

By: Moody, Price, Canales

H.B. No. 2362

A BILL TO BE ENTITLED

AN ACT

relating to the standard of proof in health care liability claims involving emergency medical care.

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

SECTION 1. Section 74.153, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) Except as provided by Subsection (b), in [In] a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department, in an [ex] obstetrical unit, or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with willful [wilful] and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

(b) Subsection (a) does not apply to:

(1) medical care or treatment:

- 1 (A) provided after the patient is:
2 (i) stabilized; and
3 (ii) receiving medical care or treatment as
4 a nonemergency patient; or
5 (B) that is unrelated to a medical emergency; or
6 (2) a physician or health care provider whose
7 negligent act or omission proximately causes a stable patient to
8 require emergency medical care.

9 SECTION 2. Section [74.153](#), Civil Practice and Remedies
10 Code, as amended by this Act, applies only to an action commenced on
11 or after the effective date of this Act. An action commenced before
12 the effective date of this Act is governed by the law applicable to
13 the action immediately before the effective date of this Act, and
14 that law is continued in effect for that purpose.

15 SECTION 3. This Act takes effect September 1, 2019.