

1-1 By: Nixon, et al. (Senate Sponsor - Ratliff) H.B. No. 4
1-2 (In the Senate - Received from the House March 31, 2003;
1-3 March 31, 2003, read first time and referred to Committee on State
1-4 Affairs; May 14, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 14, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 4 By: Ratliff

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to reform of certain procedures and remedies in civil
1-11 actions.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. CLASS ACTIONS

1-14 SECTION 1.01. Subtitle B, Title 2, Civil Practice and
1-15 Remedies Code, is amended by adding Chapter 26 to read as follows:

1-16 CHAPTER 26. CLASS ACTIONS

1-17 SUBCHAPTER A. SUPREME COURT RULES

1-18 Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) The
1-19 supreme court shall adopt rules to provide for the fair and
1-20 efficient resolution of class actions.

1-21 (b) The supreme court shall adopt rules under this chapter
1-22 on or before December 31, 2003.

1-23 Sec. 26.002. MANDATORY GUIDELINES. Rules adopted under
1-24 Section 26.001 must comply with the mandatory guidelines
1-25 established by this chapter.

1-26 Sec. 26.003. ATTORNEY'S FEES. (a) If an award of
1-27 attorney's fees is available under applicable substantive law, the
1-28 rules adopted under this chapter must provide that the trial court
1-29 shall use the Lodestar method to calculate the amount of attorney's
1-30 fees to be awarded class counsel. The rules may give the trial
1-31 court discretion to increase or decrease the fee award calculated
1-32 by using the Lodestar method by no more than four times based on
1-33 specified factors.

1-34 (b) Rules adopted under this chapter must provide that in a
1-35 class action, if any portion of the benefits recovered for the class
1-36 are in the form of coupons or other noncash common benefits, the
1-37 attorney's fees awarded in the action must be in cash and noncash
1-38 amounts in the same proportion as the recovery for the class.

1-39 [Sections 26.004-26.050 reserved for expansion]

1-40 SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

1-41 Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY
1-42 JURISDICTION. (a) Before hearing or deciding a motion to certify a
1-43 class action, a trial court must hear and rule on all pending pleas
1-44 to the jurisdiction asserting that an agency of this state has
1-45 exclusive or primary jurisdiction of the action or a part of the
1-46 action, or asserting that a party has failed to exhaust
1-47 administrative remedies. The court's ruling must be reflected in a
1-48 written order.

1-49 (b) If a plea to the jurisdiction described by Subsection
1-50 (a) is denied and a class is subsequently certified, a person may,
1-51 as part of an appeal of the order certifying the class action,
1-52 obtain appellate review of the order denying the plea to the
1-53 jurisdiction.

1-54 (c) This section does not alter or abrogate a person's right
1-55 to appeal or pursue an original proceeding in an appellate court in
1-56 regard to a trial court's order granting or denying a plea to the
1-57 jurisdiction if the right exists under statutory or common law in
1-58 effect at the time review is sought.

1-59 SECTION 1.02. Section 22.225, Government Code, is amended
1-60 by amending Subsections (b) and (d) and adding Subsection (e) to
1-61 read as follows:

1-62 (b) Except as provided by Subsection (c) or (d), a judgment
1-63 of a court of appeals is conclusive on the law and facts, and a

petition for review [~~writ of error~~] is not allowed to [~~from~~] the supreme court, in the following civil cases:

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

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

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

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

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

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

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

SECTION 1.03. Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, are amended to read as follows:

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

(1) appoints a receiver or trustee;

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

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

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

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

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

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

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

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or

(10) grants relief sought by a motion under Section 74.351(1).

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

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay [~~of the commencement of trial~~] under Subsection (b) unless the motion,

3-1 special appearance, or plea to the jurisdiction is filed and
 3-2 requested for submission or hearing before the trial court not
 3-3 later than the later of:

3-4 (1) a date set by the trial court in a scheduling order
 3-5 entered under the Texas Rules of Civil Procedure; or

3-6 (2) the 180th day after the date the defendant files:

3-7 (A) the original answer;

3-8 (B) the first other responsive pleading to the
 3-9 plaintiff's petition; or

3-10 (C) if the plaintiff files an amended pleading
 3-11 that alleges a new cause of action against the defendant and the
 3-12 defendant is able to raise a defense to the new cause of action
 3-13 under Subsection (a)(5), (7), or (8), the responsive pleading that
 3-14 raises that defense.

3-15 SECTION 1.04. Section 22.001, Government Code, is amended
 3-16 by adding Subsection (e) to read as follows:

3-17 (e) For purposes of Subsection (a)(2), one court holds
 3-18 differently from another when there is inconsistency in their
 3-19 respective decisions that should be clarified to remove unnecessary
 3-20 uncertainty in the law and unfairness to litigants.

3-21 SECTION 1.05. (a) The changes in law made by Section 1.02
 3-22 of this Act to Section 22.225(d), Government Code, apply to any case
 3-23 in which a petition for review to the Supreme Court of Texas is
 3-24 filed on or after the effective date of this Act.

3-25 (b) The changes in law made by Section 1.03 of this Act to
 3-26 Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply
 3-27 to any case in which an appeal allowed by Section 51.014(a), Civil
 3-28 Practice and Remedies Code, as amended by this Act, is taken and the
 3-29 notice of appeal is filed on or after the effective date of this
 3-30 Act.

3-31 ARTICLE 2. SETTLEMENT

3-32 SECTION 2.01. Subtitle C, Title 2, Civil Practice and
 3-33 Remedies Code, is amended by adding Chapter 42 to read as follows:

3-34 CHAPTER 42. SETTLEMENT

3-35 Sec. 42.001. DEFINITIONS. In this chapter:

3-36 (1) "Claim" means a request, including a counterclaim,
 3-37 cross-claim, or third-party claim, to recover monetary damages.

3-38 (2) "Claimant" means a person making a claim.

3-39 (3) "Defendant" means a person from whom a claimant
 3-40 seeks recovery on a claim, including a counterdefendant,
 3-41 cross-defendant, or third-party defendant.

3-42 (4) "Governmental unit" means the state, a unit of
 3-43 state government, or a political subdivision of this state.

3-44 (5) "Litigation costs" means money actually spent and
 3-45 obligations actually incurred that are directly related to the case
 3-46 in which a settlement offer is made. The term includes:

3-47 (A) court costs;

3-48 (B) reasonable fees for not more than two
 3-49 testifying expert witnesses; and

3-50 (C) reasonable attorney's fees.

3-51 (6) "Settlement offer" means an offer to settle or
 3-52 compromise a claim made in compliance with this chapter.

3-53 Sec. 42.002. APPLICABILITY AND EFFECT. (a) The settlement
 3-54 procedures provided in this chapter apply only to claims for
 3-55 monetary relief.

3-56 (b) This chapter does not apply to:

3-57 (1) a class action;

3-58 (2) a shareholder's derivative action;

3-59 (3) an action by or against a governmental unit;

3-60 (4) an action brought under the Family Code; or

3-61 (5) an action to collect workers' compensation
 3-62 benefits under Subtitle A, Title 5, Labor Code.

3-63 (c) This chapter does not apply until a defendant files a
 3-64 declaration that the settlement procedure allowed by this chapter
 3-65 is available in the action. If there is more than one defendant,
 3-66 the settlement procedure allowed by this chapter is available only
 3-67 in relation to the defendant that filed the declaration and to the
 3-68 parties that make or receive offers of settlement in relation to
 3-69 that defendant.

4-1 (d) This chapter does not limit or affect the ability of any
 4-2 person to:

4-3 (1) make an offer to settle or compromise a claim that
 4-4 does not comply with this chapter; or

4-5 (2) offer to settle or compromise a claim to which this
 4-6 chapter does not apply.

4-7 (e) An offer to settle or compromise that is not made under
 4-8 this chapter or an offer to settle or compromise made in an action
 4-9 to which this chapter does not apply does not entitle the offering
 4-10 party to recover litigation costs under this chapter.

4-11 Sec. 42.003. MAKING SETTLEMENT OFFER. A settlement offer
 4-12 must:

4-13 (1) be in writing;

4-14 (2) state that it is made under this chapter;

4-15 (3) state the terms by which the claims may be settled;

4-16 (4) state a deadline by which the settlement offer
 4-17 must be accepted; and

4-18 (5) be served on all parties to whom the settlement
 4-19 offer is made.

4-20 Sec. 42.004. AWARDING LITIGATION COSTS. (a) If a
 4-21 settlement offer is made and rejected and the judgment to be
 4-22 rendered will be significantly less favorable to the rejecting
 4-23 party than was the settlement offer, the offering party shall
 4-24 recover litigation costs from the rejecting party.

4-25 (b) A judgment will be significantly less favorable to the
 4-26 rejecting party than is the settlement offer if:

4-27 (1) the rejecting party is a claimant and the award
 4-28 will be less than 80 percent of the rejected offer; or

4-29 (2) the rejecting party is a defendant and the award
 4-30 will be more than 120 percent of the rejected offer.

4-31 (c) The litigation costs that may be recovered by the
 4-32 offering party under this section are limited to those litigation
 4-33 costs incurred by the offering party after the date the rejecting
 4-34 party rejected the settlement offer.

4-35 (d) The litigation costs that may be awarded under this
 4-36 chapter may not be greater than an amount computed by:

4-37 (1) determining the sum of:

4-38 (A) 50 percent of the economic damages to be
 4-39 awarded to the claimant in the judgment;

4-40 (B) 100 percent of the noneconomic damages to be
 4-41 awarded to the claimant in the judgment; and

4-42 (C) 100 percent of the exemplary or additional
 4-43 damages to be awarded to the claimant in the judgment; and

4-44 (2) subtracting from the amount determined under
 4-45 Subdivision (1) the amount of any statutory or contractual liens in
 4-46 connection with the occurrences or incidents giving rise to the
 4-47 claim.

4-48 (e) If a claimant or defendant is entitled to recover fees
 4-49 and costs under another law, that claimant or defendant may not
 4-50 recover litigation costs in addition to the fees and costs
 4-51 recoverable under the other law.

4-52 (f) If a claimant or defendant is entitled to recover fees
 4-53 and costs under another law, the court must not include fees and
 4-54 costs incurred by that claimant or defendant after the date of
 4-55 rejection of the settlement offer when calculating the amount of
 4-56 the judgment to be rendered under Subsection (a).

4-57 (g) If litigation costs are to be awarded against a
 4-58 claimant, those litigation costs shall be awarded to the defendant
 4-59 in the judgment as an offset against the claimant's recovery from
 4-60 that defendant.

4-61 Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) The supreme
 4-62 court shall promulgate rules implementing this chapter. The rules
 4-63 must be limited to settlement offers made under this chapter. The
 4-64 rules must be in effect on January 1, 2004.

4-65 (b) The rules promulgated by the supreme court must provide:

4-66 (1) the date by which a defendant or defendants must
 4-67 file the declaration required by Section 42.002(c);

4-68 (2) the date before which a party may not make a
 4-69 settlement offer;

5-1 (3) the date after which a party may not make a
 5-2 settlement offer; and

5-3 (4) procedures for:
 5-4 (A) making an initial settlement offer;
 5-5 (B) making successive settlement offers;
 5-6 (C) withdrawing a settlement offer;
 5-7 (D) accepting a settlement offer;
 5-8 (E) rejecting a settlement offer; and
 5-9 (F) modifying the deadline for making,
 5-10 withdrawing, accepting, or rejecting a settlement offer.

5-11 (c) The rules promulgated by the supreme court must address
 5-12 actions in which there are multiple parties and must provide that if
 5-13 the offering party joins another party or designates a responsible
 5-14 third party after making the settlement offer, the party to whom the
 5-15 settlement offer was made may declare the offer void.

5-16 (d) The rules promulgated by the supreme court may:
 5-17 (1) designate other actions to which the settlement
 5-18 procedure of this chapter does not apply; and

5-19 (2) address other matters considered necessary by the
 5-20 supreme court to the implementation of this chapter.

5-21 SECTION 2.02. The changes in law provided by this article
 5-22 apply only to an action filed on or after January 1, 2004.

5-23 ARTICLE 3. VENUE; FORUM NON CONVENIENS

5-24 SECTION 3.01. Section 74.024(c), Government Code, is
 5-25 amended to read as follows:

5-26 (c) The supreme court may consider the adoption of rules
 5-27 relating to:

5-28 (1) nonbinding time standards for pleading,
 5-29 discovery, motions, and dispositions;

5-30 (2) nonbinding dismissal of inactive cases from
 5-31 dockets, if the dismissal is warranted;

5-32 (3) attorney's accountability for and incentives to
 5-33 avoid delay and to meet time standards;

5-34 (4) penalties for filing frivolous motions;

5-35 (5) firm trial dates;

5-36 (6) restrictive devices on discovery;

5-37 (7) a uniform dockets policy;

5-38 (8) formalization of settlement conferences or
 5-39 settlement programs; ~~and~~

5-40 (9) standards for selection and management of
 5-41 nonjudicial personnel; and

5-42 (10) transfer of related cases for consolidated or
 5-43 coordinated pretrial proceedings.

5-44 SECTION 3.02. Chapter 74, Government Code, is amended by
 5-45 adding Subchapter H to read as follows:

5-46 SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

5-47 Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.

5-48 (a) The judicial panel on multidistrict litigation consists of
 5-49 five members designated from time to time by the chief justice of
 5-50 the supreme court. The members of the panel must be active court of
 5-51 appeals justices or administrative judges.

5-52 (b) The concurrence of three panel members is necessary to
 5-53 any action by the panel.

5-54 Sec. 74.162. TRANSFER OF CASES BY PANEL. Notwithstanding
 5-55 any other law to the contrary, the judicial panel on multidistrict
 5-56 litigation may transfer civil actions involving one or more common
 5-57 questions of fact pending in the same or different constitutional
 5-58 courts, county courts at law, probate courts, or district courts to
 5-59 any district court for consolidated or coordinated pretrial
 5-60 proceedings, including summary judgment or other dispositive
 5-61 motions, but not for trial on the merits. A transfer may be made by
 5-62 the judicial panel on multidistrict litigation on its determination
 5-63 that the transfer will:

5-64 (1) be for the convenience of the parties and
 5-65 witnesses; and

5-66 (2) promote the just and efficient conduct of the
 5-67 actions.

5-68 Sec. 74.163. OPERATION; RULES. (a) The judicial panel on
 5-69 multidistrict litigation must operate according to rules of

6-1 practice and procedure adopted by the supreme court under Section
 6-2 74.024. The rules adopted by the supreme court must:

6-3 (1) allow the panel to transfer related civil actions
 6-4 for consolidated or coordinated pretrial proceedings;

6-5 (2) allow transfer of civil actions only on the panel's
 6-6 written finding that transfer is for the convenience of the parties
 6-7 and witnesses and will promote the just and efficient conduct of the
 6-8 actions;

6-9 (3) require the remand of transferred actions to the
 6-10 transferor court for trial on the merits; and

6-11 (4) provide for appellate review of certain or all
 6-12 panel orders by extraordinary writ.

6-13 (b) The panel may prescribe additional rules for the conduct
 6-14 of its business not inconsistent with the law or rules adopted by
 6-15 the supreme court.

6-16 Sec. 74.164. AUTHORITY TO PRESIDE. Notwithstanding any
 6-17 other law to the contrary, a judge who is qualified and authorized
 6-18 by law to preside in the court to which an action is transferred
 6-19 under this subchapter may preside over the transferred action as if
 6-20 the transferred action were originally filed in the transferor
 6-21 court.

6-22 SECTION 3.03. Section 15.003, Civil Practice and Remedies
 6-23 Code, is amended to read as follows:

6-24 Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING
 6-25 PLAINTIFFS. (a) In a suit in which there is ~~[where]~~ more than one
 6-26 plaintiff, whether the plaintiffs are included by joinder, by
 6-27 intervention, because the lawsuit was begun by more than one
 6-28 plaintiff, or otherwise, ~~[is joined]~~ each plaintiff must,
 6-29 independently of every ~~[any]~~ other plaintiff, establish proper
 6-30 venue. ~~If a plaintiff cannot independently [Any person who is~~
 6-31 ~~unable to] establish proper venue, that plaintiff's part of the~~
 6-32 ~~suit, including all of that plaintiff's claims and causes of~~
 6-33 ~~action, must be transferred to a county of proper venue or~~
 6-34 ~~dismissed, as is appropriate, [may not join or maintain venue for~~
 6-35 ~~the suit as a plaintiff] unless that plaintiff [the person],~~
 6-36 independently of every ~~[any]~~ other plaintiff, establishes that:

6-37 (1) ~~joinder of that plaintiff or intervention in the~~
 6-38 ~~suit by that plaintiff is proper under the Texas Rules of Civil~~
 6-39 ~~Procedure;~~

6-40 (2) ~~maintaining venue as to that plaintiff in the~~
 6-41 ~~county of suit does not unfairly prejudice another party to the~~
 6-42 ~~suit;~~

6-43 (3) ~~there is an essential need to have that plaintiff's~~
 6-44 ~~[the person's] claim tried in the county in which the suit is~~
 6-45 ~~pending; and~~

6-46 (4) ~~the county in which the suit is pending is a fair~~
 6-47 ~~and convenient venue for that plaintiff [the person seeking to join~~
 6-48 ~~in or maintain venue for the suit] and all [the] persons against~~
 6-49 ~~whom the suit is brought.~~

6-50 (b) ~~An interlocutory appeal may be taken of a trial court's~~
 6-51 ~~determination under Subsection (a) that:~~

6-52 (1) ~~a plaintiff did or did not independently establish~~
 6-53 ~~proper venue; or~~

6-54 (2) ~~a plaintiff that did not independently establish~~
 6-55 ~~proper venue did or did not establish the items prescribed by~~
 6-56 ~~Subsections (a)(1)-(4) [A person may not intervene or join in a~~
 6-57 ~~pending suit as a plaintiff unless the person, independently of any~~
 6-58 ~~other plaintiff.~~

6-59 ~~[(1) establishes proper venue for the county in which~~
 6-60 ~~the suit is pending; or~~

6-61 ~~[(2) satisfies the requirements of Subdivisions (1)~~
 6-62 ~~through (4) of Subsection (a)].~~

6-63 (c) ~~An [Any person seeking intervention or joinder, who is~~
 6-64 ~~unable to independently establish proper venue, or a party opposing~~
 6-65 ~~intervention or joinder of such a person may contest the decision of~~
 6-66 ~~the trial court allowing or denying intervention or joinder by~~
 6-67 ~~taking an] interlocutory appeal permitted by Subsection (b) must be~~
 6-68 ~~taken to the court of appeals district in which the trial court is~~
 6-69 ~~located under the procedures established for interlocutory~~

7-1 appeals. The appeal may be taken by a party that is affected by the
7-2 trial court's determination under Subsection (a). ~~[The appeal must~~
7-3 ~~be perfected not later than the 20th day after the date the trial~~
7-4 ~~court signs the order denying or allowing the intervention or~~
7-5 ~~joinder.]~~ The court of appeals shall:

7-6 (1) determine whether the trial court's order ~~[joinder~~
7-7 ~~or intervention]~~ is proper based on an independent determination
7-8 from the record and not under either an abuse of discretion or
7-9 substantial evidence standard; and

7-10 (2) render judgment ~~[its decision]~~ not later than the
7-11 120th day after the date the appeal is perfected ~~[by the complaining~~
7-12 ~~party]~~.

7-13 (d) An interlocutory appeal under Subsection (b) has the
7-14 effect of staying the commencement of trial in the trial court
7-15 pending resolution of the appeal.

