays a percentage of the damages for which the
23 defendant is jointly and severally liable greater than his
24 percentage of responsibility, that defendant has a right of
25 contribution for the overpayment against each other liable
26 defendant to the extent that the other liable defendant has not paid
27 the percentage of the damages awarded in the judgment [~~found by the~~

1 ~~trier of fact]~~ equal to that other defendant's percentage of
2 responsibility.

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

5 Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY.
6 Nothing in this chapter shall be construed to affect any rights of
7 indemnity granted by [~~to a seller eligible for indemnity by Chapter~~
8 ~~82, the Texas Motor Vehicle Commission Code (Article 4413(36),~~
9 ~~Vernon's Texas Civil Statutes), or]~~ any [~~other]~~ statute, [~~nor shall~~
10 ~~it affect rights of indemnity granted]~~ by contract, or by [~~at]~~
11 common law. To the extent of any conflict between this chapter and
12 any right to indemnification granted by [~~Section 82.002, the Texas~~
13 ~~Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas~~
14 ~~Civil Statutes), or any other]~~ statute, contract, or common law,
15 those rights of indemnification shall prevail over the provisions
16 of this chapter.

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

19 (b) If a benefit is claimed by an injured employee or a legal
20 beneficiary of the employee, the insurance carrier is subrogated to
21 the rights of the injured employee and may enforce the liability of
22 the third party in the name of the injured employee or the legal
23 beneficiary. The insurance carrier's subrogation interest is
24 limited to the amount of the total benefits paid or assumed by the
25 carrier to the employee or the legal beneficiary, less the amount by
26 which the court reduces the judgment based on the percentage of
27 responsibility determined by the trier of fact under Section

1 33.003, Civil Practice and Remedies Code, attributable to the
2 employer, only if the employer maintained workers' compensation
3 insurance coverage, as defined by Section 401.011(44), at the time
4 of the act, event, or occurrence that is the basis of the employee's
5 injury. If the recovery is for an amount greater than the amount of
6 the insurance carrier's subrogation interest [~~that paid or assumed~~
7 ~~by the insurance carrier to the employee or the legal beneficiary~~],
8 the insurance carrier shall:

9 (1) reimburse itself and pay the costs from the amount
10 recovered; and

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

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

15 (1) 33.002(b), (d), (e), (f), (g), and (h);

16 (2) 33.004(c), (d), and (e);

17 (3) 33.011(7);

18 (4) 33.012(c);

19 (5) 33.013(c); and

20 (6) 33.014.

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

24 (b) This article does not apply to a suit in which the trial
25 on the merits commenced on or before the effective date of this Act
26 and that suit is governed by the law in effect immediately before
27 the change in law made by this article, and that law is continued in

1 effect for that purpose.

2 ARTICLE 5. PRODUCTS LIABILITY

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

5 Sec. 16.012. PRODUCTS LIABILITY [~~MANUFACTURING~~
6 ~~EQUIPMENT~~]. (a) In this section, "claimant," [~~+~~
7 [~~(1) "Claimant,"~~] "products liability action,"
8 "seller," and "manufacturer" have the meanings assigned by Section
9 82.001.

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

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

19 (c) If a manufacturer or seller expressly represents that
20 the product [~~manufacturing equipment~~] has a useful safe life of
21 longer than 15 years, a claimant must commence a products liability
22 action against that manufacturer or seller of the product
23 [~~equipment~~] before the end of the number of years represented after
24 the date of the sale of the product [~~equipment~~] by that seller.

25 (d) This section does not reduce a limitations period that
26 applies to a products liability action involving the product
27 [~~manufacturing equipment~~] that accrues before the end of the

1 limitations period under this section.

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

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

7 SECTION 5.02. Chapter 82, Civil Practice and Remedies Code,
8 is amended by adding Sections 82.003, 82.007, and 82.008 to read as
9 follows:

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

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

16 (2) that:

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

20 (B) the warning or instruction was inadequate;
21 and

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

24 (3) that:

25 (A) the seller made an express factual
26 representation about an aspect of the product;

27 (B) the representation was incorrect;

1 (C) the claimant relied on the representation in
2 obtaining or using the product; and

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

6 (4) that:

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

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

10 Sec. 82.007. EVIDENCE OF SUBSEQUENT IMPROVEMENTS AND
11 MEASURES. In a products liability action, a court may not admit,
12 except for purposes of impeachment, evidence of a subsequent
13 improvement made or measure taken with respect to the defect
14 alleged to have caused harm, or a similar product, that, if made or
15 taken before the product was supplied, would have made the
16 claimant's harm less likely.

17 Sec. 82.008. COMPLIANCE WITH GOVERNMENT STANDARDS. (a)
18 Notwithstanding any other law, a manufacturer or seller of a
19 product that allegedly caused the claimant's harm is not liable if
20 the product was manufactured or sold in compliance with a federal or
21 state law, rule, or regulation governing the manufacture or sale of
22 the product, including specifications for manufacturing, using,
23 packaging, or labeling of the product.

24 (b) Subsection (a) does not apply to a manufacturer or
25 seller if the claimant proves by clear and convincing evidence
26 that:

27 (1) the manufacturer or seller intentionally withheld

1 from or misrepresented to the applicable regulatory agency
2 information concerning the product;

3 (2) the manufacturer or seller knew or should have
4 known that the withheld or misrepresented information could result
5 in a potentially harmful product defect; and

6 (3) the claimant's injuries resulted from the
7 anticipated defect.

