

By: Staples

S.B. No. 1648

A BILL TO BE ENTITLED

AN ACT

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relating to civil actions.

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

SECTION 1. Section 26.01(b), Business & Commerce Code, is amended to read as follows:

(b) Subsection (a) [~~of this section~~] applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

1 (8) an agreement, promise, contract, or warranty of
2 cure relating to medical care or results thereof made by a physician
3 or health care provider as defined in Section 74.001, Civil
4 Practice and Remedies Code [~~1.03, Medical Liability and Insurance~~
5 ~~Improvement Act of Texas~~]. This section shall not apply to
6 pharmacists.

7 SECTION 2. Section 22.003(a)(2), Civil Practice and
8 Remedies Code, is amended to read as follows:

9 (2) "Commercial transportation company" means a
10 person [~~an entity~~] that offers transportation of people or goods to
11 the public in exchange for compensation.

12 SECTION 3. Section 22.003(d), Civil Practice and Remedies
13 Code, is amended to read as follows:

14 (d) A state agency may not:

15 (1) pay a commercial transportation company or a
16 commercial lodging establishment or reimburse a witness for
17 transportation, meal, or lodging expenses under this section at a
18 rate that exceeds the maximum rates provided by law for state
19 employees; or

20 (2) pay a commercial transportation company or
21 reimburse a witness for transportation under this section if the
22 company or transportation is a private aircraft owned or leased by
23 the witness, unless the travel and the air service is approved in
24 advance by the state agency.

25 SECTION 4. Sections 23.002(a) and (b), Civil Practice and
26 Remedies Code, are amended to read as follows:

27 (a) If a juror in a civil action is required to appear at a

1 court proceeding on a religious holy day or days observed by the
2 juror, the court or the court's designee shall recess the civil
3 action until the next day the court is in session after the
4 conclusion of the holy day or days.

5 (b) A juror seeking a recess must file with the court before
6 the final selection of the jury an affidavit stating:

7 (1) the grounds for the recess; and

8 (2) that the juror holds religious beliefs that
9 prohibit him from taking part in a court proceeding on the day or
10 days for which the recess is sought.

11 SECTION 5. Section 26.001(a), Civil Practice and Remedies
12 Code, is amended to read as follows:

13 (a) The supreme court shall adopt rules to provide for the
14 fair, speedy, and efficient resolution of class actions.

15 SECTION 6. (a) Section 74.352, Civil Practice and Remedies
16 Code, is amended by amending Subsections (a), (b), (c), (d), and
17 (f) to read as follows:

18 (a) In every health care liability claim the plaintiff shall
19 within 45 days after the date of filing of the original petition
20 serve on the defendant's attorney or, if no attorney has appeared
21 for the defendant, on the defendant full and complete answers to the
22 appropriate standard set of interrogatories and full and complete
23 responses to the appropriate standard set of requests for
24 production of documents and things promulgated by the Health Care
25 Liability Discovery Panel, if the panel promulgates a standard set
26 of those forms.

27 (b) Every physician or health care provider who is a

1 defendant in a health care liability claim shall within 45 days
2 after the date on which an answer to the petition was due serve on
3 the plaintiff's attorney or, if the plaintiff is not represented by
4 an attorney, on the plaintiff full and complete answers to the
5 appropriate standard set of interrogatories and complete responses
6 to the standard set of requests for production of documents and
7 things promulgated by the Health Care Liability Discovery Panel, if
8 the panel promulgates a standard set of those forms.

9 (c) Except on motion and for good cause shown, no objection
10 may be asserted regarding any standard interrogatory or request for
11 production of documents and things, but no response shall be
12 required where a particular interrogatory or request is clearly
13 inapplicable under the circumstances of the case. An objection may
14 not be asserted under this section if the Health Care Liability
15 Discovery Panel does not exist or does not promulgate a standard set
16 of forms, and a court shall consider an objection raised on this
17 ground groundless.

18 (d) Failure to file full and complete answers and responses
19 to standard interrogatories and requests for production of
20 documents and things in accordance with Subsections (a) and (b), if
21 a standard set of those forms exists, or the making of a groundless
22 objection under Subsection (c) shall be grounds for sanctions by
23 the court in accordance with the Texas Rules of Civil Procedure on
24 motion of any party.

25 (f) If a party is added by an amended pleading,
26 intervention, or otherwise, the new party shall file full and
27 complete answers to the appropriate standard set of interrogatories

1 and full and complete responses to the standard set of requests for
2 production of documents and things, if a standard set of those forms
3 exists, no later than 45 days after the date of filing of the
4 pleading by which the party first appeared in the action.