7-16 SECTION 3.04. Section 71.051(b), Civil Practice and
7-17 Remedies Code, is amended to read as follows:

7-18 (b) If a court of this state, on written motion of a party,
7-19 finds that in the interest of justice and for the convenience of the
7-20 parties a claim or action to which this section applies would be
7-21 more properly heard in a forum outside this state, the court shall
7-22 decline to exercise jurisdiction under the doctrine of forum non
7-23 conveniens and shall stay or dismiss the claim or action. In
7-24 determining whether to grant a motion to stay or dismiss an action
7-25 under the doctrine of forum non conveniens, the court may consider
7-26 whether ~~[With respect to a plaintiff who is a legal resident of the~~
7-27 ~~United States, on written motion of a party, a claim or action to~~
7-28 ~~which this section applies may be stayed or dismissed in whole or in~~
7-29 ~~part under the doctrine of forum non conveniens if the party seeking~~
7-30 ~~to stay or dismiss the claim or action proves by a preponderance of~~
7-31 ~~the evidence that]:~~

7-32 (1) an alternate ~~[alternative]~~ forum exists in which
7-33 the claim or action may be tried;

7-34 (2) the alternate forum provides an adequate remedy;

7-35 (3) maintenance of the claim or action in the courts of
7-36 this state would work a substantial injustice to the moving party;

7-37 (4) the alternate forum, as a result of the submission
7-38 of the parties or otherwise, can exercise jurisdiction over all the
7-39 defendants properly joined to the plaintiff's claim;

7-40 (5) the balance of the private interests of the
7-41 parties and the public interest of the state predominate in favor of
7-42 the claim or action being brought in an alternate forum; and

7-43 (6) the stay or dismissal would not result in
7-44 unreasonable duplication or proliferation of litigation.

7-45 SECTION 3.05. Section 5A, Texas Probate Code, is amended by
7-46 adding Subsection (f) to read as follows:

7-47 (f) Notwithstanding any other provision of this chapter,
7-48 the proper venue for an action by or against a personal
7-49 representative for personal injury, death, or property damages is
7-50 determined under Section 15.007, Civil Practice and Remedies Code.

7-51 SECTION 3.06. Section 5B, Texas Probate Code, is amended to
7-52 read as follows:

7-53 Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a
7-54 statutory probate court, on the motion of a party to the action or
7-55 on the motion of a person interested in an estate, may transfer to
7-56 his court from a district, county, or statutory court a cause of
7-57 action appertaining to or incident to an estate pending in the
7-58 statutory probate court or a cause of action in which a personal
7-59 representative of an estate pending in the statutory probate court
7-60 is a party and may consolidate the transferred cause of action with
7-61 the other proceedings in the statutory probate court relating to
7-62 that estate.

7-63 (b) Notwithstanding any other provision of this chapter,
7-64 the proper venue for an action by or against a personal
7-65 representative for personal injury, death, or property damages is
7-66 determined under Section 15.007, Civil Practice and Remedies Code.

7-67 SECTION 3.07. Section 607, Texas Probate Code, is amended
7-68 by adding Subsection (e) to read as follows:

7-69 (e) Notwithstanding any other provision of this chapter,

8-1 the proper venue for an action by or against a personal
 8-2 representative for personal injury, death, or property damages is
 8-3 determined under Section 15.007, Civil Practice and Remedies Code.

8-4 SECTION 3.08. Section 281.056(a), Health and Safety Code,
 8-5 is amended to read as follows:

8-6 (a) The board may sue and be sued. A health care liability
 8-7 claim, as defined by Section 74.001, Civil Practice and Remedies
 8-8 Code, may be brought against the district only in the county in
 8-9 which the district is established.

8-10 SECTION 3.09. Sections 71.051(a) and 71.052, Civil Practice
 8-11 and Remedies Code, are repealed.

8-12 ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND
 8-13 DESIGNATION OF RESPONSIBLE PARTIES

8-14 SECTION 4.01. Section 33.002(a), Civil Practice and
 8-15 Remedies Code, is amended to read as follows:

8-16 (a) This [~~Except as provided by Subsections (b) and (c),~~
 8-17 ~~this] chapter applies to:~~

8-18 (1) any cause of action based on tort in which a
 8-19 defendant, settling person, or responsible third party is found
 8-20 responsible for a percentage of the harm for which relief is sought;
 8-21 or

8-22 (2) any action brought under the Deceptive Trade
 8-23 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
 8-24 Business & Commerce Code) in which a defendant, settling person, or
 8-25 responsible third party is found responsible for a percentage of
 8-26 the harm for which relief is sought.

8-27 SECTION 4.02. Section 33.003, Civil Practice and Remedies
 8-28 Code, is amended to read as follows:

8-29 Sec. 33.003. DETERMINATION OF PERCENTAGE OF
 8-30 RESPONSIBILITY. (a) The trier of fact, as to each cause of action
 8-31 asserted, shall determine the percentage of responsibility, stated
 8-32 in whole numbers, for the following persons with respect to each
 8-33 person's causing or contributing to cause in any way the harm for
 8-34 which recovery of damages is sought, whether by negligent act or
 8-35 omission, by any defective or unreasonably dangerous product, by
 8-36 other conduct or activity that violates an applicable legal
 8-37 standard, or by any combination of these:

8-38 (1) each claimant;

8-39 (2) each defendant;

8-40 (3) each settling person; and

8-41 (4) each responsible third party who has been
 8-42 designated [~~joined~~] under Section 33.004.

8-43 (b) This section does not allow a submission to the jury of a
 8-44 question regarding conduct by any person without sufficient
 8-45 evidence to support the submission.

8-46 SECTION 4.03. The heading to Section 33.004, Civil Practice
 8-47 and Remedies Code, is amended to read as follows:

8-48 Sec. 33.004. DESIGNATION [~~JOINDER~~] OF RESPONSIBLE THIRD
 8-49 PARTY [~~PARTIES~~].

8-50 SECTION 4.04. Section 33.004, Civil Practice and Remedies
 8-51 Code, is amended by amending Subsections (a), (b), and (e) and
 8-52 adding Subsections (f)-(l) to read as follows:

8-53 (a) A [~~Except as provided in Subsections (d) and (e), prior~~
 8-54 ~~to the expiration of limitations on the claimant's claim for~~
 8-55 ~~damages against the defendant and on timely motion made for that~~
 8-56 ~~purpose, a] defendant may seek to designate a person as [~~join~~]
 8-57 a responsible third party by filing a motion for leave to designate
 8-58 that person as a responsible third party [~~who has not been sued by~~
 8-59 ~~the claimant]. The motion must be filed on or before the 60th day
 8-60 before the trial date unless the court finds good cause to allow the
 8-61 motion to be filed at a later date.~~~~

8-62 (b) Nothing in this section affects [~~shall affect~~] the
 8-63 third-party practice as previously recognized in the rules and
 8-64 statutes of this state with regard to the assertion by a defendant
 8-65 of rights to contribution or indemnity. Nothing in this section
 8-66 affects [~~shall affect~~] the filing of cross-claims or counterclaims.

8-67 (e) If a person is designated under this section as a
 8-68 responsible third party, a [A] claimant is not barred by
 8-69 limitations from seeking to [~~may~~] join that person [~~a responsible~~

9-1 ~~third party~~], even though such joinder would otherwise be barred by
 9-2 limitations, if the claimant seeks to join that person [~~the~~
 9-3 ~~responsible third party~~] not later than 60 days after that person is
 9-4 designated as a responsible third party [~~a third party claim is~~
 9-5 ~~filed under Subsection (d)~~].

9-6 (f) A court shall grant leave to designate the named person
 9-7 as a responsible third party unless another party files an
 9-8 objection to the motion for leave on or before the 15th day after
 9-9 the date the motion is served.

9-10 (g) If an objection to the motion for leave is timely filed,
 9-11 the court shall grant leave to designate the person as a responsible
 9-12 third party unless the objecting party establishes:

9-13 (1) the defendant did not plead sufficient facts
 9-14 concerning the alleged responsibility of the person to satisfy the
 9-15 pleading requirement of the Texas Rules of Civil Procedure; and

9-16 (2) after having been granted leave to replead, the
 9-17 defendant failed to plead sufficient facts concerning the alleged
 9-18 responsibility of the person to satisfy the pleading requirements
 9-19 of the Texas Rules of Civil Procedure.

9-20 (h) By granting a motion for leave to designate a person as a
 9-21 responsible third party, the person named in the motion is
 9-22 designated as a responsible third party for purposes of this
 9-23 chapter without further action by the court or any party.

9-24 (i) The filing or granting of a motion for leave to
 9-25 designate a person as a responsible third party or a finding of
 9-26 fault against the person:

9-27 (1) does not by itself impose liability on the person;
 9-28 and

9-29 (2) may not be used in any other proceeding, on the
 9-30 basis of res judicata, collateral estoppel, or any other legal
 9-31 theory, to impose liability on the person.

9-32 (j) Notwithstanding any other provision of this section,
 9-33 if, not later than 60 days after the filing of the defendant's
 9-34 original answer, the defendant alleges in an answer filed with the
 9-35 court that an unknown person committed a criminal act that was a
 9-36 cause of the loss or injury that is the subject of the lawsuit, the
 9-37 court shall grant a motion for leave to designate the unknown person
 9-38 as a responsible third party if:

9-39 (1) the court determines that the defendant has
 9-40 pleaded facts sufficient for the court to determine that there is a
 9-41 reasonable probability that the act of the unknown person was
 9-42 criminal;

9-43 (2) the defendant has stated in the answer all
 9-44 identifying characteristics of the unknown person, known at the
 9-45 time of the answer; and

9-46 (3) the allegation satisfies the pleading
 9-47 requirements of the Texas Rules of Civil Procedure.

9-48 (k) An unknown person designated as a responsible third
 9-49 party under Subsection (j) is denominated as "Jane Doe" or "John
 9-50 Doe" until the person's identity is known.

9-51 (1) After adequate time for discovery, a party may move to
 9-52 strike the designation of a responsible third party on the ground
 9-53 that there is no evidence that the designated person is responsible
 9-54 for any portion of the claimant's alleged injury or damage. The
 9-55 court shall grant the motion to strike unless a defendant produces
 9-56 sufficient evidence to raise a genuine issue of fact regarding the
 9-57 designated person's responsibility for the claimant's injury or
 9-58 damage.

9-59 SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil
 9-60 Practice and Remedies Code, are amended to read as follows:

9-61 (1) "Claimant" means a person [~~party~~] seeking recovery
 9-62 of damages [~~pursuant to the provisions of Section 33.001~~],
 9-63 including a plaintiff, counterclaimant, cross-claimant, or
 9-64 third-party plaintiff [~~seeking recovery of damages~~]. In an action
 9-65 in which a party seeks recovery of damages for injury to another
 9-66 person, damage to the property of another person, death of another
 9-67 person, or other harm to another person, "claimant" includes:

9-68 (A) the person who was injured, was harmed, or
 9-69 died or whose property was damaged; and

10-1 (B) any person who is [both that other person and
10-2 the party] seeking, has sought, or could seek recovery of damages
10-3 for the injury, harm, or death of that person or for the damage to
10-4 the property of that person [pursuant to the provisions of Section
10-5 33.001].

10-6 (2) "Defendant" includes any person [party] from whom,
10-7 at the time of the submission of the case to the trier of fact, a
10-8 claimant seeks recovery of damages [pursuant to the provisions of
10-9 Section 33.001 at the time of the submission of the case to the
10-10 trier of fact].

10-11 (5) "Settling person" means a person who [~~at the time~~
10-12 ~~of submission]~~ has, at any time, paid or promised to pay money or
10-13 anything of monetary value to a claimant [at any time] in
10-14 consideration of potential liability [pursuant to the provisions of
10-15 Section 33.001] with respect to the personal injury, property
10-16 damage, death, or other harm for which recovery of damages is
10-17 sought.

10-18 (6) [~~A~~] "Responsible third party" means any person
10-19 who is alleged to have caused or contributed to causing in any way
10-20 the harm for which recovery of damages is sought, whether by
10-21 negligent act or omission, by any defective or unreasonably
10-22 dangerous product, by other conduct or activity that violates an
10-23 applicable legal standard, or by any combination of these. [~~to whom~~
10-24 all of the following apply:

- 10-25 [~~i~~] the court in which the action was filed
10-26 could exercise jurisdiction over the person;
- 10-27 [~~ii~~] the person could have been, but was
10-28 not, sued by the claimant; and
- 10-29 [~~iii~~] the person is or may be liable to the
10-30 plaintiff for all or a part of the damages claimed against the named
10-31 defendant or defendants.

10-32 [~~B~~] The term "responsible third party" does not
10-33 include a seller eligible for indemnity under Section 82.002[~~+~~

- 10-34 [~~i~~] the claimant's employer, if the
10-35 employer maintained workers' compensation insurance coverage, as
10-36 defined by Section 401.011(44), Labor Code, at the time of the act,
10-37 event, or occurrence made the basis of the claimant's suit; or

- 10-38 [~~ii~~] a person or entity that is a debtor in
10-39 bankruptcy proceedings or a person or entity against whom this
10-40 claimant's claim has been discharged in bankruptcy, except to the
10-41 extent that liability insurance or other source of third party
10-42 funding may be available to pay claims asserted against the
10-43 debtor].

10-44 SECTION 4.06. Section 33.012(b), Civil Practice and
10-45 Remedies Code, is amended to read as follows:

10-46 (b) If the claimant has settled with one or more persons,
10-47 the court shall further reduce the amount of damages to be recovered
10-48 by the claimant with respect to a cause of action by a percentage
10-49 equal to each settling person's percentage of responsibility
10-50 [credit equal to one of the following, as elected in accordance with
10-51 Section 33.014:

- 10-52 [~~1~~] the sum of the dollar amounts of all settlements,
10-53 or
- 10-54 [~~2~~] a dollar amount equal to the sum of the following
10-55 percentages of damages found by the trier of fact:
 - 10-56 [~~A~~] 5 percent of those damages up to \$200,000;
 - 10-57 [~~B~~] 10 percent of those damages from \$200,001 to
10-58 \$400,000;
 - 10-59 [~~C~~] 15 percent of those damages from \$400,001 to
10-60 \$500,000; and
 - 10-61 [~~D~~] 20 percent of those damages greater than
10-62 \$500,000].

10-63 SECTION 4.07. Section 33.013, Civil Practice and Remedies
10-64 Code, is amended by amending Subsections (a) and (b) and adding
10-65 Subsections (e) and (f) to read as follows:

10-66 (a) Except as provided in Subsection [Subsections] (b) [and
10-67 (c)], a liable defendant is liable to a claimant only for the
10-68 percentage of the damages found by the trier of fact equal to that
10-69 defendant's percentage of responsibility with respect to the

11-1 personal injury, property damage, death, or other harm for which
11-2 the damages are allowed.

11-3 (b) Notwithstanding Subsection (a), each liable defendant
11-4 is, in addition to his liability under Subsection (a), jointly and
11-5 severally liable for the damages recoverable by the claimant under
11-6 Section 33.012 with respect to a cause of action if:

11-7 (1) the percentage of responsibility attributed to the
11-8 defendant with respect to a cause of action is greater than 50
11-9 percent; or

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

11-15 (A) Section 19.02 (murder);

11-16 (B) Section 19.03 (capital murder);

11-17 (C) Section 20.04 (aggravated kidnapping);

11-18 (D) Section 22.02 (aggravated assault);

11-19 (E) Section 22.011 (sexual assault);

11-20 (F) Section 22.021 (aggravated sexual assault);

11-21 (G) Section 22.04 (injury to a child, elderly
11-22 individual, or disabled individual);

11-23 (H) Section 32.21 (forgery);

11-24 (I) Section 32.43 (commercial bribery);

11-25 (J) Section 32.45 (misapplication of fiduciary
11-26 property or property of financial institution);

11-27 (K) Section 32.46 (securing execution of
11-28 document by deception);

11-29 (L) Section 32.47 (fraudulent destruction,
11-30 removal, or concealment of writing); or

11-31 (M) conduct described in Chapter 31 the
11-32 punishment level for which is a felony of the third degree or
11-33 higher.

11-34 (e) Notwithstanding anything to the contrary stated in the
11-35 provisions of the Penal Code listed in Subsection (b)(2), that
11-36 subsection applies only if the claimant proves the defendant acted
11-37 or failed to act with specific intent to do harm. A defendant acts
11-38 with specific intent to do harm with respect to the nature of the
11-39 defendant's conduct and the result of the person's conduct when it
11-40 is the person's conscious effort or desire to engage in the conduct
11-41 for the purpose of doing substantial harm to others.

11-42 (f) The jury may not be made aware through voir dire,
11-43 introduction into evidence, instruction, or any other means that
11-44 the conduct to which Subsection (b)(2) refers is defined by the
11-45 Penal Code.

11-46 SECTION 4.08. Section 33.017, Civil Practice and Remedies
11-47 Code, is amended to read as follows:

11-48 Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY.
11-49 Nothing in this chapter shall be construed to affect any rights of
11-50 indemnity granted by ~~[to a seller eligible for indemnity by Chapter~~
11-51 ~~82, the Texas Motor Vehicle Commission Code (Article 4413(36),~~
11-52 ~~Vernon's Texas Civil Statutes), or] any [other] statute, [nor shall~~
11-53 ~~it affect rights of indemnity granted]~~ by contract, or by ~~[at]~~
11-54 common law. To the extent of any conflict between this chapter and
11-55 any right to indemnification granted by ~~[Section 82.002, the Texas~~
11-56 ~~Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas~~
11-57 ~~Civil Statutes), or any other]~~ statute, contract, or common law,
11-58 those rights of indemnification shall prevail over the provisions
11-59 of this chapter.

11-60 SECTION 4.09. Section 417.001(b), Labor Code, is amended to
11-61 read as follows:

11-62 (b) If a benefit is claimed by an injured employee or a legal
11-63 beneficiary of the employee, the insurance carrier is subrogated to
11-64 the rights of the injured employee and may enforce the liability of
11-65 the third party in the name of the injured employee or the legal
11-66 beneficiary. The insurance carrier's subrogation interest is
11-67 limited to the amount of the total benefits paid or assumed by the
11-68 carrier to the employee or the legal beneficiary, less the amount by
11-69 which the court reduces the judgment based on the percentage of

responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest ~~[that paid or assumed by the insurance carrier to the employee or the legal beneficiary]~~, the insurance carrier shall:

- (1) reimburse itself and pay the costs from the amount recovered; and
- (2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

SECTION 4.10. The following sections of the Civil Practice and Remedies Code are repealed:

- (1) 33.002(b), (d), (e), (f), (g), and (h);
- (2) 33.004(c) and (d);
- (3) 33.011(7);
- (4) 33.012(c);
- (5) 33.013(c); and
- (6) 33.014.

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

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

ARTICLE 5. PRODUCTS LIABILITY

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

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

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

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

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

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

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

(b) Except as provided by Subsections ~~[Subsection]~~ (c), (d), and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product ~~[manufacturing equipment]~~ before the end of 15 years after the date of the sale of the product ~~[equipment]~~ by the defendant.

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

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

13-1 (1) the claimant was exposed to the product that is the
 13-2 subject of the action before the end of 15 years after the date the
 13-3 product was first sold;

13-4 (2) the claimant's exposure to the product caused the
 13-5 claimant's disease that is the basis of the action; and

13-6 (3) the symptoms of the claimant's disease did not,
 13-7 before the end of 15 years after the date of the first sale of the
 13-8 product by the defendant, manifest themselves to a degree and for a
 13-9 duration that would put a reasonable person on notice that the
 13-10 person suffered some injury.

13-11 (d-1) This section does not reduce a limitations period for
 13-12 a cause of action described by Subsection (d) [~~that applies to a~~
 13-13 ~~products liability action involving manufacturing equipment~~] that
 13-14 accrues before the end of the limitations period under this
 13-15 section.

13-16 (e) This section does not extend the limitations period
 13-17 within which a products liability action involving the product
 13-18 [~~manufacturing equipment~~] may be commenced under any other law.

13-19 (f) This section applies only to the sale and not to the
 13-20 lease of a product [~~manufacturing equipment~~].

