

By: Janek

S.B. No. 1598

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. Subchapter A, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 1.04 to read as follows:

Sec. 1.04. APPLICABILITY OF OTHER LAW. To the extent of any conflict between this Act and Article 4590m, Revised Statutes, related to health care liability claims against physicians, Article 4590m, Revised Statutes, prevails.

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

1 other legal disability.

2 (b) If the injury for which the claim is made cannot be
3 discovered by the claimant with reasonable diligence in the time
4 provided by Subsection (a) of this section, the claim may be filed
5 on or before the first anniversary of the earlier of the date on
6 which the injury was discovered or the date on which the claimant
7 should have discovered the injury with reasonable diligence.

8 SECTION 3. Section 11.02, Medical Liability and Insurance
9 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
10 Statutes), is amended by amending Subsections (a) and (b) and
11 adding Subsections (e) and (f) to read as follows:

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

21 (b) Subsections ~~[Subsection]~~ (a) and (e) of this section do
22 ~~[does]~~ not apply to the amount of damages awarded on a health care
23 liability claim for the expenses of necessary medical, hospital,
24 and custodial care received before judgment or required in the
25 future for treatment of the injury.

26 (e) In an action on a health care liability claim where
27 final judgment is rendered against a physician or health care

1 provider and one or more agents or employees of the physician or
2 health care provider, and where the liability of the physician or
3 health care provider is based exclusively on a theory of vicarious
4 liability for the act or omission of the agents or employees, the
5 combined total civil liability of the physician or health care
6 provider and the agents or employees shall be limited to an amount
7 not to exceed the limit under Subsection (a) of this section, as
8 adjusted under Section 11.04 of this subchapter.

9 (f) The limit on liability in Subsections (a) and (e) of
10 this section:

11 (1) applies to the final judgment that is rendered
12 against a physician or health care provider in relation to an
13 occurrence of treatment, lack of treatment, or other departure from
14 accepted standards of medical care or health care or safety that
15 resulted in injury to or death of a patient, without regard to the
16 number of health care liability claims filed in relation to the
17 occurrence; and

18 (2) may not be exceeded on the basis that more than one
19 health care liability claim is filed in relation to the occurrence.

20 SECTION 4. Subchapter K, Medical Liability and Insurance
21 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
22 Statutes), is amended by adding Section 11.06 to read as follows:

23 Sec. 11.06. APPLICABILITY OF JOINT AND SEVERAL LIABILITY
24 REQUIREMENTS. Notwithstanding Section 33.013(b), Civil Practice
25 and Remedies Code, a physician or health care provider is not
26 jointly liable for damages attributed to any other person, without
27 regard to whether the percentage of responsibility attributed to

1 the physician or health care provider is greater than 50 percent.

2 SECTION 5. Subsections (b) through (e) and (n), Section
3 13.01, Medical Liability and Insurance Improvement Act of Texas
4 (Article 4590i, Vernon's Texas Civil Statutes), are amended to read
5 as follows:

6 (b) If, as to a defendant physician or health care provider,
7 an expert report, cost bond, or cash in lieu of bond has not been
8 filed or deposited within the period specified by Subsection (a)
9 [~~or (h)~~] of this section:

10 (1) the statute of limitations is not tolled; and

11 (2) [7] the court, on the motion of the affected
12 physician or health care provider, shall enter an order dismissing
13 [~~that:~~

14 [~~(1) requires the filing of a \$7,500 cost bond with~~
15 ~~respect to the physician or health care provider not later than the~~
16 ~~21st day after the date of the order; and~~

17 [~~(2) provides that if the claimant fails to comply~~
18 ~~with the order,~~] the action [~~shall be dismissed~~] for want of
19 prosecution with respect to the physician or health care provider,
20 subject to reinstatement in accordance with the applicable rules of
21 civil procedure and Subsection (c) of this section.

22 (c) Before a claim that has been dismissed under Subsection
23 (b) [~~(b)(2)~~] of this section may be reinstated, the claimant must
24 pay the costs of court incurred by the defendant before the
25 dismissal [~~and file a \$7,500 cost bond for each defendant physician~~
26 ~~or health care provider~~].

27 (d) Not later than the [~~later of the~~] 180th day after the

1 date on which a health care liability claim is filed ~~[or the last~~
2 ~~day of any extended period established under Subsection (f) or (h)~~
3 ~~of this section]~~, the claimant shall, for each physician or health
4 care provider against whom a claim is asserted:

5 (1) furnish to counsel for each physician or health
6 care provider one or more expert reports, with a curriculum vitae of
7 each expert listed in the report; or

8 (2) voluntarily nonsuit the action against the
9 physician or health care provider.

10 (e) If a claimant has failed, for any defendant physician or
11 health care provider, to comply with Subsection (d) of this section
12 within the time required:

13 (1) the statute of limitations is not tolled; and

14 (2) [7] the court shall, on the motion of the affected
15 physician or health care provider, enter an order awarding as
16 sanctions against the claimant or the claimant's attorney:

17 (A) [(1)] the reasonable attorney's fees and
18 costs of court incurred by that defendant; and

19 (B) [(2)] ~~the forfeiture of any cost bond~~
20 ~~respecting the claimant's claim against that defendant to the~~
21 ~~extent necessary to pay the award; and~~

22 [(3)] the dismissal of the action of the claimant
23 against that defendant with prejudice to the claim's refiling.

24 (n) If a claimant nonsuits a health care liability claim
25 against a physician or health care provider ~~[before filing a cost~~
26 ~~bond]~~ and seeks to refile the same or a similar health care
27 liability claim against the physician or health care provider, ~~[the~~

1 ~~claimant shall file a \$7,500 cost bond for each previously~~
2 ~~nonsuited physician or health care provider at the time of the~~
3 ~~filing of the health care liability claim. If the claimant fails to~~
4 ~~file the \$7,500 cost bond for each physician or health care~~
5 ~~provider,~~ on motion and hearing the court shall order the [~~filing~~
6 ~~of the cost bond and the~~] claimant to [~~shall~~] pay the movant
7 reasonable attorney's fees incurred in obtaining relief under this
8 subsection.