5 (b) The legislature finds that:

6 (1) on or before September 1, 2005, the Health Care
7 Discovery Liability Panel described by Section 74.352, Civil
8 Practice and Remedies Code, does not exist and the standard forms
9 described by that section as being promulgated by that panel do not
10 exist; and

11 (2) until the panel exists and the forms are
12 promulgated, an objection or claim under Section 74.352 is
13 groundless.

14 SECTION 7. Section 76.001, Civil Practice and Remedies
15 Code, is amended by adding Subdivision (2-a) to read as follows:

16 (2-a) "Needy" includes a person who qualifies for a
17 federal, state, or local assistance program or who is or will be
18 assisted by a church, a not-for-profit organization, or a nonprofit
19 organization.

20 SECTION 8. Section 84.007(e), Civil Practice and Remedies
21 Code, is amended to read as follows:

22 (e) Sections 84.005 and 84.006 of this chapter do not apply
23 to a health care provider as defined in Section 74.001 [~~the Medical~~
24 ~~Liability and Insurance Improvement Act of Texas (Article 4590i,~~
25 ~~Vernon's Texas Civil Statutes)~~], unless the provider is a federally
26 funded migrant or community health center under the Public Health
27 Service Act (42 U.S.C.A. Sections 254b [~~254(b)~~] and 254c [~~(c)~~]) or

1 is a nonprofit health maintenance organization created and operated
2 by a community center under Section 534.101, Health and Safety
3 Code, or unless the provider usually provides discounted services
4 at or below costs based on the ability of the beneficiary to pay.
5 Acceptance of Medicare or Medicaid payments will not disqualify a
6 health care provider under this section. In no event shall Sections
7 84.005 and 84.006 of this chapter apply to a general hospital or
8 special hospital as defined in Chapter 241, Health and Safety Code,
9 or a facility or institution licensed under Subtitle C, Title 7,
10 Health and Safety Code, or Chapter 242, Health and Safety Code, or
11 to any health maintenance organization created and operating under
12 Chapter 843, Insurance Code, except for a nonprofit health
13 maintenance organization created under Section 534.101, Health and
14 Safety Code.

15 SECTION 9. Section 85.003(a), Civil Practice and Remedies
16 Code, is amended to read as follows:

17 (a) A claimant proves stalking against a defendant by
18 showing:

19 (1) on more than one occasion the defendant engaged in
20 harassing behavior;

21 (2) as a result of the harassing behavior, the
22 claimant reasonably feared for the claimant's safety or the safety
23 of a member of the claimant's family; and

24 (3) the defendant violated a restraining order
25 prohibiting harassing behavior or:

26 (A) the defendant, while engaged in harassing
27 behavior, by acts or words threatened to inflict bodily injury on

1 the claimant or to commit an offense against the claimant, a member
2 of the claimant's family, or the claimant's property;

3 (B) the defendant had the apparent ability to
4 carry out the threat;

5 (C) the defendant's apparent ability to carry out
6 the threat caused the claimant to reasonably fear for the
7 claimant's safety, ~~[or]~~ the safety of a family member, or the safety
8 of the claimant's property;

9 (D) the claimant at least once clearly demanded
10 that the defendant stop the defendant's harassing behavior;

11 (E) after the demand to stop by the claimant, the
12 defendant continued the harassing behavior; and

13 (F) the harassing behavior has been reported to
14 the police as a stalking offense.

15 SECTION 10. Section 88.001(4), Civil Practice and Remedies
16 Code, is amended to read as follows:

17 (4) "Health care provider" means a person or entity as
18 defined in Section 74.001 [~~1.03(a)(3), Medical Liability and~~
19 ~~Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas~~
20 ~~Civil Statutes)]].~~

21 SECTION 11. Section 88.002(k), Civil Practice and Remedies
22 Code, is amended to read as follows:

23 (k) An enrollee who files an action under this chapter shall
24 comply with the requirements of Section 74.351 [~~13.01, Medical~~
25 ~~Liability and Insurance Improvement Act of Texas (Article 4590i,~~
26 ~~Vernon's Texas Civil Statutes)], as it relates to [~~cost bonds,~~
27 ~~deposits, and]~~ expert reports.~~

1 SECTION 12. Chapter 124, Civil Practice and Remedies Code,
2 is amended by adding Section 124.002 to read as follows:

3 Sec. 124.002. LIABILITY. A person who is privileged to
4 detain another under Section 124.001 is not liable for damages
5 arising from the detention of that person.