13-21 SECTION 5.02. Chapter 82, Civil Practice and Remedies Code,
 13-22 is amended by adding Sections 82.003, 82.007, and 82.008 to read as
 13-23 follows:

13-24 Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A
 13-25 seller that did not manufacture a product is not liable for harm
 13-26 caused to the claimant by that product unless the claimant proves:

13-27 (1) that the seller participated in the design of the
 13-28 product;

13-29 (2) that the seller altered or modified the product
 13-30 and the claimant's harm resulted from that alteration or
 13-31 modification;

13-32 (3) that the seller installed the product, or had the
 13-33 product installed, on another product and the claimant's harm
 13-34 resulted from the product's installation onto the assembled
 13-35 product;

13-36 (4) that:
 13-37 (A) the seller exercised substantial control
 13-38 over the content of a warning or instruction that accompanied the
 13-39 product;

13-40 (B) the warning or instruction was inadequate;
 13-41 and

13-42 (C) the claimant's harm resulted from the
 13-43 inadequacy of the warning or instruction;

13-44 (5) that:
 13-45 (A) the seller made an express factual
 13-46 representation about an aspect of the product;

13-47 (B) the representation was incorrect;

13-48 (C) the claimant relied on the representation in
 13-49 obtaining or using the product; and

13-50 (D) if the aspect of the product had been as
 13-51 represented, the claimant would not have been harmed by the product
 13-52 or would not have suffered the same degree of harm;

13-53 (6) that:
 13-54 (A) the seller actually knew of a defect to the
 13-55 product at the time the seller supplied the product; and

13-56 (B) the claimant's harm resulted from the defect;
 13-57 or

13-58 (7) that the manufacturer of the product is:
 13-59 (A) insolvent; or
 13-60 (B) not subject to the jurisdiction of the court.

13-61 (b) This section does not apply to a manufacturer or seller
 13-62 whose liability in a products liability action is governed by
 13-63 Chapter 2301, Occupations Code. In the event of a conflict, Chapter
 13-64 2301, Occupations Code, prevails over this section.

13-65 Sec. 82.007. MEDICINES. (a) In a products liability action
 13-66 alleging that an injury was caused by a failure to provide adequate
 13-67 warnings or information with regard to a pharmaceutical product,
 13-68 there is a rebuttable presumption that the defendant or defendants,
 13-69 including a health care provider, manufacturer, distributor, and

prescriber, are not liable with respect to the allegations if:
(1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or

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

(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that:

(1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

(3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as recommended, promoted, or advertised; and

(C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product; or

(4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as prescribed; and

(C) the claimant's injury was causally related to the prescribed use of the product.

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

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:

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

(2) the manufacturer, before or after marketing the product, withheld information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in was material and relevant to the performance of the product and was causally related to the claimant's injury.

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

(e) This section does not extend to products covered by Section 82.007.

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

ARTICLE 6. INTEREST

15-1 SECTION 6.01. Section 304.003(c), Finance Code, is amended
15-2 to read as follows:

15-3 (c) The postjudgment interest rate is the prime rate as
15-4 published by the Federal Reserve Bank of New York on the date of
15-5 computation~~+~~

15-6 ~~[(1) the auction rate quoted on a discount basis for~~
15-7 ~~52-week treasury bills issued by the United States government as~~
15-8 ~~most recently published by the Federal Reserve Board before the~~
15-9 ~~date of computation;~~

15-10 ~~[(2) 10 percent a year if the auction rate described by~~
15-11 ~~Subdivision (1) is less than 10 percent; or~~

15-12 ~~[(3) 20 percent a year if the auction rate described by~~
15-13 ~~Subdivision (1) is more than 20 percent].~~

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

15-16 Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may
15-17 not be assessed or recovered on an award of future damages.

15-18 SECTION 6.03. Section 304.108, Finance Code, is repealed.

15-19 SECTION 6.04. The changes in law made by this article apply
15-20 in any case in which a final judgment is signed on or after the
15-21 effective date of this Act.

15-22 ARTICLE 7. APPEAL BONDS

15-23 SECTION 7.01. Section 35.006, Civil Practice and Remedies
15-24 Code, is amended to read as follows:

15-25 Sec. 35.006. STAY. (a) If the judgment debtor shows the
15-26 court that an appeal from the foreign judgment is pending or will be
15-27 taken, that the time for taking an appeal has not expired, or that a
15-28 stay of execution has been granted, has been requested, or will be
15-29 requested, and proves that the judgment debtor has furnished or
15-30 will furnish the security for the satisfaction of the judgment
15-31 required by the state in which it was rendered, the court shall stay
15-32 enforcement of the foreign judgment until the appeal is concluded,
15-33 the time for appeal expires, or the stay of execution expires or is
15-34 vacated.

15-35 (b) If the judgment debtor shows the court a ground on which
15-36 enforcement of a judgment of the court of this state would be
15-37 stayed, the court shall stay enforcement of the foreign judgment
15-38 for an appropriate period and require the same security for
15-39 suspending enforcement ~~[satisfaction]~~ of the judgment that is
15-40 required in this state in accordance with Section 52.006.

15-41 SECTION 7.02. Chapter 52, Civil Practice and Remedies Code,
15-42 is amended by adding Section 52.006 to read as follows:

15-43 Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a)
15-44 Subject to Subsection (b), when a judgment is for money, the amount
15-45 of security must equal the sum of:

15-46 (1) the amount of compensatory damages awarded in the
15-47 judgment;

15-48 (2) interest for the estimated duration of the appeal;
15-49 and

15-50 (3) costs awarded in the judgment.

15-51 (b) Notwithstanding any other law or rule of court, when a
15-52 judgment is for money, the amount of security must not exceed the
15-53 lesser of:

15-54 (1) 50 percent of the judgment debtor's net worth; or

15-55 (2) \$25 million.

15-56 (c) On a showing by the judgment debtor that the judgment
15-57 debtor is likely to suffer substantial economic harm if required to
15-58 post security in an amount required under Subsection (a) or (b), the
15-59 trial court shall lower the amount of the security to an amount that
15-60 will not cause the judgment debtor substantial economic harm.

15-61 (d) An appellate court may review the amount of security as
15-62 allowed under Rule 24, Texas Rules of Appellate Procedure, except
15-63 that when a judgment is for money, the appellate court may not
15-64 modify the amount of security to exceed the amount allowed under
15-65 this section.

15-66 (e) Nothing in this section prevents a trial court from
15-67 enjoining the judgment debtor from dissipating or transferring
15-68 assets to avoid satisfaction of the judgment, but the trial court
15-69 may not make any order that interferes with the judgment debtor's

16-1 use, transfer, conveyance, or dissipation of assets in the normal
16-2 course of business.

16-3 SECTION 7.03. The following sections of the Civil Practice
16-4 and Remedies Code are repealed:

- 16-5 (1) 52.002;
- 16-6 (2) 52.003; and
- 16-7 (3) 52.004.

16-8 SECTION 7.04. (a) The changes in law made in Section 7.01
16-9 of this article apply to any judgment filed in this state under
16-10 Chapter 35, Civil Practice and Remedies Code, on or after the
16-11 effective date of this Act.

16-12 (b) The changes in law made in Sections 7.02 and 7.03 of this
16-13 article apply to any case in which a final judgment is signed on or
16-14 after the effective date of this Act.

16-15 ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

16-16 SECTION 8.01. Sections 545.412(d) and 545.413(g),
16-17 Transportation Code, are repealed.

16-18 ARTICLE 9. RESERVED

16-19 ARTICLE 10. HEALTH CARE

16-20 SECTION 10.01. Chapter 74, Civil Practice and Remedies
16-21 Code, is amended to read as follows:

16-22 CHAPTER 74. MEDICAL LIABILITY [~~GOOD SAMARITAN LAW.~~
16-23 ~~LIABILITY FOR EMERGENCY CARE~~]

16-24 SUBCHAPTER A. GENERAL PROVISIONS

16-25 Sec. 74.001. DEFINITIONS. (a) In this chapter:

16-26 (1) "Affiliate" means a person who, directly or
16-27 indirectly, through one or more intermediaries, controls, is
16-28 controlled by, or is under common control with a specified person,
16-29 including any direct or indirect parent or subsidiary.

16-30 (2) "Claimant" means a person, including a decedent's
16-31 estate, seeking or who has sought recovery of damages in a health
16-32 care liability claim. All persons claiming to have sustained
16-33 damages as the result of the bodily injury or death of a single
16-34 person are considered a single claimant.

16-35 (3) "Control" means the possession, directly or
16-36 indirectly, of the power to direct or cause the direction of the
16-37 management and policies of the person, whether through ownership of
16-38 equity or securities, by contract, or otherwise.

16-39 (4) "Court" means any federal or state court.

16-40 (5) "Disclosure panel" means the Texas Medical
16-41 Disclosure Panel.

16-42 (6) "Economic damages" has the meaning assigned by
16-43 Section 41.001.

16-44 (7) "Emergency medical care" means bona fide emergency
16-45 services provided after the sudden onset of a medical or traumatic
16-46 condition manifesting itself by acute symptoms of sufficient
16-47 severity, including severe pain, such that the absence of immediate
16-48 medical attention could reasonably be expected to result in placing
16-49 the patient's health in serious jeopardy, serious impairment to
16-50 bodily functions, or serious dysfunction of any bodily organ or
16-51 part. The term does not include medical care or treatment that
16-52 occurs after the patient is stabilized and is capable of receiving
16-53 medical treatment as a nonemergency patient or that is unrelated to
16-54 the original medical emergency.

16-55 (8) "Emergency medical services provider" means a
16-56 licensed public or private provider to which Chapter 773, Health
16-57 and Safety Code, applies.

16-58 (9) "Gross negligence" has the meaning assigned by
16-59 Section 41.001.

16-60 (10) "Health care" means any act or treatment
16-61 performed or furnished, or that should have been performed or
16-62 furnished, by any health care provider for, to, or on behalf of a
16-63 patient during the patient's medical care, treatment, or
16-64 confinement.

16-65 (11) "Health care institution" includes:

- 16-66 (A) an ambulatory surgical center;
- 16-67 (B) an assisted living facility licensed under
16-68 Chapter 247, Health and Safety Code;
- 16-69 (C) an emergency medical services provider;

17-1 (D) a home and community support services agency;
 17-2 (E) a hospice;
 17-3 (F) a hospital;
 17-4 (G) a hospital system;
 17-5 (H) an intermediate care facility for the
 17-6 mentally retarded or a home and community-based services waiver
 17-7 program for persons with mental retardation adopted in accordance
 17-8 with Section 1915(c) of the federal Social Security Act (42 U.S.C.
 17-9 Section 1396n), as amended;
 17-10 (I) a nursing home; or
 17-11 (J) an end stage renal disease facility licensed
 17-12 under Section 251.011, Health and Safety Code.
 17-13 (12)(A) "Health care provider" means any person,
 17-14 partnership, professional association, corporation, facility, or
 17-15 institution duly licensed, certified, registered, or chartered by
 17-16 the State of Texas to provide health care, including:
 17-17 (i) a registered nurse;
 17-18 (ii) a dentist;
 17-19 (iii) a podiatrist;
 17-20 (iv) a pharmacist;
 17-21 (v) a chiropractor;
 17-22 (vii) an optometrist; or
 17-23 (viii) a health care institution.
 17-24 (B) The term includes:
 17-25 (i) an officer, director, shareholder,
 17-26 member, partner, manager, owner, or affiliate of a health care
 17-27 provider or physician; and
 17-28 (ii) an employee, independent contractor,
 17-29 or agent of a health care provider or physician acting in the course
 17-30 and scope of the employment or contractual relationship.
 17-31 (13) "Health care liability claim" means a cause of
 17-32 action against a health care provider or physician for treatment,
 17-33 lack of treatment, or other claimed departure from accepted
 17-34 standards of medical care, health care, or safety which proximately
 17-35 results in injury to or death of a claimant, whether the claimant's
 17-36 claim or cause of action sounds in tort or contract.
 17-37 (14) "Home and community support services agency"
 17-38 means a licensed public or provider agency to which Chapter 142,
 17-39 Health and Safety Code, applies.
 17-40 (15) "Hospice" means a hospice facility or activity to
 17-41 which Chapter 142, Health and Safety Code, applies.
 17-42 (16) "Hospital" means a licensed public or private
 17-43 institution as defined in Chapter 241, Health and Safety Code, or
 17-44 licensed under Chapter 577, Health and Safety Code.
 17-45 (17) "Hospital system" means a system of hospitals
 17-46 located in this state that are under the common governance or
 17-47 control of a corporate parent.
 17-48 (18) "Intermediate care facility for the mentally
 17-49 retarded" means a licensed public or private institution to which
 17-50 Chapter 252, Health and Safety Code, applies.
 17-51 (19) "Medical care" means any act defined as
 17-52 practicing medicine under Section 151.002, Occupations Code,
 17-53 performed or furnished, or which should have been performed, by one
 17-54 licensed to practice medicine in this state for, to, or on behalf of
 17-55 a patient during the patient's care, treatment, or confinement.
 17-56 (20) "Noneconomic damages" has the meaning assigned by
 17-57 Section 41.001.
 17-58 (21) "Nursing home" means a licensed public or private
 17-59 institution to which Chapter 242, Health and Safety Code, applies.
 17-60 (22) "Pharmacist" means one licensed under Chapter
 17-61 551, Occupations Code, who, for the purposes of this chapter,
 17-62 performs those activities limited to the dispensing of prescription
 17-63 medicines which result in health care liability claims and does not
 17-64 include any other cause of action that may exist at common law
 17-65 against them, including but not limited to causes of action for the
 17-66 sale of mishandled or defective products.
 17-67 (23) "Physician" means:
 17-68 (A) an individual licensed to practice medicine
 17-69 in this state;

18-1 (B) a professional association organized under
 18-2 the Texas Professional Association Act (Article 1528f, Vernon's
 18-3 Texas Civil Statutes) by an individual physician or group of
 18-4 physicians;

18-5 (C) a partnership or limited liability
 18-6 partnership formed by a group of physicians;

18-7 (D) a nonprofit health corporation certified
 18-8 under Section 162.001, Occupations Code; or

18-9 (E) a company formed by a group of physicians
 18-10 under the Texas Limited Liability Company Act (Article 1528n,
 18-11 Vernon's Texas Civil Statutes).

18-12 (24) "Professional or administrative services" means
 18-13 those duties or services that a physician or health care provider is
 18-14 required to provide as a condition of maintaining the physician's
 18-15 or health care provider's license, accreditation status, or
 18-16 certification to participate in state or federal health care
 18-17 programs.

18-18 (25) "Representative" means the spouse, parent,
 18-19 guardian, trustee, authorized attorney, or other authorized legal
 18-20 agent of the patient or claimant.

18-21 (b) Any legal term or word of art used in this chapter, not
 18-22 otherwise defined in this chapter, shall have such meaning as is
 18-23 consistent with the common law.

18-24 Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL
 18-25 PROCEDURE. (a) In the event of a conflict between this chapter and
 18-26 another law, including a rule of procedure or evidence or court
 18-27 rule, this chapter controls to the extent of the conflict.

18-28 (b) Notwithstanding Subsection (a), in the event of a
 18-29 conflict between this chapter and Section 101.023, 102.003, or
 18-30 108.002, those sections of this code control to the extent of the
 18-31 conflict.

18-32 (c) The district courts and statutory county courts in a
 18-33 county may not adopt local rules in conflict with this chapter.

18-34 Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. This chapter
 18-35 does not waive sovereign immunity from suit or from liability.

18-36 Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a)
 18-37 Notwithstanding any other law, Sections 17.41-17.63, Business &
 18-38 Commerce Code, do not apply to physicians or health care providers
 18-39 with respect to claims for damages for personal injury or death
 18-40 resulting, or alleged to have resulted, from negligence on the part
 18-41 of any physician or health care provider.

18-42 (b) This section does not apply to pharmacists.

18-43 [Sections 74.005-74.050 reserved for expansion]

18-44 SUBCHAPTER B. NOTICE AND PLEADINGS

18-45 Sec. 74.051. NOTICE. (a) Any person or his authorized
 18-46 agent asserting a health care liability claim shall give written
 18-47 notice of such claim by certified mail, return receipt requested,
 18-48 to each physician or health care provider against whom such claim is
 18-49 being made at least 60 days before the filing of a suit in any court
 18-50 of this state based upon a health care liability claim. The notice
 18-51 must be accompanied by the authorization form for release of
 18-52 protected health information as required under Section 74.052.

18-53 (b) In such pleadings as are subsequently filed in any
 18-54 court, each party shall state that it has fully complied with the
 18-55 provisions of this section and Section 74.052 and shall provide
 18-56 such evidence thereof as the judge of the court may require to
 18-57 determine if the provisions of this chapter have been met.

18-58 (c) Notice given as provided in this chapter shall toll the
 18-59 applicable statute of limitations to and including a period of 75
 18-60 days following the giving of the notice, and this tolling shall
 18-61 apply to all parties and potential parties.

18-62 (d) All parties shall be entitled to obtain complete and
 18-63 unaltered copies of the patient's medical records from any other
 18-64 party within 45 days from the date of receipt of a written request
 18-65 for such records; provided, however, that the receipt of a medical
 18-66 authorization in the form required by Section 74.052 executed by
 18-67 the claimant herein shall be considered compliance by the claimant
 18-68 with this subsection.

18-69 (e) For the purposes of this section, and notwithstanding

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

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

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

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

AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, _____ (name of patient or authorized representative), hereby authorize _____ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. To facilitate the investigation and evaluation of the health care claim described in the accompanying Notice of Health Care Claim; or

2. Defense of any litigation arising out of the claim made the basis of the accompanying Notice of Health Care Claim.

B. The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written and is specifically described as follows:

1. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) in connection with the injuries alleged to have been sustained in connection with the claim asserted in the accompanying Notice of Health Care Claim. (Here list the name and current address of all treating physicians or health care providers). This authorization shall extend to any additional physicians or health care providers that may in the future evaluate, examine, or treat _____ (patient) for injuries alleged in connection with the claim made the basis of the attached Notice of Health Care Claim;

2. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) during a period commencing five years prior to the incident made the basis of the accompanying Notice of Health Care Claim. (Here list the name and current address of such physicians or health care providers, if applicable.)

C. Excluded Health Information - the following constitutes a list of physicians or health care providers possessing health care information concerning _____ (patient) to which this authorization does not apply because I contend that such health care information is not relevant to the damages being claimed or to the physical, mental, or emotional condition of _____ (patient) arising out of the claim made the basis of the accompanying Notice of Health Care Claim. (Here state "none" or list the name of each physician or health care provider to whom this authorization does not extend and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure.)

D. The persons or class of persons to whom the health

information of _____ (patient) will be disclosed or who will make use of said information are:

1. Any and all physicians or health care providers providing care or treatment to _____ (patient);

2. Any liability insurance entity providing liability insurance coverage or defense to any physician or health care provider to whom Notice of Health Care Claim has been given with regard to the care and treatment of _____ (patient);

3. Any consulting or testifying experts employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on behalf of _____ (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of _____ (patient).

E. This authorization shall expire upon resolution of the claim asserted or at the conclusion of any litigation instituted in connection with the subject matter of the Notice of Health Care Claim accompanying this authorization, whichever occurs sooner.

F. I understand that, without exception, I have the right to revoke this authorization in writing. I further understand the consequence of any such revocation as set out in Section 74.052, Civil Practice and Remedies Code.

G. I understand that the signing of this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. I understand that information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative

Date

Name of Patient/ Representative

Description of Representative's Authority

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

[Sections 74.054-74.100 reserved for expansion]

SUBCHAPTER C. INFORMED CONSENT

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

Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients

21-1 or persons authorized to consent for their patients and to
 21-2 establish the general form and substance of such disclosure.

21-3 (b) The disclosure panel established herein is
 21-4 administratively attached to the Texas Department of Health. The
 21-5 Texas Department of Health, at the request of the disclosure panel,
 21-6 shall provide administrative assistance to the panel; and the Texas
 21-7 Department of Health and the disclosure panel shall coordinate
 21-8 administrative responsibilities in order to avoid unnecessary
 21-9 duplication of facilities and services. The Texas Department of
 21-10 Health, at the request of the panel, shall submit the panel's budget
 21-11 request to the legislature. The panel shall be subject, except
 21-12 where inconsistent, to the rules and procedures of the Texas
 21-13 Department of Health; however, the duties and responsibilities of
 21-14 the panel as set forth in this chapter shall be exercised solely by
 21-15 the disclosure panel, and the board or Texas Department of Health
 21-16 shall have no authority or responsibility with respect to same.