9 SECTION 6. Subsection (a), Section 14.01, Medical Liability
10 and Insurance Improvement Act of Texas (Article 4590i, Vernon's
11 Texas Civil Statutes), is amended to read as follows:

12 (a) In a suit involving a health care liability claim
13 against a physician for injury to or death of a patient, a person
14 may qualify as an expert witness on the issue of whether the
15 physician departed from accepted standards of medical care only if
16 the person is a physician who is licensed as a physician in the
17 United States and:

18 (1) is practicing medicine and is board certified in
19 the same field as the physician who is the subject of the testimony
20 at the time such testimony is given or was practicing medicine and
21 was board certified in the same field as the physician who is the
22 subject of the testimony at the time the claim arose;

23 (2) has knowledge of accepted standards of medical
24 care for the diagnosis, care, or treatment of the illness, injury,
25 or condition involved in the claim; and

26 (3) is qualified on the basis of training or
27 experience to offer an expert opinion regarding those accepted

standards of medical care.

SECTION 7. Subchapter N, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 14.02 to read as follows:

Sec. 14.02. QUALIFICATION OF EXPERT WITNESS IN SUIT AGAINST HEALTH CARE PROVIDER. (a) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:

(1) is practicing health care in the same field of practice as the health care provider who is the subject of the testimony at the time the testimony is given or was practicing health care in the same field of practice as the health care provider who is the subject of the testimony at the time the claim arose;

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

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of care.

(b) For the purposes of this section, "practicing health care" includes training health care providers in the same field as the defendant health care provider at an accredited educational institution or serving as a consulting health care provider and being licensed, certified, or registered in the same field as the

1 defendant health care provider.

2 (c) In determining whether a witness is qualified on the
3 basis of training or experience, the court shall consider whether,
4 at the time the claim arose or at the time the testimony is given,
5 the witness:

6 (1) is certified by a state or national certifying
7 agency or has other substantial training or experience in the area
8 of health care relevant to the claim; and

9 (2) is actively practicing health care in rendering
10 health care services relevant to the claim.

11 (d) The court shall apply the criteria specified in this
12 section in determining whether an expert is qualified to offer
13 expert testimony on the issue of whether a health care provider
14 departed from accepted standards of health care but may depart from
15 those criteria if, under the circumstances, the court determines
16 that there is a good reason to admit the expert's testimony. The
17 court shall state on the record the reason for admitting the
18 testimony if the court departs from the criteria.

19 (e) A pretrial objection to the qualifications of a witness
20 under this section must be made not later than the later of the 21st
21 day after the date the objecting party receives a copy of the
22 witness's curriculum vitae or the date of the witness's deposition.
23 The court shall conduct a hearing to determine whether the witness
24 is qualified as soon as practicable after the filing of an objection
25 and, if possible, before trial. If the objecting party is unable to
26 object in time for the hearing to be conducted before the trial, the
27 hearing shall be conducted outside the presence of the jury. This

1 subsection does not prevent a party from examining or
2 cross-examining a witness at trial about the witness's
3 qualifications.

4 (f) This section does not prevent a health care provider who
5 is a defendant from qualifying as an expert.

6 SECTION 8. The Medical Liability and Insurance Improvement
7 Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is
8 amended by adding Subchapters Q, R, and S to read as follows:

9 SUBCHAPTER Q. COLLATERAL SOURCE BENEFITS

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

13 (1) the Social Security Act (42 U.S.C. Section 301 et
14 seq.) and its subsequent amendments;

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

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

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

22 (B) a disability insurance policy; and

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

25 (4) an agreement under which a person, including a
26 health maintenance organization operating under a certificate of
27 authority issued under Chapter 843, Insurance Code, is obligated to

1 provide or pay for medical, hospital, dental, or other health care
2 services or similar benefits; or

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

6 Sec. 17.02. ADMISSIBILITY OF EVIDENCE OF COLLATERAL SOURCE
7 BENEFITS. Evidence of a collateral source benefit is admissible in
8 an action on a health care liability claim if the benefit:

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

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

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

17 (b) The court shall consider collateral source benefits
18 admissible under Section 17.02 of this subchapter in reviewing a
19 judgment for excessiveness.

20 Sec. 17.04. PREMIUMS PAID FOR COLLATERAL SOURCE BENEFITS.
21 Except for premiums on insurance that is required by law, in
22 determining the amount of a judgment, the trier of fact may consider
23 premiums personally paid by a claimant to obtain coverage that
24 provides a collateral source benefit that has been paid or that is
25 payable.

26 Sec. 17.05. EVIDENCE OF TAX IMPLICATION OF DAMAGE AWARDS.
27 The trier of fact shall be informed of the tax implications of an

1 award of damages for a claim for which collateral source benefits
2 were received.

3 Sec. 17.06. NOTICE TO CONTRACTUAL LIENHOLDER; RIGHT OF
4 SUBROGATION. On or before the 10th day after the date a judgment
5 for the claimant is entered, the claimant's attorney shall send
6 notice of the judgment by registered mail to any person entitled by
7 contract to a lien against the proceeds of the claimant's recovery.
8 If a contractual lienholder does not exercise the lienholder's
9 right of subrogation on or before the 20th day after the date notice
10 is received under this subsection, the lienholder loses the right
11 of subrogation.

12 SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

13 Sec. 18.01. SCOPE OF SUBCHAPTER. This subchapter applies
14 only if the total award of future damages in an action on a health
15 care liability claim against a physician or health care provider
16 exceeds \$50,000, regardless of whether the recovery of damages is
17 by:

18 (1) judgment;
19 (2) settlement; or
20 (3) mediation, arbitration, or any other form of
21 alternative dispute resolution.

22 Sec. 18.02. PERIODIC PAYMENT. (a) The court shall order
23 future damages awarded in a health care liability claim to be paid
24 in periodic installments, in the amounts and over the period of time
25 determined by the judge.

26 (b) The total amount paid may not exceed the amount of the
27 award for future damages specified in the findings of the trier of

1 fact.

2 (c) On the death of the claimant, payments terminate for all
3 future damages awarded except damages for loss of earning capacity.

