

By: Nelson

S.B. No. 12

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. Sections 4.01(a) and (c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made not later than the 90th day [~~at least 60 days~~] before the filing of a suit in any court of this state based upon a health care liability claim.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 90 [~~75~~] days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

SECTION 2. Section 10.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.01. LIMITATION ON HEALTH CARE LIABILITY CLAIMS. (a) Except as provided by this section and notwithstanding [~~Notwithstanding~~] any other law, no health care liability claim may be commenced unless the action is filed on or before the second anniversary of [~~within two years from~~] the occurrence of the breach

1 or tort or from the date the medical or health care treatment that  
2 is the subject of the claim or the hospitalization for which the  
3 claim is made is completed; provided that, minors under the age of  
4 12 years shall have until their 14th birthday in which to file, or  
5 have filed on their behalf, the claim. Except as herein provided,  
6 this subchapter applies to all persons regardless of minority or  
7 other legal disability.

8 (b) If the injury for which the claim is made cannot be  
9 discovered by the claimant with reasonable diligence in the time  
10 provided by Subsection (a), the claim may be filed on or before the  
11 first anniversary of the earlier of the date on which the injury was  
12 discovered or the date on which the claimant should have discovered  
13 the injury with reasonable diligence.

14 SECTION 3. Section 11.02(a), Medical Liability and  
15 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas  
16 Civil Statutes), is amended to read as follows:

17 (a) In an action on a health care liability claim where  
18 final judgment is rendered against a physician or health care  
19 provider, the limit of civil liability ~~[for damages]~~ of the  
20 physician or health care provider for all past and future  
21 noneconomic losses recoverable by or on behalf of any injured  
22 person or the injured person's estate, including past and future  
23 physical pain and suffering, mental anguish and suffering,  
24 consortium, disfigurement, and any other nonpecuniary damage, is  
25 ~~[shall be]~~ limited to an amount not to exceed \$250,000 ~~[\$500,000]~~.

26 SECTION 4. The Medical Liability and Insurance Improvement  
27 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is

amended by adding Subchapters Q, R, and S to read as follows:

SUBCHAPTER Q. COLLATERAL SOURCE BENEFITS

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

(1) the Social Security Act (42 U.S.C. Section 301 et seq.);

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

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

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

(B) a disability insurance policy; and

(C) a property or casualty insurance policy, including a motor vehicle or homeowners' insurance policy;

(4) an agreement under which a person, including a health maintenance organization operating under a certificate of authority issued under Chapter 843, Insurance Code, is obligated to provide or pay for medical, hospital, dental, or other health care services or similar benefits; or

(5) a contractual or voluntary wage continuation plan, provided by an employer or other person, or any other system intended to provide wages during a period of disability.

Sec. 17.02. ADMISSIBILITY OF EVIDENCE OF COLLATERAL SOURCE BENEFITS. Evidence of a collateral source benefit is admissible in

an action on a health care liability claim if the benefit:

(1) has been paid or is substantially certain to be paid to the claimant; and

(2) compensates the claimant for at least some of the damages sought in the action.

Sec. 17.03. CONSIDERATION OF COLLATERAL SOURCE BENEFITS. (a) The trier of fact shall consider collateral source benefits admissible under Section 17.02 in determining the amount of a judgment.

(b) The court shall consider collateral source benefits admissible under Section 17.02 in reviewing a judgment for excessiveness.

Sec. 17.04. PREMIUMS PAID FOR COLLATERAL SOURCE BENEFITS. In determining the amount of a judgment, the trier of fact may consider premiums personally paid by a claimant to obtain coverage that provides a collateral source benefit that has been paid or that is payable.

Sec. 17.05. EVIDENCE OF TAX IMPLICATION OF DAMAGE AWARDS. The trier of fact shall be informed of the tax implications of an award of damages for a claim for which collateral source benefits were received.

SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

Sec. 18.01. SCOPE OF SUBCHAPTER. This subchapter applies only if the total award of future damages in an action on a health care liability claim against a physician or health care provider exceeds \$50,000.

Sec. 18.02. PERIODIC PAYMENT. (a) The court shall order

1 future damages awarded in a health care liability claim to be paid  
2 in periodic installments, in the amounts, and over the period of  
3 time determined by the judge.

4 (b) The total amount paid may not exceed the amount of the  
5 award for future damages specified in the findings of the trier of  
6 fact.

7 (c) Payments for future damages for medical and other health  
8 care costs, for economic loss other than the costs of medical or  
9 other health care and loss of earning capacity, and for noneconomic  
10 loss terminate on the death of the claimant.

11 (d) The total amount of payments for future damages for loss  
12 of earning capacity owed but not yet paid to the claimant at the  
13 time of the claimant's death shall be paid to the estate of the  
14 claimant in a lump-sum amount based on the present discounted value  
15 of the total as determined by a court.

16 SUBCHAPTER S. ATTORNEY'S FEES

17 Sec. 19.01. LIMITATIONS ON CONTINGENCY  
18 FEES. Notwithstanding a contract between a claimant and an  
19 attorney, an attorney who represents a claimant in a health care  
20 liability claim may not receive attorney's fees for the  
21 representation that exceed:

22 (1) 40 percent of the lesser of:

23 (A) the amount awarded to the claimant; or

24 (B) \$50,000; plus

25 (2) 33-1/3 percent of the lesser of:

26 (A) the amount by which the award exceeds  
27 \$50,000; or

1                   (B) \$50,000; plus

2           (3) 25 percent of the lesser of:

3                   (A) the amount by which the award exceeds  
4 \$100,000; or

5                   (B) \$500,000; plus

6           (4) 15 percent of the amount by which the award exceeds  
7 \$600,000.

8           SECTION 5. Sections 11.01, 11.03, and 11.04, Medical  
9 Liability and Insurance Improvement Act of Texas (Article 4590i,  
10 Vernon's Texas Civil Statutes), are repealed.

11           SECTION 6. (a) Except as provided by this section, the  
12 changes in law made by this Act to the Medical Liability and  
13 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas  
14 Civil Statutes) apply only to a cause of action that accrues on or  
15 after the effective date of this Act. A cause of action that  
16 accrues before the effective date of this Act is governed by the law  
17 in effect immediately before the effective date of this Act, and  
18 that law is continued in effect for that purpose.

19           (b) Subchapter S, Medical Liability and Insurance  
20 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil  
21 Statutes), as added by this Act, applies only to attorney's fees for  
22 representing a claimant in an action filed on or after the effective  
23 date of this Act. Attorney's fees in an action filed before the  
24 effective date of this Act are governed by the law in effect  
25 immediately before that date, and that law is continued in effect  
26 for that purpose.

27           SECTION 7. This Act takes effect immediately if it receives

S.B. No. 12

1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2003.