6 SECTION 13. Section 81.048(b), Health and Safety Code, is
7 amended to read as follows:

8 (b) Notice of a positive test result for a reportable
9 disease designated under Subsection (a) shall be given to an
10 emergency medical service personnel, peace officer, or fire fighter
11 as provided by this section if:

12 (1) the emergency medical service personnel, peace
13 officer, or fire fighter delivered a person to a hospital as defined
14 by Section 74.001, Civil Practice and Remedies Code [~~1.03, Medical~~
15 ~~Liability and Insurance Improvement Act of Texas (Article 4590i,~~
16 ~~Vernon's Texas Civil Statutes)~~];

17 (2) the hospital has knowledge that the person has a
18 reportable disease and has medical reason to believe that the
19 person had the disease when the person was admitted to the hospital;
20 and

21 (3) the emergency medical service personnel, peace
22 officer, or fire fighter was exposed to the reportable disease
23 during the course of duty.

24 SECTION 14. Section 241.153, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION. A
27 patient's health care information may be disclosed without the

1 patient's authorization if the disclosure is:

2 (1) directory information, unless the patient has
3 instructed the hospital not to make the disclosure or the directory
4 information is otherwise protected by state or federal law;

5 (2) to a health care provider who is rendering health
6 care to the patient when the request for the disclosure is made;

7 (3) to a transporting emergency medical services
8 provider for the sole purpose of determining the patient's
9 diagnosis and the outcome of the patient's hospital admission;

10 (4) to a member of the clergy specifically designated
11 by the patient;

12 (5) to a qualified organ or tissue procurement
13 organization as defined in Section 692.002 for the purpose of
14 making inquiries relating to donations according to the protocol
15 referred to in Section 692.013(d);

16 (6) to a prospective health care provider for the
17 purpose of securing the services of that health care provider as
18 part of the patient's continuum of care, as determined by the
19 patient's attending physician;

20 (7) to a person authorized to consent to medical
21 treatment under Chapter 313 or to a person in a circumstance
22 exempted from Chapter 313 to facilitate the adequate provision of
23 treatment;

24 (8) to an employee or agent of the hospital who
25 requires health care information for health care education, quality
26 assurance, or peer review or for assisting the hospital in the
27 delivery of health care or in complying with statutory, licensing,

1 accreditation, or certification requirements and if the hospital
2 takes appropriate action to ensure that the employee or agent:

3 (A) will not use or disclose the health care
4 information for any other purpose; and

5 (B) will take appropriate steps to protect the
6 health care information;

7 (9) to a federal, state, or local government agency or
8 authority to the extent authorized or required by law;

9 (10) to a hospital that is the successor in interest to
10 the hospital maintaining the health care information;

11 (11) to the American Red Cross for the specific
12 purpose of fulfilling the duties specified under its charter
13 granted as an instrumentality of the United States government;

14 (12) to a regional poison control center, as the term
15 is used in Chapter 777, to the extent necessary to enable the center
16 to provide information and education to health professionals
17 involved in the management of poison and overdose victims,
18 including information regarding appropriate therapeutic use of
19 medications, their compatibility and stability, and adverse drug
20 reactions and interactions;

21 (13) to a health care utilization review agent who
22 requires the health care information for utilization review of
23 health care under Article 21.58A, Insurance Code;

24 (14) for use in a research project authorized by an
25 institutional review board under federal law;

26 (15) to health care personnel of a penal or other
27 custodial institution in which the patient is detained if the

1 disclosure is for the sole purpose of providing health care to the
2 patient;

3 (16) to facilitate reimbursement to a hospital, other
4 health care provider, or the patient for medical services or
5 supplies;

6 (17) to a health maintenance organization for purposes
7 of maintaining a statistical reporting system as required by a rule
8 adopted by a state agency or regulations adopted under the federal
9 Health Maintenance Organization Act of 1973[~~, as amended~~] (42
10 U.S.C. Section 300e [~~300~~] et seq.);

11 (18) to satisfy a request for medical records of a
12 deceased or incompetent person pursuant to Section 74.051(e), Civil
13 Practice and Remedies Code [~~4.01(e), Medical Liability and~~
14 ~~Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas~~
15 ~~Civil Statutes)];~~

16 (19) to comply with a court order except as provided by
17 Subdivision (20); or

18 (20) related to a judicial proceeding in which the
19 patient is a party and the disclosure is requested under a subpoena
20 issued under:

21 (A) the Texas Rules of Civil Procedure or Code of
22 Criminal Procedure; or

23 (B) Chapter 121, Civil Practice and Remedies
24 Code.