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

9 SUBCHAPTER S. ATTORNEY'S FEES

10 Sec. 19.01. APPLICABILITY. This subchapter applies to any
11 health care liability claim brought in a court regardless of
12 whether the recovery of damages is by:

13 (1) judgment;

14 (2) settlement; or

15 (3) mediation, arbitration, or any other form of
16 alternative dispute resolution.

17 Sec. 19.02. COURT AUTHORITY TO SUPERVISE CONTINGENCY FEES.

18 (a) In a health care liability claim, the court shall supervise
19 the arrangements for payment of damages to protect against
20 conflicts of interest that might have the effect of reducing the
21 amount of the damages awarded that are actually paid to a claimant.

22 (b) In a health care liability claim in which the attorney
23 for a party receives a contingency fee based on the amount of the
24 damage recovery, the court:

25 (1) may restrict the payment of a claimant's damage
26 recovery to the claimant's attorney and redirect the remaining
27 damages to the claimant in the interests of justice and principles

1 of equity;

2 (2) shall supervise the payment of attorney's fees in
3 accordance with Section 19.03 of this subchapter; and

4 (3) may, in a suit involving a minor or incompetent
5 person, authorize or approve a fee that is less than the maximum
6 permitted under Section 19.03 of this subchapter.

7 Sec. 19.03. LIMITATIONS ON CONTINGENCY FEES.
8 Notwithstanding a contract between a claimant and an attorney, an
9 attorney who represents a claimant in a health care liability claim
10 may not receive attorney's fees for the representation that exceed:

11 (1) 40 percent of the lesser of:

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

13 (B) \$50,000; plus

14 (2) 33-1/3 percent of the lesser of:

15 (A) the amount by which the award exceeds
16 \$50,000; or

17 (B) \$50,000; plus

18 (3) 25 percent of the lesser of:

19 (A) the amount by which the award exceeds
20 \$100,000; or

21 (B) \$500,000; plus

22 (4) 15 percent of the amount by which the award exceeds
23 \$600,000.

24 SECTION 9. Chapter 21, Title 71, Revised Statutes, is
25 amended by adding Article 4590m to read as follows:

26 Art. 4590m. HEALTH CARE LIABILITY CLAIMS AGAINST PHYSICIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1.01. FINDINGS AND PURPOSE. (a) A critical shortage of physicians and other health care providers threatens the health and safety of the citizens of this state and arises from numerous factors, including:

(1) increasing numbers of jury awards to plaintiffs in medical malpractice cases that not only provide reasonable compensation for economic damages, including costs of past, present, and future medical care and loss of earnings resulting from the injury, but also include disproportionately large awards for "pain and suffering," a noneconomic category of damages that is difficult to quantify;

(2) large numbers of suits brought against physicians that are groundless, but are more expensive to defend against than to settle;

(3) a dramatic increase in malpractice insurance rates, especially for physicians and other health care providers and most notably for those whose practices are in high-risk areas, including obstetrics and surgery;

(4) a parallel increase in the number of physicians and other health care providers who are limiting their practices to areas of lower risk or who are leaving this state to practice in states where malpractice insurance is more readily available and affordable; and

(5) a simultaneous marked decline in the number of companies offering malpractice insurance in this state.

(b) To avert the impending crisis in health care services in

1 this state, to preserve the necessary number of health care
2 providers, and to encourage new physicians to establish practices
3 in this state, the purposes of this article are to:

4 (1) revise the pretrial procedures that control
5 medical malpractice claims in order to discourage groundless
6 claims;

7 (2) encourage the pretrial settlement of meritorious
8 claims;

9 (3) establish more responsible limits on the time
10 allowed for filing a malpractice claim;

11 (4) establish new procedures related to the use of
12 expert opinions;

13 (5) revise the manner and amount of jury awards in
14 order to make the awards fairer, more timely, and more realistic;

15 (6) enact other reforms that will protect physicians
16 and other health care providers who perform volunteer services or
17 who prescribe drugs or devices that have been approved by the United
18 States Food and Drug Administration; and

19 (7) maintain access to quality health care services
20 for all residents of this state.

21 Sec. 1.02. DEFINITIONS. (a) With the exception of terms
22 defined by Subsection (b) of this section, in this article each term
23 has the meaning assigned by Section 1.03, Medical Liability and
24 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
25 Civil Statutes), if defined by that section.

26 (b) In this article:

27 (1) "Claimant" means a person who files a complaint

1 under this article with the department alleging medical malpractice
2 and consequent injury to the claimant. The term includes a person
3 who files the complaint on behalf of another person.

4 (2) "Commissioner" means the commissioner of
5 insurance.

6 (3) "Complaint" means the allegation of medical
7 malpractice and consequent injury that a claimant files under
8 Section 3.01 of this article.

9 (4) "Defendant" means a physician who a claimant or
10 plaintiff alleges is liable for damages resulting from the
11 defendant's malpractice.

12 (5) "Department" means the Texas Department of
13 Insurance.

14 (6) "Expert witness" has the meaning assigned to
15 "expert" by Section 13.01(r)(5)(A), Medical Liability and
16 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
17 Civil Statutes).

18 (7) "Medical malpractice" means the failure of a
19 physician, in rendering services, to act in accordance with the
20 standard of what a reasonable and prudent physician holding the
21 same type of medical license would have done under the same or
22 similar circumstances.

23 (8) "Plaintiff" means a person who files a health care
24 liability claim in court asserting medical malpractice and
25 consequent injury. The term includes a person who files the claim
26 on behalf of another person.

27 (9) "Review panel" means a panel of one judge and two

1 physicians that reviews a complaint under this article.

2 Sec. 1.03. APPLICABILITY OF ARTICLE. This article applies
3 only to a health care liability claim against a physician.

4 Sec. 1.04. APPLICABILITY OF OTHER LAW. To the extent of any
5 conflict between this article and another law related to health
6 care liability claims, this article prevails.

7 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

8 Sec. 2.01. DEPARTMENT RESPONSIBILITY. The department shall
9 administer all provisions of this article, except as otherwise
10 specifically provided by this article.

11 Sec. 2.02. PANEL MEMBER POOL. (a) The department shall
12 maintain a pool of judges and physicians from which to select
13 tentative review panels.

