

By: Canales

H.B. No. 3104

A BILL TO BE ENTITLED

AN ACT

relating to health care liability claims.

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

SECTION 1. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PREFILING PROCEDURE

Sec. 2.01. PREREQUISITES TO FILING: NOTICE; EXPERT REPORT; MEDIATION. (a) In this section, "mediation" has the meaning assigned by Section 154.023(a), Civil Practice and Remedies Code.

(b) Except as provided by Subsection (c) of this section, a person may not file a health care liability claim against a physician or health care provider unless the person has:

(1) provided the physician or provider written notice of the claim by certified mail, return receipt requested; or

(2) obtained an expert report regarding the physician or provider that meets the requirements of Section 2.05 of this Act and served the physician or provider with a copy of the report and a request for mediation under this subchapter; and

(3) participated in mediation of the claim in accordance with this subchapter.

(c) A person may file a health care liability claim against a physician or health care provider if the physician or provider:

(1) refuses to participate in mediation under this

1 subchapter; or

2 (2) fails to respond to a request for mediation served  
3 on the physician or provider under Subsection (b) of this section.

4 Sec. 2.02. SWORN STATEMENT REQUIRED. A complaint filed  
5 that asserts a health care liability claim must include:

6 (1) a copy of the expert report required by Section  
7 2.01 of this Act; and

8 (2) an affidavit stating that:

9 (A) the parties submitted the issues addressed in  
10 the complaint to mediation in compliance with this subchapter and  
11 failed to reach a written agreement as a result of the mediation; or

12 (B) the physician or health care provider named  
13 in the complaint:

14 (i) refuses to participate in mediation  
15 under this subchapter; or

16 (ii) failed to respond to a request for  
17 mediation served on the physician or provider under Section 2.01 of  
18 this Act.

19 Sec. 2.03. RECORDS REQUEST. If a person asserting a health  
20 care liability claim serves a physician or health care provider  
21 with a written request for the person's medical records maintained  
22 by the physician or provider, the physician or provider shall  
23 provide the records with an affidavit by the physician or provider  
24 that the records are complete, accurate, and without alteration.

25 Sec. 2.04. QUALIFICATIONS OF EXPERT. (a) A person who  
26 prepares an expert report regarding a physician must be qualified  
27 to testify under Section 14.01(a) of this Act.

1       (b) A person who prepares an expert report regarding a  
2 nonphysician health care provider must have knowledge of accepted  
3 standards of care for the diagnosis, care, or treatment of the  
4 illness, injury, or condition involved in the claim against the  
5 provider.

6       Sec. 2.05. CONTENTS OF EXPERT REPORT. An expert report  
7 prepared under this subchapter must provide a fair summary of the  
8 expert's opinions as of the date of the report regarding:

9           (1) applicable standards of care;

10          (2) the manner in which the care rendered by the  
11 physician or health care provider failed to meet the standards; and

12          (3) the causal relationship between that failure and  
13 the injury, harm, or damages claimed.

14       Sec. 2.06. SELECTION OF MEDIATOR; SUBMISSION OF CLAIM AND  
15 RESPONSE. (a) Not later than the 30th day after the date a request  
16 for mediation is served under Section 2.01 of this Act, the claimant  
17 and the physician or health care provider who receives the request  
18 shall select a mediator to conduct mediation through the procedure  
19 described by Section 2.07 of this Act.

20       (b) If the claimant and the physician or health care  
21 provider fail to select a mediator in the time provided under  
22 Subsection (a) of this section, the claimant or the physician or  
23 provider may file a petition in a district court requesting the  
24 court to refer the dispute to a mediator. The petition may only be  
25 filed in a court in which the health care liability claim against  
26 the physician or provider could properly be filed.

27       (c) The court shall refer the dispute before the 31st day

1 after the date the petition is filed.

2 (d) Not later than the fifth day after the date a mediator is  
3 selected or appointed under this section:

4 (1) the claimant shall submit to the mediator:

5 (A) a specific written statement of the nature of  
6 the claim; and

7 (B) the expert report prepared under Section 2.01  
8 of this Act; and

9 (2) the recipient shall submit to the mediator a  
10 written response to the statement and the expert report.

11 Sec. 2.07. FORUM FOR CONDUCTING MEDIATION. Mediation  
12 required by this subchapter must be conducted through:

13 (1) an alternative dispute resolution system  
14 established under Chapter 152, Civil Practice and Remedies Code;

15 (2) a dispute resolution organization described by  
16 Section 154.001, Civil Practice and Remedies Code; or

17 (3) a nonjudicial and informally conducted forum for  
18 the voluntary settlement of citizens' disputes through the  
19 intervention of an impartial third party, including the mediation  
20 procedures described by Subchapter B, Chapter 154, Civil Practice  
21 and Remedies Code.

22 Sec. 2.08. WRITTEN AGREEMENT. (a) If the parties to  
23 mediation under this subchapter reach an agreement, the mediator  
24 shall:

25 (1) issue a written statement specifying the terms of  
26 the agreement; and

27 (2) provide a copy of the written agreement to each

1 party to the mediation.

2 (b) A written agreement issued under Subsection (a) of this  
3 section is not effective unless all parties to the mediation sign  
4 the agreement before the seventh working day after the date the  
5 agreement is issued.

6 (c) A written agreement issued and signed under this section  
7 is enforceable by court order.

8 Sec. 2.09. COSTS. A person who makes a health care  
9 liability claim shall pay all costs associated with conducting the  
10 mediation required by this subchapter.

11 Sec. 2.10. TOLLING OF STATUTE OF LIMITATIONS. The statute  
12 of limitations governing a health care liability claim is tolled  
13 beginning on the date the claimant provides notice of the claim  
14 under Section 2.01 of this Act and ending on the 360th day after  
15 that date.

16 SECTION 2. Section 13.01 and Subchapter D, Medical  
17 Liability and Insurance Improvement Act of Texas (Article 4590i,  
18 Vernon's Texas Civil Statutes), are repealed.

19 SECTION 3. The changes in law made by this Act apply only to  
20 a cause of action that accrues on or after the effective date of  
21 this Act. A cause of action that accrues before the effective date  
22 of this Act is governed by the law in effect immediately before that  
23 date, and that law is continued in effect for that purpose.

24 SECTION 4. This Act takes effect September 1, 2003.