

BILL ANALYSIS

S.B. 554
By: Duncan
Civil Practices
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The 75th Texas Legislature enacted the Texas Health Care Liability Act (THCLA). THCLA amended the Texas Civil Practice and Remedies Code to hold insurance carriers, HMOs, and other managed care entities liable for failure to exercise ordinary care when making health treatment decisions. Additionally, THCLA created standards under the Texas Insurance Code for the creation of utilization review and independent review organizations.

In *Aetna Health Inc. v. Davila*, patients sued their HMOs under THCLA for refusing to cover certain medical services in violation of an HMO's duty to exercise ordinary care. Ultimately, this case reached the United States Supreme Court; the Court found that any state-law cause of action that duplicates, supplements, or supplants the Employee Retirement Income Security Act (ERISA) civil enforcement remedy conflicts with the Congressional intent to make the ERISA remedy exclusive and is pre-empted. As a result, the cause of action created by THCLA was rendered invalid except as it may still apply to non-ERISA group health plans. To date, there are only a few non-ERISA group health plans offered in Texas.

As proposed, S.B. 554 clarifies that portions of THCLA are pre-empted by ERISA.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SB 554 amends Chapter 88, Civil Practice and Remedies Code, by adding Section 88.0015, as follows:

Sec. 88.0015. INAPPLICABILITY TO ERISA-REGULATED EMPLOYEE BENEFIT PLAN. Provides that this chapter (Health Care Liability) does not apply to an employee benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.