14 (b) For the physicians' pool, the department shall
15 quarterly obtain from the Texas State Board of Medical Examiners an
16 updated list of physicians licensed by this state, by specialty and
17 subspecialty and by location of practice. The list may not include
18 a physician who has been disciplined or who is under investigation
19 by the Texas State Board of Medical Examiners.

20 (c) For the judges' pool, the department shall semiannually
21 obtain from the Office of Court Administration of the Texas
22 Judicial System a list of civil judges by location of the court.

23 Sec. 2.03. REVIEW PANEL COMPENSATION. (a) A member of a
24 review panel is not entitled to compensation, but is entitled to
25 reimbursement of reasonable expenses incurred in the performance of
26 duties associated with serving on the panel.

27 (b) The department shall reimburse a review panel member

1 who, in the manner specified by the department, submits an
2 accounting of expenses incurred.

3 Sec. 2.04. MEDICAL MALPRACTICE REVIEW PANEL ACCOUNT.

4 (a) The department shall deposit any money collected under this
5 article to the credit of the medical malpractice review panel
6 account. The medical malpractice review panel account is an
7 account in the general revenue fund that may be appropriated to the
8 department only for the purpose of administering this article. The
9 account is exempt from the application of Section 403.095,
10 Government Code.

11 (b) The department shall, to the extent possible, pay costs
12 incurred in the administration of this article from the medical
13 malpractice review panel account.

14 (c) If the department requires more money for the
15 administration of this article than is available in the medical
16 malpractice review panel account, the department may increase fees
17 charged under this article in an amount necessary and reasonable to
18 administer this article.

19 Sec. 2.05. SCHEDULING HEARINGS. The department shall
20 schedule hearings of a review panel and make all necessary
21 arrangements.

22 Sec. 2.06. COURSES OF INSTRUCTION FOR PANEL MEMBERS.

23 (a) The commissioner shall arrange for courses of instruction in
24 the rules of procedure and substantive law appropriate for members
25 of a review panel.

26 (b) Each person designated to serve on a tentative review
27 panel on or after September 1, 2004, shall attend the instruction

1 provided under Subsection (a) of this section before serving on a
2 review panel.

3 Sec. 2.07. DEPARTMENT RULES. The department may adopt
4 rules necessary to implement this article.

5 SUBCHAPTER C. FILING OF COMPLAINT, ANSWER, AND RESPONSE; FEES

6 Sec. 3.01. SUBMISSION OF COMPLAINT REQUIRED BEFORE ACTION
7 MAY BE FILED. (a) Before a person may file a health care liability
8 claim in court, the person must file a complaint with the department
9 for evaluation by a review panel.

10 (b) A health care liability claim filed without satisfying
11 the provisions of this article must be dismissed for failure to
12 comply with this section.

13 Sec. 3.02. CONTENTS OF COMPLAINT; FILING FEE. (a) A
14 complaint must contain:

15 (1) a clear and concise statement of the facts of the
16 case, including the persons involved and the dates and
17 circumstances, so far as they are known, of the alleged medical
18 malpractice; and

19 (2) a signed affidavit supporting the allegations of
20 the complaint submitted by a person:

21 (A) who holds a medical license issued by this
22 state in the same specialty or subspecialty as the person against
23 whom the complaint is made; and

24 (B) who meets the other qualifications of an
25 expert witness under Section 14.01(a), Medical Liability and
26 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
27 Civil Statutes).

1 (b) A fee of \$500 must accompany the complaint.

2 Sec. 3.03. ANSWER; FILING FEE. (a) The person against
3 whom a complaint is filed shall file an answer, accompanied by a fee
4 of \$500, with the department on or before the 30th day after the
5 date the person receives a copy of the complaint.

6 (b) The department may authorize an extension of the time in
7 which an answer must be filed only if all parties to the complaint
8 agree to the extension.

9 (c) A respondent who does not timely file an answer may not
10 participate in any conference held under Section 4.02 of this
11 article.

12 Sec. 3.04. CLAIMANT RESPONSE TO ANSWER. (a) The claimant
13 may respond to the allegations of the answer or any accompanying
14 affidavit by filing a written response with the department on or
15 before the 15th day after the date the claimant received the answer.

16 (b) The review panel shall disregard any portion of the
17 response that does not address an allegation raised in the answer or
18 an affidavit accompanying the answer.

19 (c) The department may not charge a fee for the filing of a
20 response.

21 Sec. 3.05. LATE FILINGS NOT ACCEPTED. Unless otherwise
22 agreed to by all parties, the department may not accept an answer or
23 response that is not timely filed.

24 Sec. 3.06. FEES PAYABLE ONLY ONCE. The department may not
25 charge or collect fees under this subchapter more than once:

26 (1) from a party; or

27 (2) for the filing of a complaint, regardless of the

1 number of parties joined in the complaint.

2 Sec. 3.07. FAILURE TO PAY FEE. If a person fails to pay any
3 fee required by this subchapter, the commissioner may refer the
4 nonpayment to the office of the attorney general for collection of
5 the fee and any costs incurred in that collection.

6 Sec. 3.08. SUBMISSION PROCEDURES. A person required to
7 file a submission with the department under this article shall
8 deliver a copy of the submission to the opposing party by a method
9 of service allowed under Rule 106, Texas Rules of Civil Procedure.

10 Sec. 3.09. COLLECTION OF MATERIALS RELATED TO COMPLAINT.
11 (a) The parties shall collect and file with a complaint any
12 materials related to the complaint required by the parties or the
13 review panel, including health care records and any other documents
14 necessary for the review.

15 (b) The review panel may request that the department collect
16 additional material required for the review.

17 SUBCHAPTER D. REVIEW PANEL SELECTION

18 Sec. 4.01. TENTATIVE REVIEW PANEL. (a) The department
19 shall assemble a tentative review panel for each complaint,
20 selecting, as much as possible, panel members from the same
21 geographic area.

22 (b) The tentative review panel shall consist of three judges
23 and six physicians licensed in the same specialty or subspecialty
24 as the defendant.

25 (c) The department may excuse a member of a tentative review
26 panel who, for good cause, is unable to serve on a review panel.