21-17 (c) The disclosure panel is composed of nine members, with
 21-18 three members licensed to practice law in this state and six members
 21-19 licensed to practice medicine in this state. Members of the
 21-20 disclosure panel shall be selected by the commissioner of health.

21-21 (d) At the expiration of the term of each member of the
 21-22 disclosure panel so appointed, the commissioner shall select a
 21-23 successor, and such successor shall serve for a term of six years,
 21-24 or until his successor is selected. Any member who is absent for
 21-25 three consecutive meetings without the consent of a majority of the
 21-26 disclosure panel present at each such meeting may be removed by the
 21-27 commissioner at the request of the disclosure panel submitted in
 21-28 writing and signed by the chairman. Upon the death, resignation, or
 21-29 removal of any member, the commissioner shall fill the vacancy by
 21-30 selection for the unexpired portion of the term.

21-31 (e) Members of the disclosure panel are not entitled to
 21-32 compensation for their services, but each panelist is entitled to
 21-33 reimbursement of any necessary expense incurred in the performance
 21-34 of his duties on the panel, including necessary travel expenses.

21-35 (f) Meetings of the panel shall be held at the call of the
 21-36 chairman or on petition of at least three members of the panel.

21-37 (g) At the first meeting of the panel each year after its
 21-38 members assume their positions, the panelists shall select one of
 21-39 the panel members to serve as chairman and one of the panel members
 21-40 to serve as vice chairman, and each such officer shall serve for a
 21-41 term of one year. The chairman shall preside at meetings of the
 21-42 panel, and in his absence, the vice chairman shall preside.

21-43 (h) Employees of the Texas Department of Health shall serve
 21-44 as the staff for the panel.

21-45 Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) To the extent
 21-46 feasible, the panel shall identify and make a thorough examination
 21-47 of all medical treatments and surgical procedures in which
 21-48 physicians and health care providers may be involved in order to
 21-49 determine which of those treatments and procedures do and do not
 21-50 require disclosure of the risks and hazards to the patient or person
 21-51 authorized to consent for the patient.

21-52 (b) The panel shall prepare separate lists of those medical
 21-53 treatments and surgical procedures that do and do not require
 21-54 disclosure and, for those treatments and procedures that do require
 21-55 disclosure, shall establish the degree of disclosure required and
 21-56 the form in which the disclosure will be made.

21-57 (c) Lists prepared under Subsection (b) together with
 21-58 written explanations of the degree and form of disclosure shall be
 21-59 published in the Texas Register.

21-60 (d) At least annually, or at such other period the panel may
 21-61 determine from time to time, the panel will identify and examine any
 21-62 new medical treatments and surgical procedures that have been
 21-63 developed since its last determinations, shall assign them to the
 21-64 proper list, and shall establish the degree of disclosure required
 21-65 and the form in which the disclosure will be made. The panel will
 21-66 also examine such treatments and procedures for the purpose of
 21-67 revising lists previously published. These determinations shall be
 21-68 published in the Texas Register.

21-69 Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER.

22-1 Before a patient or a person authorized to consent for a patient
 22-2 gives consent to any medical care or surgical procedure that
 22-3 appears on the disclosure panel's list requiring disclosure, the
 22-4 physician or health care provider shall disclose to the patient or
 22-5 person authorized to consent for the patient the risks and hazards
 22-6 involved in that kind of care or procedure. A physician or health
 22-7 care provider shall be considered to have complied with the
 22-8 requirements of this section if disclosure is made as provided in
 22-9 Section 74.105.

22-10 Sec. 74.105. MANNER OF DISCLOSURE. Consent to medical care
 22-11 that appears on the disclosure panel's list requiring disclosure
 22-12 shall be considered effective under this chapter if it is given in
 22-13 writing, signed by the patient or a person authorized to give the
 22-14 consent and by a competent witness, and if the written consent
 22-15 specifically states the risks and hazards that are involved in the
 22-16 medical care or surgical procedure in the form and to the degree
 22-17 required by the disclosure panel under Section 74.103.

22-18 Sec. 74.106. EFFECT OF DISCLOSURE. (a) In a suit against a
 22-19 physician or health care provider involving a health care liability
 22-20 claim that is based on the negligent failure of the physician or
 22-21 health care provider to disclose or adequately disclose the risks
 22-22 and hazards involved in the medical care or surgical procedure
 22-23 rendered by the physician or health care provider:

22-24 (1) both disclosure made as provided in Section 74.104
 22-25 and failure to disclose based on inclusion of any medical care or
 22-26 surgical procedure on the panel's list for which disclosure is not
 22-27 required shall be admissible in evidence and shall create a
 22-28 rebuttable presumption that the requirements of Sections 74.104 and
 22-29 74.105 have been complied with and this presumption shall be
 22-30 included in the charge to the jury; and

22-31 (2) failure to disclose the risks and hazards involved
 22-32 in any medical care or surgical procedure required to be disclosed
 22-33 under Sections 74.104 and 74.105 shall be admissible in evidence
 22-34 and shall create a rebuttable presumption of a negligent failure to
 22-35 conform to the duty of disclosure set forth in Sections 74.104 and
 22-36 74.105, and this presumption shall be included in the charge to the
 22-37 jury; but failure to disclose may be found not to be negligent if
 22-38 there was an emergency or if for some other reason it was not
 22-39 medically feasible to make a disclosure of the kind that would
 22-40 otherwise have been negligence.

22-41 (b) If medical care or surgical procedure is rendered with
 22-42 respect to which the disclosure panel has made no determination
 22-43 either way regarding a duty of disclosure, the physician or health
 22-44 care provider is under the duty otherwise imposed by law.

22-45 Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) The
 22-46 disclosure panel shall develop and prepare written materials to
 22-47 inform a patient or person authorized to consent for a patient of
 22-48 the risks and hazards of a hysterectomy.

22-49 (b) The materials shall be available in English, Spanish,
 22-50 and any other language the panel considers appropriate. The
 22-51 information must be presented in a manner understandable to a
 22-52 layperson.

22-53 (c) The materials must include:

22-54 (1) a notice that a decision made at any time to refuse
 22-55 to undergo a hysterectomy will not result in the withdrawal or
 22-56 withholding of any benefits provided by programs or projects
 22-57 receiving federal funds or otherwise affect the patient's right to
 22-58 future care or treatment;

22-59 (2) the name of the person providing and explaining
 22-60 the materials;

22-61 (3) a statement that the patient or person authorized
 22-62 to consent for the patient understands that the hysterectomy is
 22-63 permanent and nonreversible and that the patient will not be able to
 22-64 become pregnant or bear children if she undergoes a hysterectomy;

22-65 (4) a statement that the patient has the right to seek
 22-66 a consultation from a second physician;

22-67 (5) a statement that the patient or person authorized
 22-68 to consent for the patient has been informed that a hysterectomy is
 22-69 a removal of the uterus through an incision in the lower abdomen or

23-1 vagina and that additional surgery may be necessary to remove or
 23-2 repair other organs, including an ovary, tube, appendix, bladder,
 23-3 rectum, or vagina;

23-4 (6) a description of the risks and hazards involved in
 23-5 the performance of the procedure; and

23-6 (7) a written statement to be signed by the patient or
 23-7 person authorized to consent for the patient indicating that the
 23-8 materials have been provided and explained to the patient or person
 23-9 authorized to consent for the patient and that the patient or person
 23-10 authorized to consent for the patient understands the nature and
 23-11 consequences of a hysterectomy.

23-12 (d) The physician or health care provider shall obtain
 23-13 informed consent under this section and Section 74.104 from the
 23-14 patient or person authorized to consent for the patient before
 23-15 performing a hysterectomy unless the hysterectomy is performed in a
 23-16 life-threatening situation in which the physician determines
 23-17 obtaining informed consent is not reasonably possible. If
 23-18 obtaining informed consent is not reasonably possible, the
 23-19 physician or health care provider shall include in the patient's
 23-20 medical records a written statement signed by the physician
 23-21 certifying the nature of the emergency.

23-22 (e) The disclosure panel may not prescribe materials under
 23-23 this section without first consulting with the Texas State Board of
 23-24 Medical Examiners.

23-25 [Sections 74.108-74.150 reserved for expansion]

23-26 SUBCHAPTER D. EMERGENCY CARE

23-27 Sec. 74.151. LIABILITY FOR EMERGENCY CARE. (a) A person
 23-28 who in good faith administers emergency care, including using an
 23-29 automated external defibrillator, ~~[at the scene of an emergency but~~
 23-30 ~~not in a hospital or other health care facility or means of medical~~
 23-31 ~~transport]~~ is not liable in civil damages for an act performed
 23-32 during the emergency unless the act is wilfully or wantonly
 23-33 negligent.

23-34 (b) This section does not apply to care administered:

23-35 (1) for or in expectation of remuneration, provided
 23-36 that being legally entitled to receive remuneration for the
 23-37 emergency care rendered shall not determine whether or not the care
 23-38 was administered for or in anticipation of remuneration; or

23-39 (2) by a person who was at the scene of the emergency
 23-40 because he or a person he represents as an agent was soliciting
 23-41 business or seeking to perform a service for remuneration.

23-42 (c) This section does not apply to a physician or other
 23-43 health care provider whose day-to-day responsibilities include the
 23-44 administration of care in a hospital emergency room for or in
 23-45 expectation of remuneration if ~~[if]~~ the scene of an emergency is in
 23-46 a hospital or other health care facility or means of medical
 23-47 transport~~[, a person who in good faith administers emergency care~~
 23-48 ~~is not liable in civil damages for an act performed during the~~
 23-49 ~~emergency unless the act is wilfully or wantonly negligent,~~
 23-50 ~~provided that this subsection does not apply to care administered.~~

23-51 ~~[(1) by a person who regularly administers care in a~~
 23-52 ~~hospital emergency room unless such person is at the scene of the~~
 23-53 ~~emergency for reasons wholly unrelated to the person's work in~~
 23-54 ~~administering health care; or~~

23-55 ~~[(2) by an admitting or attending physician of the~~
 23-56 ~~patient or a treating physician associated by the admitting or~~
 23-57 ~~attending physician of the patient in question].~~

23-58 (d) For purposes of Subsections (b)(1) and (c) ~~[(c)(1)],~~ a
 23-59 person who would ordinarily receive or be entitled to receive a
 23-60 salary, fee, or other remuneration for administering care under
 23-61 such circumstances to the patient in question shall be deemed to be
 23-62 acting for or in expectation of remuneration even if the person
 23-63 waives or elects not to charge or receive remuneration on the
 23-64 occasion in question.

23-65 (e) This section does not apply to a person whose negligent
 23-66 act or omission was a producing cause of the emergency for which
 23-67 care is being administered.

23-68 Sec. 74.152 ~~[74.002]~~. UNLICENSED MEDICAL PERSONNEL.
 23-69 Persons not licensed or certified in the healing arts who in good

24-1 faith administer emergency care as emergency medical service
 24-2 personnel are not liable in civil damages for an act performed in
 24-3 administering the care unless the act is wilfully or wantonly
 24-4 negligent. This section applies without regard to whether the care
 24-5 is provided for or in expectation of remuneration.

24-6 Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY
 24-7 MEDICAL CARE. In a suit involving a health care liability claim
 24-8 against a physician or health care provider for injury to or death
 24-9 of a patient arising out of the provision of emergency medical care
 24-10 in a hospital emergency room or department, the person bringing the
 24-11 suit may prove that the treatment or lack of treatment by the
 24-12 physician or health care provider departed from accepted standards
 24-13 of medical care or health care only if the person shows by a
 24-14 preponderance of the evidence that the physician or health care
 24-15 provider did not use the degree of care and skill that is reasonably
 24-16 expected of an ordinarily prudent physician or health care provider
 24-17 in the same or similar circumstances.

24-18 Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY
 24-19 MEDICAL CARE. (a) In an action for damages that involves a claim of
 24-20 negligence arising from the provision of emergency medical care in
 24-21 a hospital emergency room or department, the court shall instruct
 24-22 the jury to consider, together with all other relevant matters:

24-23 (1) whether the person providing care did or did not
 24-24 have the patient's medical history or was able or unable to obtain a
 24-25 full medical history, including the knowledge of preexisting
 24-26 medical conditions, allergies, and medications;

24-27 (2) the presence or lack of a preexisting
 24-28 physician-patient relationship or health care provider-patient
 24-29 relationship;

24-30 (3) the circumstances constituting the emergency; and

24-31 (4) the circumstances surrounding the delivery of the
 24-32 emergency medical care.

24-33 (b) The provisions of Subsection (a) do not apply to medical
 24-34 care or treatment:

24-35 (1) that occurs after the patient is stabilized and is
 24-36 capable of receiving medical treatment as a nonemergency patient;

24-37 (2) that is unrelated to the original medical
 24-38 emergency; or

24-39 (3) that is related to an emergency caused in whole or
 24-40 in part by the negligence of the defendant.

24-41 [Sections 74.155-74.200 reserved for expansion]

24-42 SUBCHAPTER E. RES IPSA LOQUITUR

24-43 Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. The common
 24-44 law doctrine of res ipsa loquitur shall only apply to health care
 24-45 liability claims against health care providers or physicians in
 24-46 those cases to which it has been applied by the appellate courts of
 24-47 this state as of August 29, 1977.

24-48 [Sections 74.202-74.250 reserved for expansion]

24-49 SUBCHAPTER F. STATUTE OF LIMITATIONS

24-50 Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE
 24-51 LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to
 24-52 Subsection (b), no health care liability claim may be commenced
 24-53 unless the action is filed within two years from the occurrence of
 24-54 the breach or tort or from the date the medical or health care
 24-55 treatment that is the subject of the claim or the hospitalization
 24-56 for which the claim is made is completed; provided that, minors
 24-57 under the age of 12 years shall have until their 14th birthday in
 24-58 which to file, or have filed on their behalf, the claim. Except as
 24-59 herein provided this section applies to all persons regardless of
 24-60 minority or other legal disability.

24-61 (b) A claimant must bring a health care liability claim not
 24-62 later than 10 years after the date of the act or omission that gives
 24-63 rise to the claim. This subsection is intended as a statute of
 24-64 repose so that all claims must be brought within 10 years or they
 24-65 are time barred.

24-66 [Sections 74.252-74.300 reserved for expansion]

24-67 SUBCHAPTER G. LIABILITY LIMITS

24-68 Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) In an
 24-69 action on a health care liability claim where final judgment is

25-1 rendered against a physician or health care provider other than a
 25-2 health care institution, the limit of civil liability for
 25-3 noneconomic damages for each defendant physician or health care
 25-4 provider other than a health care institution, inclusive of all
 25-5 persons and entities for which vicarious liability theories may
 25-6 apply, shall be limited to an amount not to exceed \$250,000.

25-7 (b) In an action on a health care liability claim where
 25-8 final judgment is rendered against a health care institution, the
 25-9 limit of civil liability for noneconomic damages for each health
 25-10 care institution, inclusive of all persons and entities for which
 25-11 vicarious liability theories may apply, shall be limited to an
 25-12 amount not to exceed \$500,000.

25-13 (c) In an action on a health care liability claim where
 25-14 final judgment is rendered against a physician or health care
 25-15 provider, the limit of civil liability for all noneconomic damages
 25-16 shall be limited to an amount not to exceed \$750,000 for each
 25-17 claimant, regardless of the number of defendant physicians or
 25-18 health care providers against whom the claim is asserted or the
 25-19 number of separate causes of action on which the claim is based.

25-20 Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC
 25-21 DAMAGES. (a) In the event that Section 74.301 is stricken from
 25-22 this subchapter or is otherwise to any extent invalidated by a
 25-23 method other than through legislative means, the following, subject
 25-24 to the provisions of this section, shall become effective:

25-25 (1) In an action on a health care liability claim where
 25-26 final judgment is rendered against a physician or health care
 25-27 provider other than a health care institution, the limit of civil
 25-28 liability for noneconomic damages for each defendant physician or
 25-29 health care provider other than a health care institution,
 25-30 inclusive of all persons and entities for which vicarious liability
 25-31 theories may apply, shall be limited to an amount not to exceed
 25-32 \$250,000.

25-33 (2) In an action on a health care liability claim where
 25-34 final judgment is rendered against a health care institution, the
 25-35 limit of civil liability for noneconomic damages for each health
 25-36 care institution, inclusive of all persons and entities for which
 25-37 vicarious liability theories may apply, shall be limited to an
 25-38 amount not to exceed \$500,000.

25-39 (3) In an action on a health care liability claim where
 25-40 final judgment is rendered against a physician or health care
 25-41 provider, the limit of civil liability for all noneconomic damages
 25-42 shall be limited to an amount not to exceed \$750,000 for each
 25-43 claimant, regardless of the number of defendant physicians or
 25-44 health care providers against whom the claim is asserted or the
 25-45 number of separate causes of action on which the claim is based.

25-46 (b) Effective before September 1, 2005, Subsection (a)
 25-47 applies only to a physician or health care provider that provides
 25-48 evidence of financial responsibility in the following amounts in
 25-49 effect for any act or omission to which this subchapter applies:

25-50 (1) at least \$100,000 for each health care liability
 25-51 claim and at least \$300,000 in aggregate for all health care
 25-52 liability claims occurring in an insurance policy year, calendar
 25-53 year, or fiscal year for a physician in training in an approved
 25-54 residency program;

25-55 (2) at least \$200,000 for each health care liability
 25-56 claim and at least \$600,000 in aggregate for all health care
 25-57 liability claims occurring in an insurance policy year, calendar
 25-58 year, or fiscal year for a physician or health care provider, other
 25-59 than a hospital; and

25-60 (3) at least \$500,000 for each health care liability
 25-61 claim and at least \$1.5 million in aggregate for all health care
 25-62 liability claims occurring in an insurance policy year, calendar
 25-63 year, or fiscal year for a hospital.

25-64 (c) Effective September 1, 2005, Subsection (a) applies
 25-65 only to a physician or health care provider that provides evidence
 25-66 of financial responsibility in the following amounts in effect for
 25-67 any act or omission to which this subchapter applies:

25-68 (1) at least \$100,000 for each health care liability
 25-69 claim and at least \$300,000 in aggregate for all health care

26-1 liability claims occurring in an insurance policy year, calendar
 26-2 year, or fiscal year for a physician in training in an approved
 26-3 residency program;

26-4 (2) at least \$300,000 for each health care liability
 26-5 claim and at least \$900,000 in aggregate for all health care
 26-6 liability claims occurring in an insurance policy year, calendar
 26-7 year, or fiscal year for a physician or health care provider, other
 26-8 than a hospital; and

26-9 (3) at least \$750,000 for each health care liability
 26-10 claim and at least \$2.25 million in aggregate for all health care
 26-11 liability claims occurring in an insurance policy year, calendar
 26-12 year, or fiscal year for a hospital.

26-13 (d) Effective September 1, 2007, Subsection (a) applies
 26-14 only to a physician or health care provider that provides evidence
 26-15 of financial responsibility in the following amounts in effect for
 26-16 any act or omission to which this subchapter applies:

26-17 (1) at least \$100,000 for each health care liability
 26-18 claim and at least \$300,000 in aggregate for all health care
 26-19 liability claims occurring in an insurance policy year, calendar
 26-20 year, or fiscal year for a physician in training in an approved
 26-21 residency program;

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

26-27 (3) at least \$1 million for each health care liability
 26-28 claim and at least \$3 million in aggregate for all health care
 26-29 liability claims occurring in an insurance policy year, calendar
 26-30 year, or fiscal year for a hospital.