8 SECTION 5.03. Section 82.005(d), Civil Practice and
9 Remedies Code, is repealed.

10 SECTION 5.04. (a) Section 5.01 of this article applies only
11 to a suit commenced on or after the effective date of this Act. A
12 suit commenced before the effective date of this Act is governed by
13 the law in effect immediately before the change in law made by
14 Section 5.01 of this article, and that law is continued in effect
15 for that purpose.

16 (b) Sections 5.02 and 5.03 of this article apply only to a
17 suit commenced on or after the effective date of this Act or pending
18 on the effective date of this Act and in which the trial, or any new
19 trial or retrial following motion, appeal, or otherwise, begins on
20 or after that date. In a suit commenced before the effective date
21 of this Act, a trial, new trial, or retrial that is in progress on
22 that date is governed with respect to the subject matter of Section
23 5.02 and 5.03 of this article by the applicable law in effect
24 immediately before that date, and that law is continued in effect
25 for that purpose.

26 ARTICLE 6. INTEREST

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

1 to read as follows:

2 (c) The postjudgment interest rate is:

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

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

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

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

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

18 SECTION 6.03. This article applies only to a suit in which a
19 judgment is signed on or after the effective date of this Act,
20 without regard to whether the suit commenced before, on, or after
21 that date.

22 ARTICLE 7. APPEAL BONDS

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

25 Sec. 35.006. STAY. (a) If the judgment debtor shows the
26 court that an appeal from the foreign judgment is pending or will be
27 taken, that the time for taking an appeal is not expired, or that a

1 stay of execution has been granted, requested, or will be requested
2 and proves that the judgment debtor has furnished the security for
3 the satisfaction of the judgment required by the state in which it
4 was rendered, the court shall stay enforcement of the foreign
5 judgment until the appeal is concluded, the time for appeal
6 expires, or the stay of execution expires or is vacated.

7 (b) If the judgment debtor shows the court a ground on which
8 enforcement of a judgment of the court of this state would be
9 stayed, including that an appeal is pending or will be taken, that
10 the time for taking an appeal is not expired, or that a stay of
11 execution has been granted, has been requested, or will be
12 requested, the court shall stay enforcement of the foreign judgment
13 for an appropriate period and require the same security for
14 satisfaction of the judgment that is required in this state in
15 accordance with Section 52.002.

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

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

21 (1) the amount of compensatory damages awarded in the
22 judgment;

23 (2) interest for the estimated duration of the appeal;
24 and

25 (3) costs.

26 (b) Notwithstanding any other law or rule of court, when a
27 judgment is for money, the amount of security must not exceed the

1 lesser of:

2 (1) 50 percent of the judgment debtor's net worth; or

3 (2) \$25 million.

4 (c) On a showing by the judgment debtor that the judgment
5 debtor will suffer substantial economic harm if required to post
6 security in an amount required under Subsection (a) or (b), the
7 trial court shall lower the amount of the security to an amount that
8 will not cause the judgment debtor substantial economic harm.

9 (d) An appellate court may review the amount of security as
10 allowed under Rule 24, Texas Rules of Appellate Procedure, except
11 that when a judgment is for money, the appellate court may not
12 modify the amount of security to exceed the amount allowed under
13 this section.

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

16 (1) 52.002;

17 (2) 52.003; and

18 (3) 52.004.

19 SECTION 7.04. This article applies only to a suit in which a
20 judgment is signed on or after the effective date of this Act,
21 without regard to whether the suit commenced before, on, or after
22 that date.

23 ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

24 SECTION 8.01. Section 545.413(g), Transportation Code, is
25 repealed.

26 SECTION 8.02. (a) Except as provided by Subsection (b) of
27 this section, this article applies only to a suit commenced or

1 pending on or after the effective date of this Act.

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

4 ARTICLE 9. LIABILITY FOR CIVIL SUITS OF A FOREIGN CORPORATION

5 SECTION 9.01. Section A, Article 8.02, Texas Business
6 Corporation Act, is amended to read as follows:

7 A. A foreign corporation which shall have received a
8 certificate of authority under this Act shall, until its
9 certificate of authority shall have been revoked in accordance with
10 the provisions of this Act or until a certificate of withdrawal
11 shall have been issued by the Secretary of State as provided in this
12 Act, enjoy the same, but no greater, rights and privileges as a
13 domestic corporation organized for the purposes set forth in the
14 application pursuant to which such certificate of authority is
15 issued; and, as to all matters affecting the transaction of
16 intrastate business in this State, it and its officers and
17 directors shall be subject to the same duties, restrictions,
18 penalties, and liabilities now or hereafter imposed upon a domestic
19 corporation of like character and its officers and directors;
20 provided, however, that only the laws of the jurisdiction of
21 incorporation of a foreign corporation shall govern (1) the
22 internal affairs of the foreign corporation, including but not
23 limited to the rights, powers, and duties of its board of directors
24 and shareholders and matters relating to its shares, ~~and~~ (2) the
25 liability, if any, of shareholders of the foreign corporation for
26 the debts, liabilities, and obligations of the foreign corporation
27 for which they are not otherwise liable by statute or agreement, and

1 (3) the successor liability of a foreign corporation in relation to
2 civil suits of the foreign corporation.

3 SECTION 9.02. This article applies to the liability of a
4 foreign corporation in relation to a civil suit on or after the
5 effective date of this Act without regard to whether the civil suit
6 commenced before, on, or after that date.

7 ARTICLE 10. EFFECTIVE DATE

8 SECTION 10.01. (a) This Act takes effect September 1, 2003.

9 (b) The articles of this Act apply as provided by each
10 article.