27 (d) The department shall send to the parties to a complaint,

1 by registered or certified mail, a list of the members of the
2 tentative review panel on or before the 10th day after the date the
3 complaint is filed.

4 Sec. 4.02. SELECTION OF MEMBERS FOR PARTICULAR REVIEW
5 PANEL. (a) On or before the 20th day after the last date on which
6 an answer may be filed, the department shall hold a conference to
7 resolve any challenges for cause concerning members of a tentative
8 review panel. The department may continue the conference once, for
9 good cause, for a period not to exceed seven days. A party may
10 challenge any person on the tentative review panel for cause on any
11 of the grounds provided by Section 62.105, Government Code, for the
12 disqualification of jurors.

13 (b) The department shall determine whether cause exists to
14 excuse a member of the tentative review panel and shall notify each
15 party of the excused member on or before the completion of the
16 conference under Subsection (a) of this section.

17 (c) For each tentative review panel member excused, the
18 department shall appoint another person who, as much as possible,
19 meets the requirements of that panel position under Section 4.01 of
20 this subchapter.

21 (d) At the end of all challenges for cause, the plaintiff
22 and the defendant are each by turns entitled to three peremptory
23 challenges to remove one judge and two physicians from the
24 tentative review panel until a review panel composed of one judge
25 and two physicians remains. The remaining panel members constitute
26 the review panel for the complaint.

27 (e) If the department is unable to assemble a full tentative

1 review panel because of the exercise of challenges for cause or
2 other reasons affecting the availability of members to serve, the
3 department may limit the number of peremptory challenges available
4 to each party.

5 SUBCHAPTER E. DEPARTMENT POWERS AND DUTIES; ENFORCEMENT

6 Sec. 5.01. SUBPOENA POWER, EXPERT WITNESSES, PRODUCTION OF
7 MATERIALS. (a) The department may, by certified or registered
8 mail, issue a subpoena:

9 (1) if required by the review panel, to compel the
10 attendance of an expert witness; or

11 (2) if required by a party or the review panel, to
12 compel the production of books, papers, health care records,
13 statements of policy and procedure, or other materials.

14 (b) The department shall keep the material collected under
15 Subsection (a) of this section and make it available to the parties,
16 on request, for inspection or copying. If the material is
17 reasonably capable of being copied, the department shall provide a
18 copy to a party on request and receipt of a fee for the copying.

19 (c) If an expert witness refuses to attend or testify, or if
20 a person refuses to produce material required by a subpoena, the
21 department may petition a court for an order compelling the expert
22 witness to attend and testify or the person to produce the material.
23 The petition shall state that:

24 (1) notice has been given of the time and place of
25 attendance of the expert witness or for the production of the
26 material;

27 (2) the expert witness or the person required to

1 produce the material has been subpoenaed by the department under
2 this section; and

3 (3) the expert witness has failed or refused to attend
4 or to answer the questions asked or the person has failed or refused
5 to produce the material required by the subpoena.

6 Sec. 5.02. COURT ORDERS. (a) A court that receives a
7 petition under Section 5.01 of this subchapter shall:

8 (1) enter an order directing the expert witness or
9 other person to appear before the court on or before the 10th day
10 after the date of the order and show cause for the failure to
11 attend, testify, answer, or produce the material; and

12 (2) require service of a certified copy of the order on
13 the expert witness or other person.

14 (b) If the court finds that the subpoena was properly issued
15 by the department, the court shall enter an order that the expert
16 witness or other person appear at the time and place stated in the
17 order and testify or produce the required material.

18 (c) A person who disobeys an order under Subsection (b) of
19 this section is subject to contempt of court.

20 SUBCHAPTER F. REVIEW PANEL HEARINGS; FINDINGS

21 Sec. 6.01. PREFERENTIAL SCHEDULING OF HEARINGS FOR CERTAIN
22 CLAIMANTS. (a) If a claimant is 70 years of age or older or
23 suffers from an illness or condition that raises a substantial
24 medical doubt that the claimant will survive until a review panel
25 makes a decision, the claimant may file a written request with the
26 department to give preference in scheduling the claimant's hearing.
27 The request must set forth facts showing that the claimant meets the

1 conditions for preferential scheduling under this section.

2 (b) The department shall schedule the hearings of
3 complaints for which preference has been granted under Subsection
4 (a) of this section based on the order in which the department
5 receives requests for preference.

6 (c) A request for preferential scheduling may be submitted
7 simultaneously with the filing of the original complaint.

8 Sec. 6.02. HEARING BY REVIEW PANEL. (a) A review panel
9 shall hear a complaint on or before the 30th day after the date the
10 review panel was selected.

11 (b) The review panel shall consider as evidence:

12 (1) all the documentary material, including the
13 complaint, answer, and response;

14 (2) health care records and records of a hospital or
15 office; and

16 (3) testimony of any expert witnesses the panel
17 considers necessary.

18 (c) From the evidence, the review panel shall determine only
19 whether there is a reasonable probability that the acts complained
20 of constitute medical malpractice and whether the claimant was
21 injured by those acts.

22 (d) The review panel may not consider:

23 (1) any pleading or paper to the extent that it
24 addresses a legal issue presented by the complaint or a legal
25 argument of a party; or

26 (2) challenges concerning any relevant statute of
27 limitation relating to a complaint before the panel.

1 Sec. 6.03. DECISION OF REVIEW PANEL. (a) The decision of
2 the review panel must be based on a vote of the members of the panel
3 made by written ballot. Each member of the panel has one vote.

4 (b) The review panel shall render its decision in writing on
5 or before the fifth day after the date of the hearing.

6 (c) The decision must be substantially in the following
7 form:

8 (1) "Based on a review of the materials submitted by
9 the parties and the testimony of medical or other experts, we find
10 that there is a reasonable probability of medical malpractice and
11 that the claimant was injured by the malpractice.";

12 (2) "Based on a review of the materials submitted by
13 the parties and the testimony of medical or other experts, we find
14 that there is not a reasonable probability of medical
15 malpractice."; or

16 (3) "Based on a review of the materials submitted by
17 the parties and the testimony of medical or other experts, we are
18 unable to reach a decision on the issue of medical malpractice."