26-31 (e) Evidence of financial responsibility may be established
 26-32 at the time of judgment by providing proof of:

26-33 (1) the purchase of a contract of insurance or other
 26-34 plan of insurance authorized by this state or federal law or
 26-35 regulation;

26-36 (2) the purchase of coverage from a trust organized
 26-37 and operating under Article 21.49-4, Insurance Code;

26-38 (3) the purchase of coverage or another plan of
 26-39 insurance provided by or through a risk retention group or
 26-40 purchasing group authorized under applicable laws of this state or
 26-41 under the Product Liability Risk Retention Act of 1981 (15 U.S.C.
 26-42 Section 3901 et seq.), as amended, or the Liability Risk Retention
 26-43 Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any
 26-44 other contract or arrangement for transferring and distributing
 26-45 risk relating to legal liability for damages, including cost of
 26-46 defense, legal costs, fees, and other claims expenses; or

26-47 (4) the maintenance of financial reserves in or an
 26-48 irrevocable letter of credit from a federally insured financial
 26-49 institution that has its main office or a branch office in this
 26-50 state.

26-51 Sec. 74.303. LIMITATION ON DAMAGES. (a) In an action for
 26-52 wrongful death on a health care liability claim where final
 26-53 judgment is rendered against a physician or health care provider,
 26-54 the limit of civil liability for damages of the physician or health
 26-55 care provider shall be limited to an amount not to exceed \$500,000.

26-56 (b) When there is an increase or decrease in the consumer
 26-57 price index with respect to the amount of that index on August 29,
 26-58 1977, the liability limit prescribed in Subsection (a) shall be
 26-59 increased or decreased, as applicable, by a sum equal to the amount
 26-60 of such limit multiplied by the percentage increase or decrease in
 26-61 the consumer price index, as published by the Bureau of Labor
 26-62 Statistics of the United States Department of Labor, that measures
 26-63 the average changes in prices of goods and services purchased by
 26-64 urban wage earners and clerical workers' families and single
 26-65 workers living alone (CPI-W: Seasonally Adjusted U.S. City Average
 26-66 -- All Items), between August 29, 1977, and the time at which
 26-67 damages subject to such limits are awarded by final judgment or
 26-68 settlement.

26-69 (c) Subsection (a) does not apply to the amount of damages

awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(d) The liability of any insurer under the common law theory of recovery commonly known in Texas as the "Stowers Doctrine" shall not exceed the liability of the insured.

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

(1) "Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law."

(2) "A finding of negligence may not be based solely on evidence of a bad result to the claimant in question, but a bad result may be considered by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence."

[Sections 74.304-74.350 reserved for expansion]

SUBCHAPTER H. PROCEDURAL PROVISIONS

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

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

(1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and

(2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refile of the claim.

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

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

[Subsections (e)-(h) reserved]

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

(j) Nothing in this section shall be construed to require the serving of an expert report regarding any issue other than an

28-1 issue relating to liability or causation.

28-2 (k) Subject to Subsection (t), an expert report served under
 28-3 this section:

28-4 (1) is not admissible in evidence by any party;

28-5 (2) shall not be used in a deposition, trial, or other
 28-6 proceeding; and

28-7 (3) shall not be referred to by any party during the
 28-8 course of the action for any purpose.

28-9 (1) A court shall grant a motion challenging the adequacy of
 28-10 an expert report only if it appears to the court, after hearing,
 28-11 that the report does not represent an objective good faith effort to
 28-12 comply with the definition of an expert report in Subsection
 28-13 (r)(6).

28-14 [Subsections (m)-(q) reserved]

28-15 (r) In this section:

28-16 (1) "Affected parties" means the claimant and the
 28-17 physician or health care provider who are directly affected by an
 28-18 act or agreement required or permitted by this section and does not
 28-19 include other parties to an action who are not directly affected by
 28-20 that particular act or agreement.

28-21 (2) "Claim" means a health care liability claim.

28-22 [(3) reserved]

28-23 (4) "Defendant" means a physician or health care
 28-24 provider against whom a health care liability claim is asserted.
 28-25 The term includes a third-party defendant, cross-defendant, or
 28-26 counterdefendant.

28-27 (5) "Expert" means:

28-28 (A) with respect to a person giving opinion
 28-29 testimony regarding whether a physician departed from accepted
 28-30 standards of medical care, an expert qualified to testify under the
 28-31 requirements of Section 74.401;

28-32 (B) with respect to a person giving opinion
 28-33 testimony regarding whether a health care provider departed from
 28-34 accepted standards of health care, an expert qualified to testify
 28-35 under the requirements of Section 74.402;

28-36 (C) with respect to a person giving opinion
 28-37 testimony about the causal relationship between the injury, harm,
 28-38 or damages claimed and the alleged departure from the applicable
 28-39 standard of care in any health care liability claim, a physician who
 28-40 is otherwise qualified to render opinions on such causal
 28-41 relationship under the Texas Rules of Evidence;

28-42 (D) with respect to a person giving opinion
 28-43 testimony about the causal relationship between the injury, harm,
 28-44 or damages claimed and the alleged departure from the applicable
 28-45 standard of care for a dentist, a dentist or physician who is
 28-46 otherwise qualified to render opinions on such causal relationship
 28-47 under the Texas Rules of Evidence; or

28-48 (E) with respect to a person giving opinion
 28-49 testimony about the causal relationship between the injury, harm,
 28-50 or damages claimed and the alleged departure from the applicable
 28-51 standard of care for a podiatrist, a podiatrist or physician who is
 28-52 otherwise qualified to render opinions on such causal relationship
 28-53 under the Texas Rules of Evidence.

28-54 (6) "Expert report" means a written report by an
 28-55 expert that provides a fair summary of the expert's opinions as of
 28-56 the date of the report regarding applicable standards of care, the
 28-57 manner in which the care rendered by the physician or health care
 28-58 provider failed to meet the standards, and the causal relationship
 28-59 between that failure and the injury, harm, or damages claimed.

28-60 (s) Until a claimant has served the expert report and
 28-61 curriculum vitae as required by Subsection (a), all discovery in a
 28-62 health care liability claim is stayed except for the acquisition by
 28-63 the claimant of information, including medical or hospital records
 28-64 or other documents or tangible things, related to the patient's
 28-65 health care or a defendant's liability through:

28-66 (1) written discovery as defined in Rule 192.7, Texas
 28-67 Rules of Civil Procedure;

28-68 (2) depositions on written questions under Rule 200,
 28-69 Texas Rules of Civil Procedure; and

29-1 (3) discovery from nonparties under Rule 205, Texas
 29-2 Rules of Civil Procedure.

29-3 (t) If an expert report is used by the claimant in the course
 29-4 of the action for any purpose other than to meet the service
 29-5 requirement of Subsection (a), the restrictions imposed by
 29-6 Subsection (k) on use of the expert report by any party are waived.

29-7 (u) Notwithstanding any other provision of this section,
 29-8 after a claim is filed all claimants, collectively, may take not
 29-9 more than two depositions before the expert report is served as
 29-10 required by Subsection (a). The court may allow additional
 29-11 deposition discovery on a showing by a plaintiff that additional
 29-12 information is needed for the completion of an expert report that
 29-13 cannot otherwise practicably be obtained in a timely manner under
 29-14 this subsection and Subsection (s).

29-15 Sec. 74.352. DISCOVERY PROCEDURES. (a) In every health
 29-16 care liability claim the plaintiff shall within 45 days after the
 29-17 date of filing of the original petition serve on the defendant's
 29-18 attorney or, if no attorney has appeared for the defendant, on the
 29-19 defendant full and complete answers to the appropriate standard set
 29-20 of interrogatories and full and complete responses to the
 29-21 appropriate standard set of requests for production of documents
 29-22 and things promulgated by the Health Care Liability Discovery
 29-23 Panel.

29-24 (b) Every physician or health care provider who is a
 29-25 defendant in a health care liability claim shall within 45 days
 29-26 after the date on which an answer to the petition was due serve on
 29-27 the plaintiff's attorney or, if the plaintiff is not represented by
 29-28 an attorney, on the plaintiff full and complete answers to the
 29-29 appropriate standard set of interrogatories and complete responses
 29-30 to the standard set of requests for production of documents and
 29-31 things promulgated by the Health Care Liability Discovery Panel.

29-32 (c) Except on motion and for good cause shown, no objection
 29-33 may be asserted regarding any standard interrogatory or request for
 29-34 production of documents and things, but no response shall be
 29-35 required where a particular interrogatory or request is clearly
 29-36 inapplicable under the circumstances of the case.

29-37 (d) Failure to file full and complete answers and responses
 29-38 to standard interrogatories and requests for production of
 29-39 documents and things in accordance with Subsections (a) and (b) or
 29-40 the making of a groundless objection under Subsection (c) shall be
 29-41 grounds for sanctions by the court in accordance with the Texas
 29-42 Rules of Civil Procedure on motion of any party.

29-43 (e) The time limits imposed under Subsections (a) and (b)
 29-44 may be extended by the court on the motion of a responding party for
 29-45 good cause shown and shall be extended if agreed in writing between
 29-46 the responding party and all opposing parties. In no event shall an
 29-47 extension be for a period of more than an additional 30 days.

29-48 (f) If a party is added by an amended pleading,
 29-49 intervention, or otherwise, the new party shall file full and
 29-50 complete answers to the appropriate standard set of interrogatories
 29-51 and full and complete responses to the standard set of requests for
 29-52 production of documents and things no later than 45 days after the
 29-53 date of filing of the pleading by which the party first appeared in
 29-54 the action.

29-55 (g) If information or documents required to provide full and
 29-56 complete answers and responses as required by this section are not
 29-57 in the possession of the responding party or attorney when the
 29-58 answers or responses are filed, the party shall supplement the
 29-59 answers and responses in accordance with the Texas Rules of Civil
 29-60 Procedure.

29-61 (h) Nothing in this section shall preclude any party from
 29-62 taking additional non-duplicative discovery of any other party.
 29-63 The standard sets of interrogatories provided for in this section
 29-64 shall not constitute, as to each plaintiff and each physician or
 29-65 health care provider who is a defendant, the first of the two sets
 29-66 of interrogatories permitted under the Texas Rules of Civil
 29-67 Procedure.

29-68 [Sections 74.353-74.400 reserved for expansion]

29-69 SUBCHAPTER I. EXPERT WITNESSES

30-1 Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT
 30-2 AGAINST PHYSICIAN. (a) In a suit involving a health care liability
 30-3 claim against a physician for injury to or death of a patient, a
 30-4 person may qualify as an expert witness on the issue of whether the
 30-5 physician departed from accepted standards of medical care only if
 30-6 the person is a physician who:

30-7 (1) is practicing medicine at the time such testimony
 30-8 is given or was practicing medicine at the time the claim arose;

30-9 (2) has knowledge of accepted standards of medical
 30-10 care for the diagnosis, care, or treatment of the illness, injury,
 30-11 or condition involved in the claim; and

30-12 (3) is qualified on the basis of training or
 30-13 experience to offer an expert opinion regarding those accepted
 30-14 standards of medical care.

30-15 (b) For the purpose of this section, "practicing medicine"
 30-16 or "medical practice" includes, but is not limited to, training
 30-17 residents or students at an accredited school of medicine or
 30-18 osteopathy or serving as a consulting physician to other physicians
 30-19 who provide direct patient care, upon the request of such other
 30-20 physicians.

30-21 (c) In determining whether a witness is qualified on the
 30-22 basis of training or experience, the court shall consider whether,
 30-23 at the time the claim arose or at the time the testimony is given,
 30-24 the witness:

30-25 (1) is board certified or has other substantial
 30-26 training or experience in an area of medical practice relevant to
 30-27 the claim; and

30-28 (2) is actively practicing medicine in rendering
 30-29 medical care services relevant to the claim.

30-30 (d) The court shall apply the criteria specified in
 30-31 Subsections (a), (b), and (c) in determining whether an expert is
 30-32 qualified to offer expert testimony on the issue of whether the
 30-33 physician departed from accepted standards of medical care, but may
 30-34 depart from those criteria if, under the circumstances, the court
 30-35 determines that there is a good reason to admit the expert's
 30-36 testimony. The court shall state on the record the reason for
 30-37 admitting the testimony if the court departs from the criteria.

30-38 (e) A pretrial objection to the qualifications of a witness
 30-39 under this section must be made not later than the later of the 21st
 30-40 day after the date the objecting party receives a copy of the
 30-41 witness's curriculum vitae or the 21st day after the date of the
 30-42 witness's deposition. If circumstances arise after the date on
 30-43 which the objection must be made that could not have been reasonably
 30-44 anticipated by a party before that date and that the party believes
 30-45 in good faith provide a basis for an objection to a witness's
 30-46 qualifications, and if an objection was not made previously, this
 30-47 subsection does not prevent the party from making an objection as
 30-48 soon as practicable under the circumstances. The court shall
 30-49 conduct a hearing to determine whether the witness is qualified as
 30-50 soon as practicable after the filing of an objection and, if
 30-51 possible, before trial. If the objecting party is unable to object
 30-52 in time for the hearing to be conducted before the trial, the
 30-53 hearing shall be conducted outside the presence of the jury. This
 30-54 subsection does not prevent a party from examining or
 30-55 cross-examining a witness at trial about the witness's
 30-56 qualifications.

30-57 (f) This section does not prevent a physician who is a
 30-58 defendant from qualifying as an expert.

30-59 (g) In this subchapter, "physician" means a person who is:

30-60 (1) licensed to practice medicine in one or more
 30-61 states in the United States; or

30-62 (2) a graduate of a medical school accredited by the
 30-63 Liaison Committee on Medical Education or the American Osteopathic
 30-64 Association only if testifying as a defendant and that testimony
 30-65 relates to that defendant's standard of care, the alleged departure
 30-66 from that standard of care, or the causal relationship between the
 30-67 alleged departure from that standard of care and the injury, harm,
 30-68 or damages claimed.

30-69 Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT

31-1 AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section,
31-2 "practicing health care" includes:

31-3 (1) training health care providers in the same field
31-4 as the defendant health care provider at an accredited educational
31-5 institution; or

31-6 (2) serving as a consulting health care provider and
31-7 being licensed, certified, or registered in the same field as the
31-8 defendant health care provider.

31-9 (b) In a suit involving a health care liability claim
31-10 against a health care provider, a person may qualify as an expert
31-11 witness on the issue of whether the health care provider departed
31-12 from accepted standards of care only if the person:

31-13 (1) is practicing health care in a field of practice
31-14 that involves the same type of care or treatment as that delivered
31-15 by the defendant health care provider, if the defendant health care
31-16 provider is an individual, at the time the testimony is given or was
31-17 practicing that type of health care at the time the claim arose;

31-18 (2) has knowledge of accepted standards of care for
31-19 health care providers for the diagnosis, care, or treatment of the
31-20 illness, injury, or condition involved in the claim; and

31-21 (3) is qualified on the basis of training or
31-22 experience to offer an expert opinion regarding those accepted
31-23 standards of health care.

31-24 (c) In determining whether a witness is qualified on the
31-25 basis of training or experience, the court shall consider whether,
31-26 at the time the claim arose or at the time the testimony is given,
31-27 the witness:

31-28 (1) is certified by a licensing agency of one or more
31-29 states of the United States or a national professional certifying
31-30 agency, or has other substantial training or experience, in the
31-31 area of health care relevant to the claim; and

31-32 (2) is actively practicing health care in rendering
31-33 health care services relevant to the claim.

31-34 (d) The court shall apply the criteria specified in
31-35 Subsections (a), (b), and (c) in determining whether an expert is
31-36 qualified to offer expert testimony on the issue of whether the
31-37 defendant health care provider departed from accepted standards of
31-38 health care but may depart from those criteria if, under the
31-39 circumstances, the court determines that there is good reason to
31-40 admit the expert's testimony. The court shall state on the record
31-41 the reason for admitting the testimony if the court departs from the
31-42 criteria.

31-43 (e) This section does not prevent a health care provider who
31-44 is a defendant, or an employee of the defendant health care
31-45 provider, from qualifying as an expert.

31-46 (f) A pretrial objection to the qualifications of a witness
31-47 under this section must be made not later than the later of the 21st
31-48 day after the date the objecting party receives a copy of the
31-49 witness's curriculum vitae or the 21st day after the date of the
31-50 witness's deposition. If circumstances arise after the date on
31-51 which the objection must be made that could not have been reasonably
31-52 anticipated by a party before that date and that the party believes
31-53 in good faith provide a basis for an objection to a witness's
31-54 qualifications, and if an objection was not made previously, this
31-55 subsection does not prevent the party from making an objection as
31-56 soon as practicable under the circumstances. The court shall
31-57 conduct a hearing to determine whether the witness is qualified as
31-58 soon as practicable after the filing of an objection and, if
31-59 possible, before trial. If the objecting party is unable to object
31-60 in time for the hearing to be conducted before the trial, the
31-61 hearing shall be conducted outside the presence of the jury. This
31-62 subsection does not prevent a party from examining or
31-63 cross-examining a witness at trial about the witness's
31-64 qualifications.

31-65 Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION
31-66 IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by
31-67 Subsections (b) and (c), in a suit involving a health care liability
31-68 claim against a physician or health care provider, a person may
31-69 qualify as an expert witness on the issue of the causal relationship

32-1 between the alleged departure from accepted standards of care and
 32-2 the injury, harm, or damages claimed only if the person is a
 32-3 physician and is otherwise qualified to render opinions on that
 32-4 causal relationship under the Texas Rules of Evidence.

32-5 (b) In a suit involving a health care liability claim
 32-6 against a dentist, a person may qualify as an expert witness on the
 32-7 issue of the causal relationship between the alleged departure from
 32-8 accepted standards of care and the injury, harm, or damages claimed
 32-9 if the person is a dentist or physician and is otherwise qualified
 32-10 to render opinions on that causal relationship under the Texas
 32-11 Rules of Evidence.

32-12 (c) In a suit involving a health care liability claim
 32-13 against a podiatrist, a person may qualify as an expert witness on the
 32-14 issue of the causal relationship between the alleged departure
 32-15 from accepted standards of care and the injury, harm, or damages
 32-16 claimed if the person is a podiatrist or physician and is otherwise
 32-17 qualified to render opinions on that causal relationship under the
 32-18 Texas Rules of Evidence.

32-19 (d) A pretrial objection to the qualifications of a witness
 32-20 under this section must be made not later than the later of the 21st
 32-21 day after the date the objecting party receives a copy of the
 32-22 witness's curriculum vitae or the 21st day after the date of the
 32-23 witness's deposition. If circumstances arise after the date on
 32-24 which the objection must be made that could not have been reasonably
 32-25 anticipated by a party before that date and that the party believes
 32-26 in good faith provide a basis for an objection to a witness's
 32-27 qualifications, and if an objection was not made previously, this
 32-28 subsection does not prevent the party from making an objection as
 32-29 soon as practicable under the circumstances. The court shall
 32-30 conduct a hearing to determine whether the witness is qualified as
 32-31 soon as practicable after the filing of an objection and, if
 32-32 possible, before trial. If the objecting party is unable to object
 32-33 in time for the hearing to be conducted before the trial, the
 32-34 hearing shall be conducted outside the presence of the jury. This
 32-35 subsection does not prevent a party from examining or
 32-36 cross-examining a witness at trial about the witness's
 32-37 qualifications.

32-38 [Sections 74.404-74.450 reserved for expansion]

32-39 SUBCHAPTER J. ARBITRATION AGREEMENTS

32-40 Sec. 74.451. ARBITRATION AGREEMENTS. (a) No physician,
 32-41 professional association of physicians, or other health care
 32-42 provider shall request or require a patient or prospective patient
 32-43 to execute an agreement to arbitrate a health care liability claim
 32-44 unless the form of agreement delivered to the patient contains a
 32-45 written notice in 10-point boldface type clearly and conspicuously
 32-46 stating:

32-47 UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT
 32-48 UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS
 32-49 AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING
 32-50 YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT
 32-51 FIRST CONSULTING WITH AN ATTORNEY.

32-52 (b) A violation of this section by a physician or
 32-53 professional association of physicians constitutes a violation of
 32-54 Subtitle B, Title 3, Occupations Code, and shall be subject to the
 32-55 enforcement provisions and sanctions contained in that subtitle.

