By: Harris S.B. No. 312

A BILL TO BE ENTITLED

AN ACT

- 2 relating to civil liability of and liability insurance for certain
 3 nursing institutions.
- 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 5 ARTICLE 1. LIMITATION ON CIVIL DAMAGES IN CERTAIN ACTIONS
- SECTION 1.01. Section 41.008, Civil Practice and Remedies
 Code, is amended to read as follows:
- 8 Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an
- 9 action in which a claimant seeks recovery of exemplary damages, the
- 10 trier of fact shall determine the amount of economic damages
- 11 separately from the amount of other compensatory damages.
- 12 (b) Except as provided by this section, exemplary
- 13 [Exemplary] damages awarded against a defendant may not exceed an
- 14 amount equal to the greater of:

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- 15 (1)(A) two times the amount of economic damages; plus
- 16 (B) an amount equal to any noneconomic damages
- found by the jury, not to exceed \$750,000; or
- 18 (2) \$200,000.
- (c) Except as provided by Subsection (d), Subsection (b)
- 20 does not apply to a cause of action against a defendant from whom a
- 21 plaintiff seeks recovery of exemplary damages based on conduct
- 22 described as a felony in the following sections of the Penal Code
- 23 if, except for Sections 49.07 and 49.08, the conduct was committed
- 24 knowingly or intentionally:

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Section 19.02 (murder);
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                (1)
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                (2)
                     Section 19.03 (capital murder);
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                (3)
                     Section 20.04 (aggravated kidnapping);
                     Section 22.02 (aggravated assault);
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                (4)
                     Section 22.011 (sexual assault);
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                (5)
 6
                     Section 22.021 (aggravated sexual assault);
                (6)
 7
                (7)
                     Section 22.04
                                     (injury to a child, elderly
 8
     individual, or disabled individual);
 9
                (8)
                     Section 32.21 (forgery);
                (9) Section 32.43 (commercial bribery);
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                (10) Section 32.45 (misapplication of fiduciary
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     property or property of financial institution);
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                      Section 32.46 (securing execution of document by
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     deception);
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                (12)
                      Section 32.47 (fraudulent destruction, removal,
     or concealment of writing);
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                (13) Chapter 31 (theft) the punishment level for which
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     is a felony of the third degree or higher;
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                      Section 49.07 (intoxication assault); or
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                (14)
                (15) Section 49.08 (intoxication manslaughter).
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               Subsection (b) applies to a cause of action against a
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           (d)
     defendant that is a not-for-profit nursing institution licensed
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     under Chapter 242, Health and Safety Code, and from whom a plaintiff
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24
     seeks recovery of exemplary damages based on conduct described as a
     felony in Section 22.04, Penal Code, only if the defendant is
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     finally convicted under that section for the conduct that gives
     rise to the plaintiff's cause of action.
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- 1 (e) In this section, "intentionally" and "knowingly" have
- 2 the same meanings assigned those terms in Sections 6.03(a) and (b),
- 3 Penal Code.
- 4 (f) [(e)] The provisions of Subsections (a), [and] (b),
- 5 (d), and (h) may not be made known to a jury by any means, including
- 6 voir dire, introduction into evidence, argument, or instruction.
- 7 $\underline{(g)}$ [$\frac{(f)}{(f)}$] Subsection (b) does not apply to a cause of action
- 8 for damages arising from the manufacture of methamphetamine as
- 9 described by Chapter 99.
- (h) Exemplary damages awarded against a defendant that is a
- 11 not-for-profit nursing institution licensed under Chapter 242,
- 12 Health and Safety Code, may not exceed an amount equal to the
- 13 greater of:
- 14 (1)(A) two times the amount of economic damages; plus
- 15 (B) an amount equal to any noneconomic damages
- found by the jury, not to exceed \$250,000; or
- 17 (2) \$200,000.
- 18 SECTION 1.02. Section 41.008, Civil Practice and Remedies
- 19 Code, as amended by this article, applies only to an action filed on
- 20 or after the effective date of this Act. An action filed before the
- 21 effective date of this Act is governed by the law in effect
- 22 immediately before that date, and that law is continued in effect
- 23 for that purpose.
- 24 ARTICLE 2. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION
- 25 SECTION 2.01. Subchapter B, Chapter 32, Human Resources
- 26 Code, is amended by adding Section 32.060 to read as follows:
- Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO

- 1 NOT-FOR-PROFIT NURSING INSTITUTIONS. (a) The following are not
- 2 admissible as evidence in a civil action:
- 3 (1) any finding by the department that a
- 4 not-for-profit institution licensed under Chapter 242, Health and
- 5 Safety Code, has violated a standard for participation in the
- 6 medical assistance program under this chapter; or
- 7 (2) the fact of the assessment of a monetary penalty
- 8 against a not-for-profit institution under Section 32.021 or the
- 9 payment of the penalty by an institution.
- 10 (b) This section does not apply in an enforcement action in
- 11 which the state or an agency or political subdivision of the state
- 12 <u>is a party.</u>
- SECTION 2.02. Subchapter A, Chapter 242, Health and Safety
- 14 Code, is amended by adding Section 242.017 to read as follows:
- 15 Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL
- 16 ACTIONS. (a) The following are not admissible as evidence in a
- 17 civil action:
- 18 (1) any finding by the department that a
- 19 not-for-profit institution has violated this chapter or a rule
- 20 adopted under this chapter; or
- 21 (2) the fact of the assessment of a penalty against a
- 22 not-for-profit institution under this chapter or the payment of the
- 23 penalty by an institution.
- 24 (b) This section does not apply in an enforcement action in
- 25 which the state or an agency or political subdivision of the state
- 26 is a party.
- 27 SECTION 2.03. The following laws are repealed:

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- 1 (1) Sections 32.021(i) and (k), Human Resources Code;
- 2 and
- 3 (2) Section 242.050, Health and Safety Code, as added
- 4 by Chapter 1284, Acts of the 77th Legislature, Regular Session,
- 5 2001.
- 6 ARTICLE 3. FILING OF RATES FOR CERTAIN LIABILITY INSURANCE
- 7 COVERAGE
- 8 SECTION 3.01. On or before the 60th day after the effective
- 9 date of this Act, each insurer described by Article 5.13, Insurance
- 10 Code, including a Lloyd's plan and the joint underwriting
- 11 association established under Article 21.49-3, Insurance Code,
- 12 that writes professional liability insurance coverage in this state
- 13 for a nursing institution licensed under Chapter 242, Health and
- 14 Safety Code, shall file new rates for that coverage under Articles
- 5.13-2 and 5.15-1, Insurance Code, to ensure that the reduction in
- 16 risk that is effected by the changes in law made by this Act is
- 17 reflected in those rates.
- 18 ARTICLE 4. EFFECTIVE DATE
- 19 SECTION 4.01. This Act takes effect immediately if it
- 20 receives a vote of two-thirds of all the members elected to each
- 21 house, as provided by Section 39, Article III, Texas
- 22 Constitution. If this Act does not receive the vote necessary for
- immediate effect, this Act takes effect September 1, 2003.