19 (d) The review panel may reach a decision if two members of
20 the panel agree that:

21 (1) there was a reasonable probability of medical
22 malpractice and injury; or

23 (2) there was not a reasonable probability of medical
24 malpractice.

25 (e) The commissioner shall forward copies:

26 (1) of the original complaint and of the review panel's
27 decision to the Texas State Board of Medical Examiners; and

1 (2) of the panel's decision to the parties.

2 Sec. 6.04. PANEL DECISION ADMISSIBLE IN COURT; EXCEPTION.

3 (a) Except as provided by Subsection (b) of this section, a
4 decision of a review panel is admissible in an action concerning the
5 complaint that is subsequently filed in court.

6 (b) If the review panel is unable to reach a decision on the
7 issue of medical malpractice, that fact is not admissible in an
8 action concerning the complaint that is subsequently filed in
9 court.

10 (c) Other than the review panel's decision, evidence
11 concerning the review panel or its deliberations is not
12 discoverable or admissible, and a member of the panel may not be
13 called to testify in the action.

14 Sec. 6.05. EFFECT OF REVIEW PANEL'S DECISION; PARTIES TO
15 ACTION. (a) If the review panel finds in favor of the claimant and
16 an action involving that claimant's complaint is filed, an
17 alternative dispute resolution method of settlement must be held as
18 provided by Section 7.01 of this article.

19 (b) If the review panel does not find in favor of the
20 claimant, the claimant may file an action in court. If the court
21 judgment does not favor the claimant, the defendant must be awarded
22 reasonable costs and attorney's fees incurred in defense against
23 the complaint and the court action.

24 (c) If the review panel is unable to reach a decision, the
25 claimant may file an action in court.

26 (d) If the claimant files an action in court, a physician
27 may not be named as a party in the action unless the physician was

1 named as a party in the complaint that was filed with the department
2 and considered by the review panel.

3 SUBCHAPTER G. CLAIM SETTLEMENT

4 Sec. 7.01. ALTERNATIVE DISPUTE RESOLUTION. (a) In an
5 action for medical malpractice filed after a review panel's
6 decision favorable to the plaintiff, the court shall require the
7 parties to follow the alternative dispute resolution procedures
8 required by the rules of the court.

9 (b) If the court does not have required alternative dispute
10 resolution procedures, the parties shall agree on an alternative
11 dispute resolution method under Chapter 154, Civil Practice and
12 Remedies Code, and, before trial may begin except for good cause
13 shown, shall agree on an amount of money for which the parties are
14 willing to settle the dispute.

15 (c) The judge, except for good cause shown, shall dismiss an
16 action if the parties fail to complete alternative dispute
17 resolution procedures under this section.

18 Sec. 7.02. OFFER TO SETTLE; AWARD OF COSTS AND ATTORNEY'S
19 FEES. (a) On or before the 14th day after the date the alternative
20 dispute resolution concludes without settling the claim, the
21 plaintiff shall make an offer to settle for an amount the plaintiff
22 will accept in full payment of the claim.

23 (b) The defendant shall accept or reject the plaintiff's
24 offer on or before the 30th day after the date the offer was
25 received.

26 (c) If the defendant rejects the plaintiff's offer and at
27 trial the plaintiff is awarded an amount greater than the amount of

1 the plaintiff's offer, the court shall award the plaintiff
2 reasonable expert witness fees incurred at trial and court costs.

3 Sec. 7.03. REFUSAL OF DEFENDANT'S INSURER TO SETTLE. If the
4 defendant's insurer refuses to settle under Section 7.02 of this
5 subchapter, the insurer may not at the time for renewal of the
6 coverage:

7 (1) raise the insurance rates of the defendant for the
8 same type of coverage; or

9 (2) drop the defendant from coverage.

10 Sec. 7.04. MODIFICATION BY AGREEMENT OF PARTIES. The
11 plaintiff is entitled to modify the procedures under Section 7.01
12 of this subchapter by written agreement with the defendant.

13 SUBCHAPTER H. JURY INSTRUCTIONS

14 Sec. 8.01. INSTRUCTIONS TO JURY. Unless the decision of the
15 review panel is not admissible under Section 6.04 of this article,
16 in an action for medical malpractice tried before a jury, the
17 following instructions must be given:

18 (1) If the review panel heard testimony of a medical
19 expert:

20 "During the course of this trial certain evidence was
21 admitted concerning the decision of a review panel. The decision of
22 the panel was based on a review of medical records and the testimony
23 of a medical expert based on the expert's review of those records.
24 That decision is to be given the same weight as any other evidence
25 but is not conclusive on your determination of the case."

26 (2) If the review panel did not hear testimony of a
27 medical expert:

1 "During the course of this trial certain evidence was
2 admitted concerning the decision of a review panel. The decision of
3 the panel was based solely on a review of medical records and an
4 expert report. That decision is to be given the same weight as any
5 other evidence but is not conclusive on your determination of the
6 case."

7 SUBCHAPTER I. TOLLING OF STATUTE OF LIMITATIONS

8 Sec. 9.01. TOLLING OF STATUTE OF LIMITATIONS. The statute
9 of limitations under Section 10.01, Medical Liability and Insurance
10 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
11 Statutes), is tolled from the date a complaint is filed until the
12 earlier of:

13 (1) the date the parties receive their copies of the
14 review panel's decision under Section 6.03(e) of this article; or

15 (2) the 180th day after the date the complaint is
16 filed.

17 SECTION 10. Section 74.001, Civil Practice and Remedies
18 Code, is amended to read as follows:

19 Sec. 74.001. LIABILITY FOR EMERGENCY CARE. (a) Except as
20 provided by this section, a [A] person who in good faith administers
21 emergency care, including using an automated external
22 defibrillator, without remuneration and without expectation of
23 remuneration ~~[at the scene of an emergency but not in a hospital or~~
24 ~~other health care facility or means of medical transport]~~ is not
25 liable in civil damages for an act performed during the emergency
26 unless the act is wilfully or wantonly negligent.