25 SECTION 15. Section 578.003(a), Health and Safety Code, is
26 amended to read as follows:

27 (a) The board by rule shall adopt a standard written consent

1 form to be used when electroconvulsive therapy is considered. The
2 board by rule shall also prescribe the information that must be
3 contained in the written supplement required under Subsection (c).
4 In addition to the information required under this section, the
5 form must include the information required by the Texas Medical
6 Disclosure Panel for electroconvulsive therapy. In developing the
7 form, the board shall consider recommendations of the panel. Use of
8 the consent form prescribed by the board in the manner prescribed by
9 this section creates a rebuttable presumption that the disclosure
10 requirements of Sections 74.104 and 74.105, Civil Practice and
11 Remedies Code [~~6.05 and 6.06, Medical Liability and Insurance~~
12 ~~Improvement Act of Texas (Article 4590i, Vernon's Texas Civil~~
13 ~~Statutes)] , have been met.~~

14 SECTION 16. Section 611.004(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) A professional may disclose confidential information
17 only:

18 (1) to a governmental agency if the disclosure is
19 required or authorized by law;

20 (2) to medical or law enforcement personnel if the
21 professional determines that there is a probability of imminent
22 physical injury by the patient to the patient or others or there is
23 a probability of immediate mental or emotional injury to the
24 patient;

25 (3) to qualified personnel for management audits,
26 financial audits, program evaluations, or research, in accordance
27 with Subsection (b);

1 (4) to a person who has the written consent of the
2 patient, or a parent if the patient is a minor, or a guardian if the
3 patient has been adjudicated as incompetent to manage the patient's
4 personal affairs;

5 (5) to the patient's personal representative if the
6 patient is deceased;

7 (6) to individuals, corporations, or governmental
8 agencies involved in paying or collecting fees for mental or
9 emotional health services provided by a professional;

10 (7) to other professionals and personnel under the
11 professionals' direction who participate in the diagnosis,
12 evaluation, or treatment of the patient;

13 (8) in an official legislative inquiry relating to a
14 state hospital or state school as provided by Subsection (c);

15 (9) to designated persons or personnel of a
16 correctional facility in which a person is detained if the
17 disclosure is for the sole purpose of providing treatment and
18 health care to the person in custody;

19 (10) to an employee or agent of the professional who
20 requires mental health care information to provide mental health
21 care services or in complying with statutory, licensing, or
22 accreditation requirements, if the professional has taken
23 appropriate action to ensure that the employee or agent:

24 (A) will not use or disclose the information for
25 any other purposes; and

26 (B) will take appropriate steps to protect the
27 information; or

1 (11) to satisfy a request for medical records of a
2 deceased or incompetent person pursuant to Section 74.051(e), Civil
3 Practice and Remedies Code [~~4.01(e), Medical Liability and~~
4 ~~Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas~~
5 ~~Civil Statutes)~~].

6 SECTION 17. Section 159.003(a), Occupations Code, is
7 amended to read as follows:

8 (a) An exception to the privilege of confidentiality in a
9 court or administrative proceeding exists:

10 (1) in a proceeding brought by a patient against a
11 physician, including:

12 (A) a malpractice proceeding; or

13 (B) a criminal proceeding or license revocation
14 proceeding in which the patient is a complaining witness and
15 disclosure is relevant to a claim or defense of the physician;

16 (2) if the patient or a person authorized to act on the
17 patient's behalf submits a written consent to the release of
18 confidential information as provided by Section 159.005;

19 (3) in a proceeding to substantiate and collect on a
20 claim for medical services provided to the patient;

21 (4) in a civil action or administrative proceeding, if
22 relevant, brought by the patient or a person on the patient's
23 behalf, if the patient or person is attempting to recover monetary
24 damages for a physical or mental condition including the patient's
25 death;

26 (5) in a disciplinary investigation or proceeding
27 conducted under this subtitle, if the board protects the identity

1 of any patient whose billing or medical records are examined other
2 than a patient:

3 (A) for whom an exception exists under
4 Subdivision (1); or

5 (B) who has submitted written consent to the
6 release of the billing or medical records as provided by Section
7 159.005;

8 (6) in a criminal investigation of a physician in
9 which the board is participating, or assisting in the investigation
10 or proceeding by providing certain billing or medical records
11 obtained from the physician, if the board protects the identity of a
12 patient whose billing or medical records are provided in the
13 investigation or proceeding other than a patient:

14 (A) for whom an exception exists under
15 Subdivision (1); or

16 (B) who has submitted written consent to the
17 release of the billing or medical records as provided by Section
18 159.005;

19 (7) in an involuntary civil commitment proceeding,
20 proceeding for court-ordered treatment, or probable cause hearing
21 under Chapter 462, 574, or 593, Health and Safety Code;

22 (8) if the patient's physical or mental condition is
23 relevant to the execution of a will;

24 (9) if the information is relevant to a proceeding
25 brought under Section 159.009;

26 (10) in a criminal prosecution in which the patient is
27 a victim, witness, or defendant;

1 (11) to satisfy a request for billing or medical
2 records of a deceased or incompetent person under Section
3 74.051(e), Civil Practice and Remedies Code [~~4.01(e), Medical~~
4 ~~Liability and Insurance Improvement Act of Texas (Article 4590i,~~
5 ~~Vernon's Texas Civil Statutes)~~]; or

6 (12) to a court or a party to an action under a court
7 order or court subpoena.

8 SECTION 18. Section 160.053(a), Occupations Code, is
9 amended to read as follows:

10 (a) Not later than the 30th day after the date an insurer
11 receives from an insured a complaint filed in a lawsuit, a
12 settlement of a claim without the filing of a lawsuit, or a
13 settlement of a lawsuit against the insured, the insurer shall
14 furnish to the board:

15 (1) the name of the insured and the insured's Texas
16 medical license number;

17 (2) the policy number;

18 (3) a copy of the complaint or settlement; and

19 (4) a copy of any expert report served [~~filed~~] under
20 Section 74.351, Civil Practice and Remedies Code [~~13.01, Medical~~
21 ~~Liability and Insurance Improvement Act of Texas (Article 4590i,~~
22 ~~Vernon's Texas Civil Statutes)~~].

23 SECTION 19. Section 164.201, Occupations Code, is amended
24 to read as follows:

25 Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE
26 CLAIMS. The board shall review the medical competency of a
27 physician against whom three or more expert reports under Section

1 74.351, Civil Practice and Remedies Code [~~13.01, Medical Liability~~
2 ~~and Insurance Improvement Act of Texas (Article 4590i, Vernon's~~
3 ~~Texas Civil Statutes)~~], have been served [~~filed~~] in three separate
4 lawsuits within a five-year period in the same manner as if a
5 complaint against the physician had been made to the board under
6 Section 154.051.

7 SECTION 20. (a) The change in law made by Section 26.01,
8 Business & Commerce Code, as amended by this Act, applies only to an
9 agreement, promise, contract, or warranty made on or after the
10 effective date of this Act. An agreement, promise, contract, or
11 warranty made before the effective date of this Act is governed by
12 the law in effect immediately before that date, and that law is
13 continued in effect for that purpose.

14 (b) The change in law made by Sections 22.003, 23.002,
15 76.001, 84.007, 85.003, 88.001, and 88.002, Civil Practice and
16 Remedies Code, as amended by this Act, and Section 124.002, Civil
17 Practice and Remedies Code, as added by this Act, applies only to a
18 cause of action that accrues on or after the effective date of this
19 Act. A cause of action that accrues before the effective date of
20 this Act is governed by the law in effect immediately before that
21 date, and that law is continued in effect for that purpose.

22 (c) The amendment by this Act of Section 74.352, Civil
23 Practice and Remedies Code, is intended to clarify rather than
24 change existing law.

25 (d) The change in law made by Section 81.048, Health and
26 Safety Code, as amended by this Act, applies only to conduct of
27 emergency services personnel or a peace officer or firefighter on

1 or after the effective date of this Act. Conduct of those persons
2 before the effective date of this Act is governed by the law in
3 effect immediately before that date, and that law is continued in
4 effect for that purpose.

5 (e) The change in law made by Sections 241.153 and 611.004,
6 Health and Safety Code, and Section 159.003, Occupations Code,
7 applies only to a disclosure made in response to a request made on
8 or after the effective date of this Act. A disclosure made to a
9 request made before the effective date of this Act is governed by
10 the law in effect immediately before that date, and that law is
11 continued in effect for that purpose.

12 (f) The change in law made by Section 578.003, Health and
13 Safety Code, and Section 160.053, Occupations Code, as amended by
14 this Act, applies only to an action filed on or after the effective
15 date of this Act. An action filed before the effective date of this
16 Act is governed by the law in effect before that date, and that law
17 is continued in effect for that purpose.

18 SECTION 21. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2005.