

By: Leibowitz

H.B. No. 4249

Substitute the following for H.B. No. 4249:

By: Hartnett

C.S.H.B. No. 4249

A BILL TO BE ENTITLED

AN ACT

relating to expert reports in a health care liability claim.

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

SECTION 1. Section 74.351, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (k) and adding Subsections (d) and (s-1) to read as follows:

(a) In a health care liability claim, a claimant shall, not later than the 120th day after the date each defendant's [the] original answer is [petition was] filed, serve on that [each] party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the later of the 21st day after the date the report is [it was] served or the 21st day after the defendant's answer is filed, failing which all objections are waived.

(d) An objection to the sufficiency of an expert report must clearly state the specific elements of the report that are alleged to be deficient. An objection that is conclusory or that fails to state the specific elements of the report that are alleged to be deficient shall be overruled and any deficiency in the report is

1 considered waived.

2 (k) Subject to Subsection (t), an expert report served under
3 this section:

4 (1) is not admissible in evidence by any party;

5 (2) shall not be used in a deposition, trial, or other
6 proceeding; ~~and~~

7 (3) shall not be referred to by any party during the
8 course of the action for any purpose; and

9 (4) does not limit a party to allegations or opinions
10 expressed in the report.

11 (s-1) Notwithstanding Subsection (s), a claimant may
12 proceed with discovery if:

13 (1) the citation has been served on the defendant but
14 the defendant has not answered in a timely manner; or

15 (2) the claimant has made a reasonable effort to serve
16 the expert report on the defendant in the manner provided by Rule
17 106(a), Texas Rules of Civil Procedure, but service has failed.

18 SECTION 2. The change in law made by this Act applies to a
19 cause of action that accrues on or after the effective date of this
20 Act. A cause of action that accrues before the effective date of
21 this Act is governed by the law as it existed before that date, and
22 that law is continued in effect for that purpose.

23 SECTION 3. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2009.