27 (b) This section does not apply to ~~[care administered.~~

1 ~~[(1) for or in expectation of remuneration; or~~

2 ~~[(2) by a person who was at the scene of the emergency~~
3 ~~because he or a person he represents as an agent was soliciting~~
4 ~~business or seeking to perform a service for remuneration.~~

5 ~~[(c) If the scene of an emergency is in a hospital or other~~
6 ~~health care facility or means of medical transport, a person who in~~
7 ~~good faith administers emergency care is not liable in civil~~
8 ~~damages for an act performed during the emergency unless the act is~~
9 ~~wilfully or wantonly negligent, provided that this subsection does~~
10 ~~not apply to care administered]:~~

11 (1) ~~[by]~~ a person who regularly administers care in a
12 hospital emergency room for or in expectation of remuneration;
13 ~~[unless such person is at the scene of the emergency for reasons~~
14 ~~wholly unrelated to the person's work in administering health care,~~
15 ~~or]~~

16 (2) ~~[by]~~ an admitting or attending physician of the
17 patient; or

18 (3) a person who regularly administers emergency care
19 in an emergency transport vehicle for or in expectation of
20 remuneration.

21 (c) ~~[or a treating physician associated by the admitting or~~
22 ~~attending physician of the patient in question.~~

23 ~~[(d) For purposes of Subsections (b)(1) and (c)(1), a person~~
24 ~~who would ordinarily receive or be entitled to receive a salary,~~
25 ~~fee, or other remuneration for administering care under such~~
26 ~~circumstances to the patient in question shall be deemed to be~~
27 ~~acting for or in expectation of remuneration even if the person~~

1 ~~waives or elects not to charge or receive remuneration on the~~
2 ~~occasion in question].~~

3 ~~[(e)]~~ This section does not apply to a person whose
4 negligent act or omission was a producing cause of the emergency for
5 which care is being administered.

6 SECTION 11. Chapter 74, Civil Practice and Remedies Code,
7 is amended by adding Section 74.003 to read as follows:

8 Sec. 74.003. LIBERAL CONSTRUCTION. A court shall liberally
9 construe this chapter to encourage individuals to volunteer their
10 time and skills in administering emergency care during an
11 emergency.

12 SECTION 12. Section 82.001, Civil Practice and Remedies
13 Code, is amended by adding Subdivisions (5) through (14) to read as
14 follows:

15 (5) "Advanced practice nurse" has the meaning assigned
16 by Section 301.152, Occupations Code.

17 (6) "Dentist" means a person licensed to practice
18 dentistry under Subtitle D, Title 3, Occupations Code.

19 (7) "Device" has the meaning assigned by Section 201,
20 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), and
21 its subsequent amendments.

22 (8) "Drug" has the meaning assigned by Section 201,
23 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), and
24 its subsequent amendments.

25 (9) "Health care practitioner" means a physician,
26 dentist, podiatrist, optometrist, advanced practice nurse, or
27 physician assistant.

1 (10) "Optometrist" has the meaning assigned by Section
2 351.002, Occupations Code.

3 (11) "Physician" means a person licensed to practice
4 medicine in this state.

5 (12) "Physician assistant" means a person who holds a
6 license issued under Chapter 204, Occupations Code.

7 (13) "Podiatrist" means a person licensed to practice
8 podiatry under Chapter 202, Occupations Code.

9 (14) "Veterinarian" has the meaning assigned by
10 Section 801.002, Occupations Code.

11 SECTION 13. Chapter 82, Civil Practice and Remedies Code,
12 is amended by adding Section 82.007 to read as follows:

13 Sec. 82.007. EXEMPTION FROM LIABILITY FOR HEALTH CARE
14 PRACTITIONERS AND VETERINARIANS. In a products liability action,
15 including a class action, against the manufacturer or seller of a
16 drug or device, including a blood product, that has been approved by
17 the United States Food and Drug Administration:

18 (1) a person may not name as a defendant a health care
19 practitioner or veterinarian who prescribed the drug or device in
20 accordance with the standard of what a reasonable and prudent
21 health care practitioner or veterinarian holding the same license
22 would have done under the same or similar circumstances; and

23 (2) the health care practitioner or veterinarian who
24 prescribed the drug or device in accordance with the standard of
25 what a reasonable and prudent health care practitioner or
26 veterinarian holding the same license would have done under the
27 same or similar circumstances is not liable to a claimant.

SECTION 14. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 92 to read as follows:

CHAPTER 92. LIMITATION ON LIABILITY OF HEALTH CARE PROVIDERS AT
FREE MEDICAL CLINICS

Sec. 92.001. DEFINITION. In this chapter, "health care provider" means a person licensed in this state or another state or territory of the United States as:

- (1) a physician;
- (2) a physician assistant;
- (3) a registered nurse;
- (4) an advanced practice nurse;
- (5) a licensed vocational nurse;
- (6) a licensed medical physicist;
- (7) a medical radiologic technologist;
- (8) a dentist;
- (9) a dental hygienist;
- (10) an optometrist or therapeutic optometrist;
- (11) an optician;
- (12) a chiropractor;
- (13) a licensed prosthetist;
- (14) a licensed orthotist;
- (15) an audiologist;
- (16) a speech-language pathologist;
- (17) a hearing instrument fitter and dispenser;
- (18) a physical therapist;
- (19) an occupational therapist;
- (20) a psychologist;

- (21) a social worker;
- (22) a licensed professional counselor;
- (23) a chemical dependency counselor;
- (24) a licensed marriage and family therapist;
- (25) an acupuncturist;
- (26) a dietitian;
- (27) a midwife;
- (28) an athletic trainer;
- (29) a massage therapist;
- (30) a licensed perfusionist;
- (31) a pharmacist;
- (32) a respiratory care practitioner; or
- (33) a podiatrist.

Sec. 92.002. APPLICABILITY. This chapter applies only to health care provided in a medical clinic that:

(1) is an organized, community-based program providing health care without charge to persons unable to pay for it;

(2) does not provide health care that includes the use of general anesthesia or that requires an overnight stay in a health care facility; and

(3) posts in a conspicuous place on its premises an explanation of the limitation on liability provided by this chapter.

