

By: Nixon

H.J.R. No. 39

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to limits of
2 liability for other than economic damages in medical or health care
3 liability claims and other claims.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article III, Texas Constitution, is amended by
6 adding Section 66 to read as follows:

7 Sec. 66 (a) As used in this section, "economic damages"
8 means compensatory damages for any pecuniary loss or damage, but
9 does not include any loss or damage, however characterized, for
10 past, present, and future physical pain and suffering, mental
11 anguish and suffering, loss of consortium, loss of companionship
12 and society, disfigurement, or physical impairment.

13 (b) Notwithstanding any other provision of this
14 constitution, the legislature may by statute determine the limit of
15 liability for all damages and losses, however characterized, other
16 than economic damages, of a provider of medical or health care with
17 respect to treatment, lack of treatment, or other claimed departure
18 from an accepted standard of medical or health care or safety,
19 however characterized, which is or is claimed to be a cause of, or
20 which contributes or is claimed to contribute to, disease, injury,
21 or death of a person, whether the claim or cause of action arises
22 under or is derived from common law, a statute, or other law,
23 including any claim or cause of action based or sounding in tort,
24 contract, or any other theory or any combination of theories of

1 liability. Such a claim or cause of action includes a medical or
2 health care liability claim as defined by the legislature.

3 (c) Notwithstanding any other provision of this
4 constitution, the legislature may by statute enacted after January
5 1, 2005, determine the limit of liability for all damages and
6 losses, however characterized, other than economic damages, in any
7 claim or cause of action not within subsection (b) of this section,
8 whether the claim or cause of action arises under or is derived from
9 common law, a statute, or other law, including any claim or cause of
10 action based or sounding in tort, contract, or any other theory or
11 any combination of theories of liability.

12 (d) The legislature may include in any statute passed
13 pursuant to this section a limitation of liability in the statute:

14 (1) that applies to each claim or cause of action, each
15 claimant, each provider, or a combination of one or more claims or
16 causes of action, claimants, or providers;

17 (2) that applies to all damages and losses, other than
18 economic damages, sought with respect to such a claim or cause of
19 action, an element of such damage or loss so sought, or a
20 combination of such elements;

21 (3) that is subject to increase or decrease over time
22 by a means or as otherwise specified by the legislative;

23 (4) that is subject to or conditioned on an event or
24 requirement specified by the legislative; or

25 (5) that applies to a claim or cause of action within
26 either subsection (a) or subsection (b) of this section which has
27 not become vested in a final judgment, including a claim or cause of

1 action in a suit or action pending on or before the effective date
2 of a statute passed pursuant to this section.

3 (e) This section applies to laws enacted by the 78th
4 Legislature, Regular Session, 2003, and to all subsequent regular
5 or special sessions of the legislature.

6 SECTION 2. This proposed constitutional amendment shall be
7 submitted to the voters at an election to be held November 4, 2003.
8 The ballot shall be printed to permit voting for or against the
9 proposition: "Amend the Texas Constitution to permit the
10 Legislature to determine limitations on non-economic damages."

11 SECTION 3. In the event that a majority of the voters voting
12 for or against this proposed constitutional amendment, pursuant to
13 Section 2 of this resolution, do not vote for the amendment, no
14 consideration for any purpose is to be given by any court in any
15 manner or to any extent to any aspect of this vote.