32-56 (c) A violation of this section by a health care provider
 32-57 other than a physician shall constitute a false, misleading, or
 32-58 deceptive act or practice in the conduct of trade or commerce within
 32-59 the meaning of Section 17.46 of the Deceptive Trade
 32-60 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
 32-61 Business & Commerce Code), and shall be subject to an enforcement
 32-62 action by the consumer protection division under that act and
 32-63 subject to the penalties and remedies contained in Section 17.47,
 32-64 Business & Commerce Code, notwithstanding Section 74.004 or any
 32-65 other law.

32-66 (d) Notwithstanding any other provision of this section, a
 32-67 person who is found to be in violation of this section for the first
 32-68 time shall be subject only to injunctive relief or other
 32-69 appropriate order requiring the person to cease and desist from

33-1 such violation, and not to any other penalty or sanction.

33-2 [Sections 74.452-74.500 reserved for expansion]

33-3 SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

33-4 Sec. 74.501. DEFINITIONS. In this subchapter:

33-5 (1) "Future damages" means damages that are incurred
 33-6 after the date of judgment for:

33-7 (A) medical, health care, or custodial care
 33-8 services;

33-9 (B) physical pain and mental anguish,
 33-10 disfigurement, or physical impairment;

33-11 (C) loss of consortium, companionship, or
 33-12 society; or

33-13 (D) loss of earnings.

33-14 (2) "Future loss of earnings" means the following
 33-15 losses incurred after the date of the judgment:

33-16 (A) loss of income, wages, or earning capacity
 33-17 and other pecuniary losses; and

33-18 (B) loss of inheritance.

33-19 (3) "Periodic payments" means the payment of money or
 33-20 its equivalent to the recipient of future damages at defined
 33-21 intervals.

33-22 Sec. 74.502. SCOPE OF SUBCHAPTER. This subchapter applies
 33-23 only to an action on a health care liability claim against a
 33-24 physician or health care provider in which the present value of the
 33-25 award of future damages, as determined by the court, equals or
 33-26 exceeds \$100,000.

33-27 Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the
 33-28 request of a defendant physician or health care provider or
 33-29 claimant, the court may order that future damages awarded in a
 33-30 health care liability claim be paid in whole or in part in periodic
 33-31 payments rather than by a lump-sum payment.

33-32 (b) The court shall make a specific finding of the dollar
 33-33 amount of periodic payments that will compensate the claimant for
 33-34 the future damages.

33-35 (c) The court shall specify in its judgment ordering the
 33-36 payment of future damages by periodic payments the:

33-37 (1) recipient of the payments;

33-38 (2) dollar amount of the payments;

33-39 (3) interval between payments; and

33-40 (4) number of payments or the period of time over which
 33-41 payments must be made.

33-42 Sec. 74.504. RELEASE. The entry of an order for the payment
 33-43 of future damages by periodic payments constitutes a release of the
 33-44 health care liability claim filed by the claimant.

33-45 Sec. 74.505. FINANCIAL RESPONSIBILITY. (a) As a condition
 33-46 to authorizing periodic payments of future damages, the court shall
 33-47 require a defendant who is not adequately insured to provide
 33-48 evidence of financial responsibility in an amount adequate to
 33-49 assure full payment of damages awarded by the judgment.

33-50 (b) The judgment must provide for payments to be funded by:

33-51 (1) an annuity contract issued by a company licensed
 33-52 to do business as an insurance company, including an assignment
 33-53 within the meaning of Section 130, Internal Revenue Code of 1986, as
 33-54 amended;

33-55 (2) an obligation of the United States;

33-56 (3) applicable and collectible liability insurance
 33-57 from one or more qualified insurers; or

33-58 (4) any other satisfactory form of funding approved by
 33-59 the court.

33-60 (c) On termination of periodic payments of future damages,
 33-61 the court shall order the return of the security, or as much as
 33-62 remains, to the defendant.

33-63 Sec. 74.506. DEATH OF RECIPIENT. (a) On the death of the
 33-64 recipient, money damages awarded for loss of future earnings
 33-65 continue to be paid to the estate of the recipient of the award
 33-66 without reduction.

33-67 (b) Periodic payments, other than future loss of earnings,
 33-68 terminate on the death of the recipient.

33-69 (c) If the recipient of periodic payments dies before all

34-1 payments required by the judgment are paid, the court may modify the
34-2 judgment to award and apportion the unpaid damages for future loss
34-3 of earnings in an appropriate manner.

34-4 (d) Following the satisfaction or termination of any
34-5 obligations specified in the judgment for periodic payments, any
34-6 obligation of the defendant physician or health care provider to
34-7 make further payments ends and any security given reverts to the
34-8 defendant.

34-9 Sec. 74.507. AWARD OF ATTORNEY'S FEES. For purposes of
34-10 computing the award of attorney's fees when the claimant is awarded
34-11 a recovery that will be paid in periodic payments, the court shall:

34-12 (1) place a total value on the payments based on the
34-13 claimant's projected life expectancy; and

34-14 (2) reduce the amount in Subdivision (1) to present
34-15 value.

34-16 SECTION 10.02. Section 84.003, Civil Practice and Remedies
34-17 Code, is amended by adding Subdivision (6) to read as follows:

34-18 (6) "Hospital system" means a system of hospitals and
34-19 other health care providers located in this state that are under the
34-20 common governance or control of a corporate parent.

34-21 SECTION 10.03. Section 84.003, Civil Practice and Remedies
34-22 Code, is amended by adding Subdivision (7) to read as follows:

34-23 (7) "Person responsible for the patient" means:

34-24 (A) the patient's parent, managing conservator,
34-25 or guardian;

34-26 (B) the patient's grandparent;

34-27 (C) the patient's adult brother or sister;

34-28 (D) another adult who has actual care, control,
34-29 and possession of the patient and has written authorization to
34-30 consent for the patient from the parent, managing conservator, or
34-31 guardian of the patient;

34-32 (E) an educational institution in which the
34-33 patient is enrolled that has written authorization to consent for
34-34 the patient from the parent, managing conservator, or guardian of
34-35 the patient; or

34-36 (F) any other person with legal responsibility
34-37 for the care of the patient.

34-38 SECTION 10.04. Section 84.004, Civil Practice and Remedies
34-39 Code, is amended by adding Subsection (f) to read as follows:

34-40 (f) Subsection (c) applies even if:

34-41 (1) the patient is incapacitated due to illness or
34-42 injury and cannot sign the acknowledgment statement required by
34-43 that subsection; or

34-44 (2) the patient is a minor or is otherwise legally
34-45 incompetent and the person responsible for the patient is not
34-46 reasonably available to sign the acknowledgment statement required
34-47 by that subsection.

34-48 SECTION 10.05. Article 5.15-1, Insurance Code, is amended
34-49 by adding Section 11 to read as follows:

34-50 Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude
34-51 or otherwise limit coverage for physicians or health care providers
34-52 under a vendor's endorsement issued to a manufacturer, as that term
34-53 is defined by Section 82.001, Civil Practice and Remedies Code. A
34-54 physician or health care provider shall be considered a vendor for
34-55 purposes of coverage under a vendor's endorsement or a
34-56 manufacturer's general liability or products liability policy.

34-57 SECTION 10.06. Section 242.0372, Health and Safety Code, is
34-58 amended by adding Subsection (f) to read as follows:

34-59 (f) An institution is not required to comply with this
34-60 section before September 1, 2005. This subsection expires
34-61 September 2, 2005.

34-62 SECTION 10.07. The Medical Liability and Insurance
34-63 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
34-64 Statutes) is repealed.

34-65 SECTION 10.08. Unless otherwise removed as provided by law,
34-66 a member of the Texas Medical Disclosure Panel serving on the
34-67 effective date of this Act continues to serve for the term to which
34-68 the member was appointed.

34-69 SECTION 10.09. (a) The Legislature of the State of Texas

35-1 finds that:

35-2 (1) the number of health care liability claims
35-3 (frequency) has increased since 1995 inordinately;

35-4 (2) the filing of legitimate health care liability
35-5 claims in Texas is a contributing factor affecting medical
35-6 professional liability rates;

35-7 (3) the amounts being paid out by insurers in
35-8 judgments and settlements (severity) have likewise increased
35-9 inordinately in the same short period;

35-10 (4) the effect of the above has caused a serious public
35-11 problem in availability of and affordability of adequate medical
35-12 professional liability insurance;

35-13 (5) the situation has created a medical malpractice
35-14 insurance crisis in Texas;

35-15 (6) this crisis has had a material adverse effect on
35-16 the delivery of medical and health care in Texas, including
35-17 significant reductions of availability of medical and health care
35-18 services to the people of Texas and a likelihood of further
35-19 reductions in the future;

35-20 (7) the crisis has had a substantial impact on the
35-21 physicians and hospitals of Texas and the cost to physicians and
35-22 hospitals for adequate medical malpractice insurance has
35-23 dramatically risen, with cost impact on patients and the public;

35-24 (8) the direct cost of medical care to the patient and
35-25 public of Texas has materially increased due to the rising cost of
35-26 malpractice insurance protection for physicians and hospitals in
35-27 Texas;

35-28 (9) the crisis has increased the cost of medical care
35-29 both directly through fees and indirectly through additional
35-30 services provided for protection against future suits or claims,
35-31 and defensive medicine has resulted in increasing cost to patients,
35-32 private insurers, and Texas and has contributed to the general
35-33 inflation that has marked health care in recent years;

35-34 (10) satisfactory insurance coverage for adequate
35-35 amounts of insurance in this area is often not available at any
35-36 price;

35-37 (11) the combined effect of the defects in the
35-38 medical, insurance, and legal systems has caused a serious public
35-39 problem both with respect to the availability of coverage and to the
35-40 high rates being charged by insurers for medical professional
35-41 liability insurance to some physicians, health care providers, and
35-42 hospitals; and

35-43 (12) the adoption of certain modifications in the
35-44 medical, insurance, and legal systems, the total effect of which is
35-45 currently undetermined, will have a positive effect on the rates
35-46 charged by insurers for medical professional liability insurance.

35-47 (b) Because of the conditions stated in Subsection (a) of
35-48 this section, it is the purpose of this article to improve and
35-49 modify the system by which health care liability claims are
35-50 determined in order to:

35-51 (1) reduce excessive frequency and severity of health
35-52 care liability claims through reasonable improvements and
35-53 modifications in the Texas insurance, tort, and medical practice
35-54 systems;

35-55 (2) decrease the cost of those claims and ensure that
35-56 awards are rationally related to actual damages;

35-57 (3) do so in a manner that will not unduly restrict a
35-58 claimant's rights any more than necessary to deal with the crisis;

35-59 (4) make available to physicians, hospitals, and other
35-60 health care providers protection against potential liability
35-61 through the insurance mechanism at reasonably affordable rates;

35-62 (5) make affordable medical and health care more
35-63 accessible and available to the citizens of Texas;

35-64 (6) make certain modifications in the medical,
35-65 insurance, and legal systems in order to determine whether or not
35-66 there will be an effect on rates charged by insurers for medical
35-67 professional liability insurance; and

35-68 (7) make certain modifications to the liability laws
35-69 as they relate to health care liability claims only and with an

36-1 intention of the legislature to not extend or apply such
36-2 modifications of liability laws to any other area of the Texas legal
36-3 system or tort law.

36-4 ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A
36-5 GOVERNMENTAL UNIT

36-6 SECTION 11.01. Sections 108.002(a) and (b), Civil Practice
36-7 and Remedies Code, are amended to read as follows:

36-8 (a) Except in an action arising under the constitution or
36-9 laws of the United States, a public servant [~~other than a provider~~
36-10 ~~of health care as that term is defined in Section 108.002(c),~~] is
36-11 not personally liable for damages in excess of \$100,000 arising
36-12 from personal injury, death, or deprivation of a right, privilege,
36-13 or immunity if:

36-14 (1) the damages are the result of an act or omission by
36-15 the public servant in the course and scope of the public servant's
36-16 office, employment, or contractual performance for or service on
36-17 behalf of a state agency, institution, department, or local
36-18 government; and

36-19 (2) for the amount not in excess of \$100,000, the
36-20 public servant is covered:

36-21 (A) by the state's obligation to indemnify under
36-22 Chapter 104;

36-23 (B) by a local government's authorization to
36-24 indemnify under Chapter 102;

36-25 (C) by liability or errors and omissions
36-26 insurance; or

36-27 (D) by liability or errors and omissions coverage
36-28 under an interlocal agreement.

36-29 (b) Except in an action arising under the constitution or
36-30 laws of the United States, a public servant [~~other than a provider~~
36-31 ~~of health care as that term is defined in Section 108.002(c),~~] is
36-32 not liable for damages in excess of \$100,000 for property damage if:

36-33 (1) the damages are the result of an act or omission by
36-34 the public servant in the course and scope of the public servant's
36-35 office, employment, or contractual performance for or service on
36-36 behalf of a state agency, institution, department, or local
36-37 government; and

36-38 (2) for the amount not in excess of \$100,000, the
36-39 public servant is covered:

36-40 (A) by the state's obligation to indemnify under
36-41 Chapter 104;

36-42 (B) by a local government's authorization to
36-43 indemnify under Chapter 102;

36-44 (C) by liability or errors and omissions
36-45 insurance; or

36-46 (D) by liability or errors and omissions coverage
36-47 under an interlocal agreement.

36-48 SECTION 11.02. Chapter 261, Health and Safety Code, is
36-49 amended by adding Subchapter C to read as follows:

36-50 SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

36-51 Sec. 261.051. DEFINITION. In this subchapter, "municipal
36-52 hospital management contractor" means a nonprofit corporation,
36-53 partnership, or sole proprietorship that manages or operates a
36-54 hospital or provides services under a contract with a municipality.

36-55 Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT
36-56 CONTRACTOR. A municipal hospital management contractor in its
36-57 management or operation of a hospital under a contract with a
36-58 municipality is considered a governmental unit for purposes of
36-59 Chapters 101, 102, and 108, Civil Practice and Remedies Code, and
36-60 any employee of the contractor is, while performing services under
36-61 the contract for the benefit of the hospital, an employee of the
36-62 municipality for the purposes of Chapters 101, 102, and 108, Civil
36-63 Practice and Remedies Code.

36-64 SECTION 11.03. Section 285.071, Health and Safety Code, is
36-65 amended to read as follows:

36-66 Sec. 285.071. DEFINITION. In this chapter, "hospital
36-67 district management contractor" means a nonprofit corporation,
36-68 partnership, or sole proprietorship that manages or operates a
36-69 hospital or provides services [~~as a part of a rural health network~~

37-1 ~~as defined under 42 U.S.C. Section 1395i-4(g)]~~ under contract with
37-2 a hospital district that was created by general or special law ~~[and~~
37-3 ~~that has a population under 50,000]~~.

37-4 SECTION 11.04. Section 285.072, Health and Safety Code, is
37-5 amended to read as follows:

37-6 Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT
37-7 CONTRACTOR. A hospital district management contractor in its
37-8 management or operation of a hospital under a contract with a
37-9 hospital district is considered a governmental unit for purposes of
37-10 Chapters 101, 102, and 108, Civil Practice and Remedies Code, and
37-11 any employee of the contractor is [are], while performing services
37-12 under the contract for the benefit of the hospital, an employee
37-13 [employees] of the hospital district for the purposes of Chapters
37-14 101, [and] 102, and 108, Civil Practice and Remedies Code.

37-15 SECTION 11.05. Section 101.106, Civil Practice and Remedies
37-16 Code, is amended to read as follows:

37-17 Sec. 101.106. ELECTION OF REMEDIES. (a) The filing of a
37-18 suit under this chapter against a governmental unit constitutes an
37-19 irrevocable election by the plaintiff and immediately and forever
37-20 bars any suit or recovery by the plaintiff against any individual
37-21 employee of the governmental unit regarding the same subject
37-22 matter.

37-23 (b) The filing of a suit against any employee of a
37-24 governmental unit constitutes an irrevocable election by the
37-25 plaintiff and immediately and forever bars any suit or recovery by
37-26 the plaintiff against the governmental unit regarding the same
37-27 subject matter unless the governmental unit consents.

37-28 (c) The settlement of a claim arising under this chapter
37-29 shall immediately and forever bar the claimant from any suit
37-30 against or recovery from any employee of the same governmental unit
37-31 regarding the same subject matter.

37-32 (d) A judgment against an employee of a governmental unit
37-33 shall immediately and forever bar the party obtaining the judgment
37-34 from any suit against or recovery from the governmental unit.

37-35 (e) If a suit is filed under this chapter against both a
37-36 governmental unit and any of its employees, the employees shall
37-37 immediately be dismissed on the filing of a motion by the
37-38 governmental unit.

37-39 (f) If a suit is filed against an employee of a governmental
37-40 unit based on conduct within the general scope of that employee's
37-41 employment and if it could have been brought under this chapter
37-42 against the governmental unit, the suit is considered to be against
37-43 the employee in the employee's official capacity only. On the
37-44 employee's motion, the suit against the employee shall be dismissed
37-45 unless the plaintiff files amended pleadings dismissing the
37-46 employee and naming the governmental unit as defendant on or before
37-47 the 30th day after the date the motion is filed. [EMPLOYEES NOT
37-48 LIABLE AFTER SETTLEMENT OR JUDGMENT. A judgment in an action or a
37-49 settlement of a claim under this chapter bars any action involving
37-50 the same subject matter by the claimant against the employee of the
37-51 governmental unit whose act or omission gave rise to the claim.]

37-52 SECTION 11.06. Section 108.001, Civil Practice and Remedies
37-53 Code, is amended by adding Subdivision (3) to read as follows:

37-54 (3) "Public servant" includes a licensed physician who
37-55 provides emergency or postemergency stabilization services to
37-56 patients in a hospital owned or operated by a unit of local
37-57 government.

37-58 SECTION 11.07. Section 108.002(c), Civil Practice and
37-59 Remedies Code, is repealed.

37-60 ARTICLE 12. RESERVED

37-61 ARTICLE 13. DAMAGES

37-62 SECTION 13.01. The heading to Chapter 41, Civil Practice
37-63 and Remedies Code, is amended to read as follows:

37-64 CHAPTER 41. ~~[EXEMPLARY]~~ DAMAGES

37-65 SECTION 13.02. Section 41.001, Civil Practice and Remedies
37-66 Code, is amended by amending Subdivisions (1), (3), (4), (5), and
37-67 (7) and adding Subdivisions (8)-(13) to read as follows:

37-68 (1) "Claimant" means a party, including a plaintiff,
37-69 counterclaimant, cross-claimant, or third-party plaintiff, seeking

38-1 recovery of [~~exemplary~~] damages. In a cause of action in which a
 38-2 party seeks recovery of [~~exemplary~~] damages related to injury to
 38-3 another person, damage to the property of another person, death of
 38-4 another person, or other harm to another person, "claimant"
 38-5 includes both that other person and the party seeking recovery of
 38-6 [~~exemplary~~] damages.

38-7 (3) "Defendant" means a party, including a
 38-8 counterdefendant, cross-defendant, or third-party defendant, from
 38-9 whom a claimant seeks relief [~~with respect to exemplary damages~~].

38-10 (4) "Economic damages" means compensatory damages
 38-11 intended to compensate a claimant for actual economic or [~~for~~]
 38-12 pecuniary loss; the term does not include exemplary damages or
 38-13 noneconomic damages [~~for physical pain and mental anguish, loss of~~
 38-14 consortium, disfigurement, physical impairment, or loss of
 38-15 companionship and society].

38-16 (5) "Exemplary damages" means any damages awarded as a
 38-17 penalty or by way of punishment but not for compensatory purposes.
 38-18 Exemplary damages are neither economic nor noneconomic damages.
 38-19 "Exemplary damages" includes punitive damages.

38-20 (7) "Malice" means [~~+~~
 38-21 [~~(A)~~] a specific intent by the defendant to cause
 38-22 substantial injury or harm to the claimant [~~, or~~
 38-23 [~~(B)~~] an act or omission.

38-24 [~~(i)~~] which when viewed objectively from the
 38-25 standpoint of the actor at the time of its occurrence involves an
 38-26 extreme degree of risk, considering the probability and magnitude
 38-27 of the potential harm to others; and

38-28 [~~(ii)~~] of which the actor has actual,
 38-29 subjective awareness of the risk involved, but nevertheless
 38-30 proceeds with conscious indifference to the rights, safety, or
 38-31 welfare of others].

