

By: Davis

H.B. No. 3984

A BILL TO BE ENTITLED

AN ACT

1
2 relating to service of expert reports for health care liability
3 claims.

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

5 SECTION 1. Sections 74.351(a) and (c), Civil Practice and
6 Remedies Code, are amended to read as follows:

7 (a) In a health care liability claim, a claimant shall, not
8 later than the 120th day after the date each defendant's original
9 answer is filed or a later date required under Section 74.353, serve
10 on that party or the party's attorney one or more expert reports,
11 with a curriculum vitae of each expert listed in the report for each
12 physician or health care provider against whom a liability claim is
13 asserted. The date for serving the report may be extended by
14 written agreement of the affected parties. Each defendant
15 physician or health care provider whose conduct is implicated in a
16 report must file and serve any objection to the sufficiency of the
17 report not later than the later of the 21st day after the date the
18 report is served or the 21st day after the date the defendant's
19 answer is filed, failing which all objections are waived.

20 (c) If an expert report has not been served within the
21 period specified by Subsection (a) because elements of the report
22 are found deficient, the court may grant one 30-day extension to the
23 claimant in order to cure the deficiency. If the claimant does not
24 receive notice of the court's ruling granting the extension until

1 after the applicable [~~120-day~~] deadline has passed, then the 30-day
2 extension shall run from the date the plaintiff first received the
3 notice.

4 SECTION 2. Subchapter H, Chapter 74, Civil Practice and
5 Remedies Code, is amended by adding Section 74.353 to read as
6 follows:

7 Sec. 74.353. PRELIMINARY DETERMINATION FOR EXPERT REPORT
8 REQUIREMENT. (a) On motion of a claimant filed not later than 30
9 days after the date each defendant's original answer is filed, a
10 court may issue a preliminary determination regarding whether a
11 claim made by the claimant is a health care liability claim for the
12 purposes of Section 74.351.

13 (b) If a court determines under Subsection (a) that a claim
14 is a health care liability claim for purposes of Section 74.351, the
15 claimant shall serve an expert report as required by Section 74.351
16 not later than the later of:

17 (1) 120 days after the date each defendant's original
18 answer is filed;

19 (2) 60 days after the date the court issues the
20 preliminary determination under Subsection (a); or

21 (3) a date agreed to in writing by the affected
22 parties.

23 (c) A preliminary determination under this section:

24 (1) applies only to the issue of whether a claimant is
25 required to serve an expert report under Section 74.351; and

26 (2) is not subject to interlocutory appeal.

27 SECTION 3. The change in law made by this Act applies only

1 to an action commenced on or after the effective date of this Act.
2 An action commenced before the effective date of this Act is
3 governed by the law as it existed immediately before the effective
4 date of this Act, and that law is continued in effect for that
5 purpose.

6 SECTION 4. This Act takes effect September 1, 2021.