

By: Moody

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 [or] obstetrical unit for the initial evaluation or treatment of a patient with an obstetric emergency, 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 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 medical care or

1 treatment:

2 (1) provided when a patient arrives at a health care
3 institution:

4 (A) in stable condition; or

5 (B) capable of receiving medical care or
6 treatment as a nonemergency patient;

7 (2) provided after the patient is:

8 (A) stabilized; or

9 (B) capable of receiving medical care or
10 treatment as a nonemergency patient;

11 (3) provided in an obstetrical unit if the patient
12 arrives at a hospital for medical care or treatment for a
13 non-obstetric emergency;

14 (4) that is unrelated to the original medical
15 emergency for which the patient initially sought medical care or
16 treatment; or

17 (5) that is related to an emergency caused wholly or
18 partly by the negligence of any defendant.

19 SECTION 2. Section 74.153, Civil Practice and Remedies
20 Code, as amended by this Act, applies only to a cause of action that
21 accrues on or after the effective date of this Act. A cause of
22 action that accrues before the effective date of this Act is
23 governed by the law applicable to the cause of action immediately
24 before the effective date of this Act, and that law is continued in
25 effect for that purpose.

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