38-32 (8) "Compensatory damages" means economic and
 38-33 noneconomic damages. The term does not include exemplary damages.

38-34 (9) "Future damages" means damages that are incurred
 38-35 after the date of the judgment. Future damages do not include
 38-36 exemplary damages.

38-37 (10) "Future loss of earnings" means a pecuniary loss
 38-38 incurred after the date of the judgment, including:

38-39 (A) loss of income, wages, or earning capacity;
 38-40 and

38-41 (B) loss of inheritance.

38-42 (11) "Gross negligence" means an act or omission:

38-43 (A) which when viewed objectively from the
 38-44 standpoint of the actor at the time of its occurrence involves an
 38-45 extreme degree of risk, considering the probability and magnitude
 38-46 of the potential harm to others; and

38-47 (B) of which the actor has actual, subjective
 38-48 awareness of the risk involved, but nevertheless proceeds with
 38-49 conscious indifference to the rights, safety, or welfare of others.

38-50 (12) "Noneconomic damages" means damages awarded for
 38-51 the purpose of compensating a claimant for physical pain and
 38-52 suffering, mental or emotional pain or anguish, loss of consortium,
 38-53 disfigurement, physical impairment, loss of companionship and
 38-54 society, inconvenience, loss of enjoyment of life, injury to
 38-55 reputation, and all other nonpecuniary losses of any kind other
 38-56 than exemplary damages.

38-57 (13) "Periodic payments" means the payment of money or
 38-58 its equivalent to the recipient of future damages at defined
 38-59 intervals.

38-60 SECTION 13.03. Sections 41.002(a) and (b), Civil Practice
 38-61 and Remedies Code, are amended to read as follows:

38-62 (a) This chapter applies to any action in which a claimant
 38-63 seeks [~~exemplary~~] damages relating to a cause of action.

38-64 (b) This chapter establishes the maximum [~~exemplary~~]
 38-65 damages that may be awarded in an action subject to this chapter,
 38-66 including an action for which [~~exemplary~~] damages are awarded under
 38-67 another law of this state. This chapter does not apply to the
 38-68 extent another law establishes a lower maximum amount of
 38-69 [~~exemplary~~] damages for a particular claim.

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

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

- (1) fraud;
- (2) malice; or

(3) gross negligence [wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B)].

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

SECTION 13.05. Section 41.004(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) ~~[A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A).]~~ Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

SECTION 13.06. Section 41.008, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of ~~[exemplary]~~ damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

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

- (1)(A) two times the amount of economic damages; plus
- (B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or
- (2) \$200,000.

(c) This section [Subsection (b)] does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.04 (aggravated kidnapping);
- (4) Section 22.02 (aggravated assault);
- (5) Section 22.011 (sexual assault);
- (6) Section 22.021 (aggravated sexual assault);
- (7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);
- (8) Section 32.21 (forgery);
- (9) Section 32.43 (commercial bribery);
- (10) Section 32.45 (misapplication of fiduciary property or property of financial institution);
- (11) Section 32.46 (securing execution of document by deception);
- (12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);
- (13) Chapter 31 (theft) the punishment level for which

40-1 is a felony of the third degree or higher;

40-2 (14) Section 49.07 (intoxication assault); or

40-3 (15) Section 49.08 (intoxication manslaughter).

40-4 (d) In this section, "intentionally" and "knowingly" have
40-5 the same meanings assigned those terms in Sections 6.03(a) and (b),
40-6 Penal Code.

40-7 (e) The provisions of this section [~~Subsections (a) and (b)~~]
40-8 may not be made known to a jury by any means, including voir dire,
40-9 introduction into evidence, argument, or instruction.

40-10 (f) This section [~~Subsection (b)~~] does not apply to a cause
40-11 of action for damages arising from the manufacture of
40-12 methamphetamine as described by Chapter 99.

40-13 SECTION 13.07. Section 41.010(b), Civil Practice and
40-14 Remedies Code, is amended to read as follows:

40-15 (b) Subject to Section 41.008, the [~~The~~] determination of
40-16 whether to award exemplary damages and the amount of exemplary
40-17 damages to be awarded is within the discretion of the trier of fact.

40-18 SECTION 13.08. Chapter 41, Civil Practice and Remedies
40-19 Code, is amended by adding Section 41.0105 to read as follows:

40-20 Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC
40-21 DAMAGES. (a) In addition to any other limitation under law,
40-22 recovery of medical or health care expenses incurred is limited to
40-23 the amount actually paid or incurred by or on behalf of the
40-24 claimant.

40-25 (b) A defendant may introduce evidence of any amount payable
40-26 to the claimant as a collateral benefit arising from the event in
40-27 the cause of action under:

40-28 (1) the Social Security Act (42 U.S.C. Section 301 et
40-29 seq.); or

40-30 (2) a state or federal income disability or workers'
40-31 compensation act.

40-32 (c) If the defendant introduces evidence under Subsection
40-33 (b), the plaintiff may introduce evidence of any legal obligation
40-34 to reimburse any subrogated entity.

40-35 SECTION 13.09. Chapter 18, Civil Practice and Remedies
40-36 Code, is amended by adding Subchapter D to read as follows:

40-37 SUBCHAPTER D. CERTAIN LOSSES

40-38 Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION.

40-39 (a) Notwithstanding any other law, if any claimant seeks recovery
40-40 for loss of earnings, loss of earning capacity, loss of
40-41 contributions of a pecuniary value, or loss of inheritance,
40-42 evidence to prove the loss must be presented in the form of a net
40-43 loss after reduction for income tax payments or unpaid tax
40-44 liability pursuant to any federal income tax law.

40-45 (b) If any claimant seeks recovery for loss of earnings,
40-46 loss of earning capacity, loss of contributions of a pecuniary
40-47 value, or loss of inheritance, the court shall instruct the jury as
40-48 to whether any recovery for compensatory damages sought by the
40-49 claimant is subject to federal or state income taxes.

40-50 ARTICLE 14. RESERVED

40-51 ARTICLE 15. SCHOOL EMPLOYEES

40-52 SECTION 15.01. Subchapter B, Chapter 22, Education Code, is
40-53 amended by amending Section 22.051 and adding Sections 22.0511
40-54 through 22.0517 to read as follows:

40-55 Sec. 22.051. DEFINITION. In this subchapter, "professional
40-56 employee of a school district" includes:

40-57 (1) a superintendent, principal, teacher, including a
40-58 substitute teacher, supervisor, social worker, counselor, nurse,
40-59 and teacher's aide employed by a school district;

40-60 (2) a teacher employed by a company that contracts
40-61 with a school district to provide the teacher's services to the
40-62 district;

40-63 (3) a student in an education preparation program
40-64 participating in a field experience or internship;

40-65 (4) a school bus driver certified in accordance with
40-66 standards and qualifications adopted by the Department of Public
40-67 Safety of the State of Texas; and

40-68 (5) any other person employed by a school district
40-69 whose employment requires certification and the exercise of

41-1 discretion.

41-2 Sec. 22.0511. IMMUNITY FROM LIABILITY [FOR PROFESSIONAL
 41-3 EMPLOYEES]. (a) A professional employee of a school district is
 41-4 not personally liable for any act that is incident to or within the
 41-5 scope of the duties of the employee's position of employment and
 41-6 that involves the exercise of judgment or discretion on the part of
 41-7 the employee, except in circumstances in which a professional
 41-8 employee uses excessive force in the discipline of students or
 41-9 negligence resulting in bodily injury to students.

41-10 (b) This section does not apply to the operation, use, or
 41-11 maintenance of any motor vehicle.

41-12 (c) In addition to the immunity provided under this section
 41-13 and under other provisions of state law, an individual is entitled
 41-14 to any immunity and any other protections afforded under the Paul D.
 41-15 Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et
 41-16 seq.), as amended. Nothing in this subsection shall be construed to
 41-17 limit or abridge any immunity or protection afforded an individual
 41-18 under state law. For purposes of this subsection, "individual"
 41-19 includes a person who provides services to private schools, to the
 41-20 extent provided by federal law [this section, "professional
 41-21 employee" includes:

41-22 [(1) a superintendent, principal, teacher,
 41-23 supervisor, social worker, counselor, nurse, and teacher's aide;

41-24 [(2) a student in an education preparation program
 41-25 participating in a field experience or internship;

41-26 [(3) a school bus driver certified in accordance with
 41-27 standards and qualifications adopted by the Department of Public
 41-28 Safety; and

41-29 [(4) any other person whose employment requires
 41-30 certification and the exercise of discretion].

41-31 Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR
 41-32 PROFESSIONAL EMPLOYEES. (a) A professional employee of a school
 41-33 district may not be subject to disciplinary proceedings for the
 41-34 employee's use of physical force against a student to the extent
 41-35 justified under Section 9.62, Penal Code.

41-36 (b) In this section, "disciplinary proceeding" means:

41-37 (1) an action brought by the school district employing
 41-38 a professional employee of a school district to discharge or
 41-39 suspend the employee or terminate or not renew the employee's term
 41-40 contract; or

41-41 (2) an action brought by the State Board for Educator
 41-42 Certification to enforce the educator's code of ethics adopted
 41-43 under Section 21.041(b)(8).

41-44 (c) Nothing in this section shall prohibit a school district
 41-45 from enforcing a policy relating to corporal punishment.

41-46 Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th
 41-47 day before the date a person files a suit against a professional
 41-48 employee of a school district, the person must give written notice
 41-49 to the employee of the claim, reasonably describing the incident
 41-50 from which the claim arose.

41-51 (b) A professional employee of a school district against
 41-52 whom a suit is pending who does not receive written notice, as
 41-53 required by Subsection (a), may file a plea in abatement not later
 41-54 than the 30th day after the date the person files an original answer
 41-55 in the court in which the suit is pending.

41-56 (c) The court shall abate the suit if the court, after a
 41-57 hearing, finds that the person is entitled to an abatement because
 41-58 notice was not provided as required by this section.

41-59 (d) An abatement under Subsection (c) continues until the
 41-60 90th day after the date written notice is given to the professional
 41-61 employee of a school district as provided by Subsection (a).

41-62 Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file
 41-63 suit against a professional employee of a school district unless
 41-64 the person has exhausted the remedies provided by the school
 41-65 district for resolving the complaint.

41-66 Sec. 22.0515. LIMITATION ON DAMAGES. (a) Subject to
 41-67 Subsection (b), the liability of a professional employee of a
 41-68 school district for an act incident to or within the scope of duties
 41-69 of the employee's position of employment may not exceed \$100,000.

The limitation on liability provided by this subsection does not apply to any attorney's fees or court costs that may be awarded against the professional employee under Section 22.0517.

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

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in which a judicial proceeding is being brought against a professional employee of a school district may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. In an action against a professional employee of a school district based on an allegation that the employee physically abused a student, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee substantially prevails.

SECTION 15.02. Section 22.053(a), Education Code, is amended to read as follows:

(a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511 [~~22.051~~].

SECTION 15.03. Section 30.024(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.04. Section 30.055(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. Section 105.301(e), Education Code, is amended to read as follows:

(e) The academy is not subject to the provisions of this code, or to the rules of the Texas Education Agency, regulating public schools, except that:

(1) professional employees of the academy are entitled to the limited liability of an employee under Section 22.0511, 22.0512, [~~22.051~~] or 22.052;

(2) a student's attendance at the academy satisfies compulsory school attendance requirements; and

(3) for each student enrolled, the academy is entitled to allotments from the foundation school program under Chapter 42 as if the academy were a school district, except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District.

SECTION 15.06. The change in law made by this article applies only to a suit for damages or a school employee disciplinary proceeding involving conduct that occurs on or after the effective date of this Act. A suit for damages or a school employee disciplinary proceeding involving conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NOT-FOR-PROFIT NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that a not-for-profit institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty

43-1 against a not-for-profit institution under Section 32.021 or the
 43-2 payment of the penalty by an institution.

43-3 (b) This section does not apply in an enforcement action in
 43-4 which the state or an agency or political subdivision of the state
 43-5 is a party.

43-6 SECTION 16.02. Subchapter A, Chapter 242, Health and Safety
 43-7 Code, is amended by adding Section 242.017 to read as follows:

43-8 Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL
 43-9 ACTIONS. (a) The following are not admissible as evidence in a
 43-10 civil action:

43-11 (1) any finding by the department that a
 43-12 not-for-profit institution has violated this chapter or a rule
 43-13 adopted under this chapter; or

43-14 (2) the fact of the assessment of a penalty against a
 43-15 not-for-profit institution under this chapter or the payment of the
 43-16 penalty by an institution.

43-17 (b) This section does not apply in an enforcement action in
 43-18 which the state or an agency or political subdivision of the state
 43-19 is a party.

43-20 SECTION 16.03. The following laws are repealed:

43-21 (1) Sections 32.021(i) and (k), Human Resources Code;
 43-22 and

43-23 (2) Section 242.050, Health and Safety Code, as added
 43-24 by Chapter 1284, Acts of the 77th Legislature, Regular Session,
 43-25 2001.

43-26 ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
 43-27 RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

43-28 SECTION 17.01. Title 6, Civil Practice and Remedies Code,
 43-29 is amended by adding Chapter 149 to read as follows:

43-30 CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING
 43-31 TO CERTAIN MERGERS OR CONSOLIDATIONS

43-32 Sec. 149.001. DEFINITIONS. In this chapter:

43-33 (1) "Asbestos claim" means any claim, wherever or
 43-34 whenever made, for damages, losses, indemnification, contribution,
 43-35 or other relief arising out of, based on, or in any way related to
 43-36 asbestos, including:

43-37 (A) property damage caused by the installation,
 43-38 presence, or removal of asbestos;

43-39 (B) the health effects of exposure to asbestos,
 43-40 including any claim for:

43-41 (i) personal injury or death;

43-42 (ii) mental or emotional injury;

43-43 (iii) risk of disease or other injury; or

43-44 (iv) the costs of medical monitoring or
 43-45 surveillance; and

43-46 (C) any claim made by or on behalf of any person
 43-47 exposed to asbestos, or a representative, spouse, parent, child, or
 43-48 other relative of the person.

43-49 (2) "Corporation" means a corporation for profit,
 43-50 including:

43-51 (A) a domestic corporation organized under the
 43-52 laws of this state; or

43-53 (B) a foreign corporation organized under laws
 43-54 other than the laws of this state.

43-55 (3) "Successor asbestos-related liabilities" means
 43-56 any liabilities, whether known or unknown, asserted or unasserted,
 43-57 absolute or contingent, accrued or unaccrued, liquidated or
 43-58 unliquidated, or due or to become due, that are related in any way
 43-59 to asbestos claims that were assumed or incurred by a corporation as
 43-60 a result of or in connection with a merger or consolidation, or the
 43-61 plan of merger or consolidation related to the merger or
 43-62 consolidation, with or into another corporation or that are related
 43-63 in any way to asbestos claims based on the exercise of control or
 43-64 the ownership of stock of the corporation before the merger or
 43-65 consolidation. The term includes liabilities that, after the time
 43-66 of the merger or consolidation for which the fair market value of
 43-67 total gross assets is determined under Section 149.004, were or are
 43-68 paid or otherwise discharged, or committed to be paid or otherwise
 43-69 discharged, by or on behalf of the corporation, or by a successor of

44-1 the corporation, or by or on behalf of a transferor, in connection
 44-2 with settlements, judgments, or other discharges in this state or
 44-3 another jurisdiction.

44-4 (4) "Successor" means a corporation that assumes or
 44-5 incurs, or has assumed or incurred, successor asbestos-related
 44-6 liabilities.

44-7 (5) "Transferor" means a corporation from which
 44-8 successor asbestos-related liabilities are or were assumed or
 44-9 incurred.

44-10 Sec. 149.002. APPLICABILITY. (a) The limitations in
 44-11 Section 149.003 shall apply to a domestic corporation or a foreign
 44-12 corporation that has had a certificate of authority to transact
 44-13 business in this state or has done business in this state and that
 44-14 is a successor which became a successor prior to May 13, 1968, or
 44-15 which is any of that successor corporation's successors, but in the
 44-16 latter case only to the extent of the limitation of liability
 44-17 applied under Section 149.003(b) and subject also to the
 44-18 limitations found in this chapter, including those in Subsection
 44-19 (b).

44-20 (b) The limitations in Section 149.003 shall not apply to:

44-21 (1) workers' compensation benefits paid by or on
 44-22 behalf of an employer to an employee under the Texas Workers'
 44-23 Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable
 44-24 workers' compensation law of another jurisdiction;

44-25 (2) any claim against a corporation that does not
 44-26 constitute a successor asbestos-related liability;

44-27 (3) an insurance corporation, as that term is used in
 44-28 the Insurance Code;

44-29 (4) any obligations under the National Labor Relations
 44-30 Act (29 U.S.C. Section 151 et seq.), as amended, or under any
 44-31 collective bargaining agreement;

44-32 (5) a successor that, after a merger or consolidation,
 44-33 continued in the business of mining asbestos or in the business of
 44-34 selling or distributing asbestos fibers or in the business of
 44-35 manufacturing, distributing, removing, or installing
 44-36 asbestos-containing products which were the same or substantially
 44-37 the same as those products previously manufactured, distributed,
 44-38 removed, or installed by the transferor;

44-39 (6) a contractual obligation existing as of the
 44-40 effective date of this chapter that was entered into with claimants
 44-41 or potential claimants or their counsel and which resolves asbestos
 44-42 claims or potential asbestos claims;

44-43 (7) any claim made against the estate of a debtor in a
 44-44 bankruptcy proceeding commenced prior to April 1, 2003, under the
 44-45 United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or
 44-46 against such debtor, or against a bankruptcy trust established
 44-47 under 11 U.S.C. Section 524(g) or similar provisions of the United
 44-48 States Code in such a bankruptcy proceeding commenced prior to such
 44-49 date; or

44-50 (8) a successor asbestos-related liability arising
 44-51 from a claim brought under Chapter 95, a common law claim for
 44-52 premises liability, or a cause of action for premises liability, as
 44-53 applicable, but only if the successor owned or controlled the
 44-54 premise or premises at issue after the merger or consolidation.

44-55 Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED
 44-56 LIABILITIES. (a) Except as further limited in Subsection (b), the
 44-57 cumulative successor asbestos-related liabilities of a corporation
 44-58 are limited to the fair market value of the total gross assets of
 44-59 the transferor determined as of the time of the merger or
 44-60 consolidation. The corporation does not have any responsibility
 44-61 for successor asbestos-related liabilities in excess of this
 44-62 limitation.

44-63 (b) If the transferor had assumed or incurred successor
 44-64 asbestos-related liabilities in connection with a prior merger or
 44-65 consolidation with a prior transferor, then the fair market value
 44-66 of the total assets of the prior transferor, determined as of the
 44-67 time of such earlier merger or consolidation, shall be substituted
 44-68 for the limitation set forth in Subsection (a) for purposes of
 44-69 determining the limitation of liability of a corporation.

45-1 Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS
 45-2 ASSETS. (a) A corporation may establish the fair market value of
 45-3 total gross assets for the purpose of the limitations under Section
 45-4 149.003 through any method reasonable under the circumstances,
 45-5 including:

45-6 (1) by reference to the going concern value of the
 45-7 assets or to the purchase price attributable to or paid for the
 45-8 assets in an arm's-length transaction; or

45-9 (2) in the absence of other readily available
 45-10 information from which fair market value can be determined, by
 45-11 reference to the value of the assets recorded on a balance sheet.

45-12 (b) Total gross assets include intangible assets.

45-13 (c) Total gross assets include the aggregate coverage under
 45-14 any applicable liability insurance that was issued to the
 45-15 transferor whose assets are being valued for purposes of this
 45-16 section and which insurance has been collected or is collectable to
 45-17 cover successor asbestos-related liabilities (except compensation
 45-18 for liabilities arising from workers' exposure to asbestos solely
 45-19 during the course of their employment by the transferor). A
 45-20 settlement of a dispute concerning such insurance coverage entered
 45-21 into by a transferor or successor with the insurers of the
 45-22 transferor 10 years or more before the enactment of this chapter
 45-23 shall be determinative of the aggregate coverage of such liability
 45-24 insurance to be included in the calculation of the transferor's
 45-25 total gross assets.