Sec. 92.003. LIMITATION ON LIABILITY. A health care provider is not liable in civil damages for an act performed during the provision of the health care if:

1 (1) the health care is provided to a person at a
2 medical clinic to which this chapter applies and is part of the
3 services regularly offered by the clinic;

4 (2) the provider provides the health care in good
5 faith;

6 (3) the act is not wilfully or wantonly negligent;

7 (4) the health care provider does not receive a fee or
8 any other compensation for providing the health care; and

9 (5) the health care does not require the services of a
10 hospital or ambulatory surgical treatment center.

11 Sec. 92.004. VOLUNTARY CONTRIBUTIONS. The limitation on
12 liability established by this chapter applies without regard to
13 whether the medical clinic accepts a voluntary contribution from a
14 person receiving health care services from the clinic if:

15 (1) the person has acknowledged the person's ability
16 and willingness to pay a portion of the value of the health care
17 services provided; and

18 (2) the contribution is used only to pay overhead
19 expenses related to operating the clinic and not to provide a fee or
20 other compensation to a health care provider.

21 Sec. 92.005. LIMITATION IN ADDITION TO CHAPTER 84. The
22 limitation on liability established by this chapter is independent
23 of and in addition to any limitation on liability that may apply
24 under Chapter 84.

25 SECTION 15. Section 17.45, Business & Commerce Code, is
26 amended by adding Subdivisions (14) through (23) to read as
27 follows:

1 (14) "Advanced practice nurse" has the meaning
2 assigned by Section 301.152, Occupations Code.

3 (15) "Dentist" means a person licensed to practice
4 dentistry under Subtitle D, Title 3, Occupations Code.

5 (16) "Device" has the meaning assigned by Section 201,
6 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), and
7 its subsequent amendments.

8 (17) "Drug" has the meaning assigned by Section 201,
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321), and
10 its subsequent amendments.

11 (18) "Health care practitioner" means a physician,
12 dentist, podiatrist, optometrist, advanced practice nurse, or
13 physician assistant.

14 (19) "Optometrist" has the meaning assigned by Section
15 351.002, Occupations Code.

16 (20) "Physician" means a person licensed to practice
17 medicine in this state.

18 (21) "Physician assistant" means a person who holds a
19 license issued under Chapter 204, Occupations Code.

20 (22) "Podiatrist" means a person licensed to practice
21 podiatry under Chapter 202, Occupations Code.

22 (23) "Veterinarian" has the meaning assigned by
23 Section 801.002, Occupations Code.

24 SECTION 16. Section 17.49, Business & Commerce Code, is
25 amended by adding Subsection (d-1) to read as follows:

26 (d-1) In an action under this subchapter, including a class
27 action, for damages arising out of personal injury, death, or

1 property damage allegedly caused by using a drug or device,
2 including a blood product, that has been approved by the United
3 States Food and Drug Administration:

4 (1) a person may not name as a defendant a health care
5 practitioner or veterinarian who prescribed the drug or device in
6 accordance with the standard of what a reasonable and prudent
7 health care practitioner or veterinarian holding the same license
8 would have done under the same or similar circumstances; and

9 (2) the health care practitioner or veterinarian who
10 prescribed the drug or device in accordance with the standard of
11 what a reasonable and prudent health care practitioner or
12 veterinarian holding the same license would have done under the
13 same or similar circumstances is not liable to a claimant.

14 SECTION 17. The following provisions of the Medical
15 Liability and Insurance Improvement Act of Texas (Article 4590i,
16 Vernon's Texas Civil Statutes) are repealed:

17 (1) Section 11.03; and

18 (2) Subsections (f), (g), (h), (m), and (o), Section
19 13.01.

20 (b) Section 74.002, Civil Practice and Remedies Code, is
21 repealed.

22 SECTION 18. (a) Except as provided by this section, the
23 changes in law made by this Act apply only to a cause of action that
24 accrues on or after the effective date of this Act. A cause of
25 action that accrues before the effective date of this Act is
26 governed by the law in effect immediately before that date, and that
27 law is continued in effect for that purpose.

1 (b) Section 17.06, Medical Liability and Insurance
2 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
3 Statutes), as added by this Act, applies only to a contract entered
4 into on or after the effective date of this Act.

5 (c) Subchapter S, Medical Liability and Insurance
6 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
7 Statutes), as added by this Act, applies only to attorney's fees for
8 representing a claimant in an action filed on or after the effective
9 date of this Act. Attorney's fees in an action filed before the
10 effective date of this Act are governed by the law in effect
11 immediately before that date, and that law is continued in effect
12 for that purpose.

13 (d) The changes in law made by Article 4590m, Revised
14 Statutes, as added by this Act, relating to a review panel in cases
15 alleging medical care liability against a physician, apply only to
16 a cause of action that accrues on or after January 1, 2004. A cause
17 of action that accrues before January 1, 2004, is governed by the
18 law as it existed immediately before the effective date of this Act,
19 and that law is continued in effect for that purpose.

20 (e) The Texas Department of Insurance shall develop rules
21 for the implementation of Article 4590m, Revised Statutes, as added
22 by this Act, not later than January 1, 2004.

23 (f) The Texas State Board of Medical Examiners shall prepare
24 lists of physicians for the Texas Department of Insurance as
25 required by Section 2.02, Article 4590m, Revised Statutes, as added
26 by this Act, not later than June 1, 2004.

27 (g) The Office of Court Administration of the Texas Judicial

1 System shall prepare lists of judges as required by Section 2.02,
2 Article 4590m, Revised Statutes, as added by this Act, not later
3 than June 1, 2004.

4 SECTION 19. (a) Except as provided by Subsections (b) and
5 (c) of this section, this Act takes effect September 1, 2003.

6 (b) Subsection (a), Section 11.02, Medical Liability and
7 Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas
8 Civil Statutes), as amended by this Act, and Subsections (e) and
9 (f), Section 11.02, Medical Liability and Insurance Improvement Act
10 of Texas (Article 4590i, Vernon's Texas Civil Statutes), as added
11 by this Act, take effect on the date on which the constitutional
12 amendment proposed by __J.R. No. ____, 78th Legislature, Regular
13 Session, 2003, takes effect. If that amendment is not approved by
14 the voters, this Act has no effect.

15 (c) Article 4590m, Revised Statutes, as added by this Act,
16 takes effect January 1, 2004.