

By: Williams

S.B. No. 890

A BILL TO BE ENTITLED

AN ACT

relating to the amount of recovery in a civil action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 33.012, Civil Practice and Remedies Code, as amended by Chapter 136, Acts of the 74th Legislature, Regular Session, 1995, and Chapter 204, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 33.012. AMOUNT OF RECOVERY. (a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by ~~[a percentage equal to each settling person's percentage of responsibility.]~~

~~[(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by] an amount equal to [one of the following, as elected by the defendant:~~

~~[(1)] the sum of the dollar amounts of all settlements[, or~~

1 ~~[(2) a percentage equal to each settling person's~~
2 ~~percentage of responsibility as found by the trier of fact].~~

3 (c) ~~[(d) An election made under Subsection (c) shall be~~
4 ~~made by any defendant filing a written election before the issues of~~
5 ~~the action are submitted to the trier of fact and when made, shall~~
6 ~~be binding on all defendants. If no defendant makes this election~~
7 ~~or if conflicting elections are made, all defendants are considered~~
8 ~~to have elected Subsection (c)(1).~~

9 ~~[(d)]~~ This section shall not apply to benefits paid by or on
10 behalf of an employer to an employee pursuant to workers'
11 compensation insurance coverage, as defined in Section
12 401.011(44), Labor Code, in effect at the time of the act, event, or
13 occurrence made the basis of claimant's suit.

14 SECTION 2. (a) This Act applies to all actions:

15 (1) commenced on or after the effective date of this
16 Act; or

17 (2) pending on the effective date of this Act and in
18 which the trial, or any new trial or retrial following motion,
19 appeal, or otherwise, begins on or after that effective date.

20 (b) For an action commenced before the effective date of
21 this Act, a trial, new trial, or retrial that is in progress on the
22 effective date is governed by the law applicable to the trial, new
23 trial, or retrial immediately before that date, and that law is
24 continued in effect for that purpose.

25 SECTION 3. To the extent of any conflict, this Act prevails
26 over another Act of the 79th Legislature, Regular Session, 2005,
27 relating to nonsubstantive additions to and corrections in enacted

1 codes.

2 SECTION 4. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2005.