45-26 (d) The fair market value of total gross assets shall
 45-27 reflect no deduction for any liabilities arising from any asbestos
 45-28 claim.

45-29 Sec. 149.005. ADJUSTMENT. (a) Except as provided in
 45-30 Subsections (b), (c), and (d), the fair market value of total gross
 45-31 assets at the time of a merger or consolidation increases annually
 45-32 at a rate equal to the sum of:

45-33 (1) the prime rate as listed in the first edition of
 45-34 the Wall Street Journal published for each calendar year since the
 45-35 merger or consolidation; and

45-36 (2) one percent.

45-37 (b) The rate in Subsection (a) is not compounded.

45-38 (c) The adjustment of fair market value of total gross
 45-39 assets continues as provided under Subsection (a) until the date
 45-40 the adjusted value is exceeded by the cumulative amounts of
 45-41 successor asbestos-related liabilities paid or committed to be paid
 45-42 by or on behalf of the corporation or a predecessor, or by or on
 45-43 behalf of a transferor, after the time of the merger or
 45-44 consolidation for which the fair market value of total gross assets
 45-45 is determined.

45-46 (d) No adjustment of the fair market value of total gross
 45-47 assets shall be applied to any liability insurance otherwise
 45-48 included in the definition of total gross assets by Section
 45-49 149.004(c).

45-50 Sec. 149.006. SCOPE OF CHAPTER. The courts in this state
 45-51 shall apply, to the fullest extent permissible under the United
 45-52 States Constitution, this state's substantive law, including the
 45-53 limitation under this chapter, to the issue of successor
 45-54 asbestos-related liabilities.

45-55 SECTION 17.02. Chapter 149, Civil Practice and Remedies
 45-56 Code, as added by this article, applies to all actions:

45-57 (1) commenced on or after the effective date of this
 45-58 Act; or

45-59 (2) pending on that effective date and in which the
 45-60 trial, or any new trial or retrial following motion, appeal, or
 45-61 otherwise, begins on or after that effective date.

45-62 ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

45-63 SECTION 18.01. Sections 84.004(a) and (c), Civil Practice
 45-64 and Remedies Code, are amended to read as follows:

45-65 (a) Except as provided by Subsection (d) and Section 84.007,
 45-66 a volunteer [~~who is serving as an officer, director, or trustee~~] of
 45-67 a charitable organization is immune from civil liability for any
 45-68 act or omission resulting in death, damage, or injury if the
 45-69 volunteer was acting in the course and scope of the volunteer's

46-1 [~~his~~] duties or functions, including as an officer, director, or
46-2 trustee within the organization.

46-3 (c) Except as provided by Subsection (d) and Section 84.007,
46-4 a volunteer health care provider who is serving as a direct service
46-5 volunteer of a charitable organization is immune from civil
46-6 liability for any act or omission resulting in death, damage, or
46-7 injury to a patient if:

46-8 (1) ~~the volunteer was acting in good faith and in the~~
46-9 ~~course and scope of the volunteer's duties or functions within the~~
46-10 ~~organization;~~

46-11 ~~[(2)]~~ the volunteer commits the act or omission in the
46-12 course of providing health care services to the patient;

46-13 (2) ~~[(3)]~~ the services provided are within the scope
46-14 of the license of the volunteer; and

46-15 (3) ~~[(4)]~~ before the volunteer provides health care
46-16 services, the patient or, if the patient is a minor or is otherwise
46-17 legally incompetent, the person responsible for ~~[patient's parent,~~
46-18 ~~managing conservator, legal guardian, or other person with legal~~
46-19 ~~responsibility for the care of]~~ the patient signs a written
46-20 statement that acknowledges:

46-21 (A) that the volunteer is providing care that is
46-22 not administered for or in expectation of compensation; and

46-23 (B) the limitations on the recovery of damages
46-24 from the volunteer in exchange for receiving the health care
46-25 services.

46-26 SECTION 18.02. Section 84.007(a), Civil Practice and
46-27 Remedies Code, is amended to read as follows:

46-28 (a) This chapter does not apply to an act or omission that is
46-29 intentional, wilfully ~~[or wantonly]~~ negligent, or done with
46-30 conscious indifference or reckless disregard for the safety of
46-31 others.

46-32 SECTION 18.03. The following provisions of the Civil
46-33 Practice and Remedies Code are repealed:

46-34 (1) Section 84.003(4); and

46-35 (2) Section 84.004(b).

46-36 ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS
46-37 AND VOLUNTEER FIRE FIGHTERS

46-38 SECTION 19.01. (a) The legislature finds that:

46-39 (1) 80 percent of the area of this state is currently
46-40 protected by volunteer fire departments;

46-41 (2) concern regarding personal liability arising out
46-42 of services rendered by volunteer fire fighters on behalf of
46-43 volunteer fire departments deters individuals from offering their
46-44 services as volunteer fire fighters;

46-45 (3) the diminishing number of volunteer fire fighters
46-46 leads to increased costs and less service to areas of this state
46-47 that are served by volunteer fire departments; and

46-48 (4) it is in the public interest of the citizens of
46-49 this state to encourage the continued level of service provided by
46-50 volunteer fire departments.

46-51 (b) The purpose of this article is to reduce the exposure to
46-52 liability of:

46-53 (1) a volunteer fire department while involved in or
46-54 providing an emergency response; and

46-55 (2) a volunteer fire fighter while acting as a member
46-56 of a volunteer fire department.

46-57 SECTION 19.02. Chapter 78, Civil Practice and Remedies
46-58 Code, is amended by adding Subchapter C to read as follows:

46-59 SUBCHAPTER C. FIRE-FIGHTING SERVICES

46-60 Sec. 78.101. DEFINITIONS. In this subchapter:

46-61 (1) "Emergency response" means a response involving
46-62 fire protection or prevention, rescue, emergency medical, or
46-63 hazardous material response services.

46-64 (2) "Volunteer fire department" means a nonprofit
46-65 organization that is:

46-66 (A) operated by its members;

46-67 (B) exempt from the state sales tax under Section
46-68 151.310, Tax Code, or the state franchise tax under Section
46-69 171.083, Tax Code; and

47-1 (C) organized to provide an emergency response.
47-2 (3) "Volunteer fire fighter" means a member of a
47-3 volunteer fire department.

47-4 Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY
47-5 RESPONSE. This subchapter applies only to damages for personal
47-6 injury, death, or property damage, other than property damage to
47-7 which Subchapter A applies, arising from an error or omission of:

47-8 (1) a volunteer fire department while involved in or
47-9 providing an emergency response; or

47-10 (2) a volunteer fire fighter while involved in or
47-11 providing an emergency response as a member of a volunteer fire
47-12 department.

47-13 Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A
47-14 volunteer fire department is:

47-15 (1) liable for damages described by Section 78.102
47-16 only to the extent that a county providing the same or similar
47-17 services would be liable under Chapter 101; and

47-18 (2) entitled to the exclusions, exceptions, and
47-19 defenses applicable to a county under Chapter 101 and other
47-20 statutory or common law.

47-21 Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A
47-22 volunteer fire fighter is:

47-23 (1) liable for damages described by Section 78.102
47-24 only to the extent that an employee providing the same or similar
47-25 services for a county would be liable; and

47-26 (2) entitled to the exclusions, exceptions,
47-27 immunities, and defenses applicable to an employee of a county
47-28 under Chapter 101 and other statutory or common law.

47-29 ARTICLE 20. DESIGN PROFESSIONALS

47-30 SECTION 20.01. Title 6, Civil Practice and Remedies Code,
47-31 is amended by adding Chapter 150 to read as follows:

47-32 CHAPTER 150. DESIGN PROFESSIONALS

47-33 Sec. 150.001. DEFINITION. In this chapter, "design
47-34 professional" means a registered architect or licensed
47-35 professional engineer.

47-36 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action for
47-37 damages alleging professional negligence by a design professional,
47-38 the plaintiff shall be required to file with the complaint an
47-39 affidavit of a third-party registered architect or licensed
47-40 professional engineer competent to testify and practicing in the
47-41 same area of practice as the defendant, which affidavit shall set
47-42 forth specifically at least one negligent act, error, or omission
47-43 claimed to exist and the factual basis for each such claim. The
47-44 third-party professional engineer or registered architect shall be
47-45 licensed in this state and actively engaged in the practice of
47-46 architecture or engineering.

47-47 (b) The contemporaneous filing requirement of Subsection
47-48 (a) shall not apply to any case in which the period of limitation
47-49 will expire within 10 days of the date of filing and, because of
47-50 such time constraints, the plaintiff has alleged that an affidavit
47-51 of a third-party registered architect or professional engineer
47-52 could not be prepared. In such cases, the plaintiff shall have 30
47-53 days after the filing of the complaint to supplement the pleadings
47-54 with the affidavit. The trial court may, on motion, after hearing
47-55 and for good cause, extend such time as it shall determine justice
47-56 requires.

47-57 (c) The defendant shall not be required to file an answer to
47-58 the complaint and affidavit until 30 days after the filing of such
47-59 affidavit.

47-60 (d) The plaintiff's failure to file the affidavit in
47-61 accordance with Subsection (a) or (b) may result in dismissal with
47-62 prejudice of the complaint against the defendant.

47-63 (e) This statute shall not be construed to extend any
47-64 applicable period of limitation or repose.

47-65 ARTICLE 21. LIMITATIONS OF LIABILITY

47-66 SECTION 21.01. Section 75.002, Civil Practice and Remedies
47-67 Code, is amended by adding Subsection (h) to read as follows:

47-68 (h) An owner, lessee, or occupant of real property in this
47-69 state is liable for trespass as a result of migration or transport

48-1 of any air contaminant, as defined in Section 382.003(2), Health
 48-2 and Safety Code, other than odor, only upon a showing of actual and
 48-3 substantial damages by a plaintiff in a civil action.

48-4 ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

48-5 SECTION 22.01. Section 311.041, Health and Safety Code, is
 48-6 amended to read as follows:

48-7 Sec. 311.041. POLICY STATEMENT. It is the purpose of this
 48-8 subchapter to clarify and set forth the duties, [and]
 48-9 responsibilities, and benefits that apply to [of nonprofit]
 48-10 hospitals for providing community benefits that include charity
 48-11 care.

48-12 SECTION 22.02. Subchapter D, Chapter 311, Health and Safety
 48-13 Code, is amended by adding Section 311.0456 to read as follows:

48-14 Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED
 48-15 LIABILITY. (a) In this section, "department" means the Texas
 48-16 Department of Health.

48-17 (b) This section applies only to:

48-18 (1) a nonprofit hospital or hospital system that is
 48-19 certified by the department under Subsection (d); or

48-20 (2) a hospital that is licensed under Chapter 241, is
 48-21 not a nonprofit hospital, and is certified by the department under
 48-22 Subsection (g).

48-23 (c) To be eligible for certification under Subsection (d), a
 48-24 nonprofit hospital or hospital system must provide:

48-25 (1) charity care and community benefits in a combined
 48-26 amount equal to at least eight percent of the net patient revenue of
 48-27 the hospital or hospital system during the preceding fiscal year of
 48-28 the hospital or system; and

48-29 (2) at least 40 percent of the charity care required by
 48-30 the county in which the hospital is located.

48-31 (d) To be certified under this subsection, a nonprofit
 48-32 hospital or hospital system must submit a report based on its most
 48-33 recent completed and audited prior fiscal year to the department
 48-34 not later than April 30 of each year stating that the hospital or
 48-35 system is eligible for certification. The department must verify
 48-36 the information in the report not later than May 31 of the year in
 48-37 which the department receives the report by checking the
 48-38 information against the report filed by the hospital or system
 48-39 under Section 311.046. After the department has verified the
 48-40 information in the report, the department shall certify that the
 48-41 hospital or hospital system has met the requirements for
 48-42 certification. The certification issued under this subsection to a
 48-43 nonprofit hospital or hospital system takes effect on May 31 of that
 48-44 year and expires on the anniversary of that date.

48-45 (e) For the purposes of Subsection (b)(1), a corporation
 48-46 certified by the Texas State Board of Medical Examiners as a
 48-47 nonprofit organization under Section 162.001, Occupations Code,
 48-48 whose sole member is a qualifying hospital or hospital system is
 48-49 considered a nonprofit hospital or hospital system.

48-50 (f) To be eligible for certification under Subsection (g), a
 48-51 hospital described by Subsection (b)(2) must provide:

48-52 (1) charity care and community benefits in a combined
 48-53 amount equal to at least eight percent of the net patient revenue of
 48-54 the hospital during the preceding fiscal year of the hospital; and

48-55 (2) at least 40 percent of the charity care required by
 48-56 the county in which the hospital is located.

48-57 (g) To be certified under this subsection, a hospital
 48-58 described by Subsection (b)(2) must submit a report based on its
 48-59 most recent completed and audited prior fiscal year to the
 48-60 department not later than April 30 of each year stating that the
 48-61 hospital is eligible for certification. The report must include
 48-62 the information described by Sections 311.046(a)(3), (4), and (5).
 48-63 The department must verify the information in the report not later
 48-64 than May 31 of the year in which the department receives the report.
 48-65 After the department has verified the information in the report,
 48-66 the department shall certify that the hospital has met the
 48-67 requirements for certification. The certification issued under
 48-68 this subsection to a hospital takes effect on May 31 of that year
 48-69 and expires on the anniversary of that date.

49-1 (h) Notwithstanding any other law, the liability of a
 49-2 hospital or hospital system for a cause of action that accrues
 49-3 during the period that the hospital or system is certified under
 49-4 this section is subject to the limitations specified by Section
 49-5 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of
 49-6 that section does not apply.

49-7 SECTION 22.03. The heading to Subchapter D, Chapter 311,
 49-8 Health and Safety Code, is amended to read as follows:

49-9 SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE [~~DUTIES OF~~
 49-10 ~~NONPROFIT HOSPITALS~~]

49-11 ARTICLE 23. INVERSE CONDEMNATION

49-12 SECTION 23.01. Title 4, Property Code, is amended by adding
 49-13 Chapter 30 to read as follows:

49-14 CHAPTER 30. INVERSE CONDEMNATION

49-15 Sec. 30.001. CONCURRENT JURISDICTION. District courts and
 49-16 county courts at law have concurrent jurisdiction in inverse
 49-17 condemnation cases. A county court has no jurisdiction in inverse
 49-18 condemnation cases.

49-19 Sec. 30.002. TRANSFER OF CASES. If an inverse condemnation
 49-20 case is pending in a county court at law and the court determines
 49-21 that the case involves an issue of title or any other matter that
 49-22 cannot be fully adjudicated in that court, the judge shall transfer
 49-23 the case to a district court.

49-24 Sec. 30.003. DISTRICT COURT AUTHORITY. A district court
 49-25 may determine all issues in an inverse condemnation case, including
 49-26 whether property has been taken or damaged for a public purpose
 49-27 without compensation and the assessment of damages, in any suit in
 49-28 which this state, a political subdivision of this state, a person,
 49-29 an association of persons, or a corporation is a party.

49-30 Sec. 30.004. STANDARD PROCEDURE. (a) The judge of a court
 49-31 in which an inverse condemnation petition is filed shall order a
 49-32 bench trial to:

49-33 (1) determine whether the property owned by the
 49-34 plaintiff was taken or damaged for a public purpose without
 49-35 compensation; and

49-36 (2) resolve any jurisdictional matters.

49-37 (b) If the judge determines that the taking of or damage to
 49-38 the property occurred, the judge, if requested, shall conduct a
 49-39 jury trial on valuation issues.

49-40 (c) If the judge determines that the taking of or damage to
 49-41 the property has not occurred, the judge shall dismiss the
 49-42 petition.

49-43 Sec. 30.005. VENUE IN CERTAIN CASES. An inverse
 49-44 condemnation action arising from flooding, the impoundment of
 49-45 water, the discharge of water into a natural watercourse, or the
 49-46 construction or operation of dams for flood control shall be
 49-47 brought in the county in which the principal office of the defendant
 49-48 is located.

49-49 SECTION 23.02. Chapter 30, Property Code, as added by this
 49-50 article, applies only to an inverse condemnation action filed on or
 49-51 after the effective date of this article. An inverse condemnation
 49-52 action filed before the effective date of this article is governed
 49-53 by the law in effect on the date the action was filed, and the former
 49-54 law is continued in effect for that purpose.

49-55 ARTICLE 24. ACCELERATED APPEAL;

49-56 EFFECTIVE DATE; SEVERABILITY

49-57 SECTION 24.01. (a) The constitutionality and other
 49-58 validity under the state or federal constitution of all or any part
 49-59 of Article 10 of this Act may be determined in an action for
 49-60 declaratory judgment in a district court in Travis County under
 49-61 Chapter 37, Civil Practice and Remedies Code, if it is alleged that
 49-62 all or any part of Article 10 of this Act affects the rights,
 49-63 status, or legal relation of a party in a civil action with respect
 49-64 to any other party in the civil action.

49-65 (b) An appeal of a declaratory judgment or order, however
 49-66 characterized, of a district court, including an appeal of the
 49-67 judgment of an appellate court, holding or otherwise determining
 49-68 that all or any part of Article 10 of this Act is constitutional or
 49-69 unconstitutional, or otherwise valid or invalid, under the state or

50-1 federal constitution is an accelerated appeal.

50-2 (c) If the judgment or order is interlocutory, an
50-3 interlocutory appeal may be taken from the judgment or order and is
50-4 an accelerated appeal.

50-5 (d) A district court in Travis County may grant or deny a
50-6 temporary or otherwise interlocutory injunction or a permanent
50-7 injunction on the grounds of the constitutionality or
50-8 unconstitutionality, or other validity or invalidity, under the
50-9 state or federal constitution of all or any part of Article 10 of
50-10 this Act.

50-11 (e) There is a direct appeal to the supreme court from an
50-12 order, however characterized, of a trial court granting or denying
50-13 a temporary or otherwise interlocutory injunction or a permanent
50-14 injunction on the grounds of the constitutionality or
50-15 unconstitutionality, or other validity or invalidity, under the
50-16 state or federal constitution of all or any part of Article 10 this
50-17 Act. The direct appeal is an accelerated appeal.

50-18 (f) This section exercises the authority granted by Section
50-19 3-b, Article V, Texas Constitution.

50-20 (g) An appeal under this section, including an
50-21 interlocutory, accelerated, or direct appeal, is governed, as
50-22 applicable, by the Texas Rules of Appellate Procedure, including
50-23 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
50-24 38.6(a) and (b), 40.1(b), and 49.4.

50-25 SECTION 24.02. (a) All articles of this Act, other than
50-26 Article 17, take effect September 1, 2003.

50-27 (b) Article 17 of this Act takes effect immediately if this
50-28 Act receives a vote of two-thirds of all the members elected to each
50-29 house, as provided by Section 39, Article III, Texas Constitution.
50-30 If this Act does not receive the vote necessary for immediate
50-31 effect, Article 17 of this Act takes effect September 1, 2003.

50-32 (c) Articles 4, 5, and 8 of this Act apply to an action filed
50-33 on or after May 30, 2003. An action filed before May 30, 2003, is
50-34 governed by the law in effect immediately before the change in law
50-35 made by Articles 4, 5, and 8, and that law is continued in effect for
50-36 that purpose.

50-37 (d) Except as otherwise provided in this section or by a
50-38 specific provision in an article, this Act applies only to an action
50-39 filed on or after the effective date of this Act. An action filed
50-40 before the effective date of this Act is governed by the law in
50-41 effect immediately before the change in law made by this Act, and
50-42 that law is continued in effect for that purpose.

50-43 SECTION 24.03. If any provision of this Act or its
50-44 application to any person or circumstance is held invalid, the
50-45 invalidity does not affect other provisions or applications of this
50-46 Act that can be given effect without the invalid provision or
50-47 application, and to this end the provisions of this Act are declared
50-48 to be severable.

50-49 * * * * *