

1-1 By: Johnson S.B. No. 232
 1-2 (In the Senate - Filed December 7, 2020; March 3, 2021, read
 1-3 first time and referred to Committee on Jurisprudence;
 1-4 April 12, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; April 12, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Huffman	X			
1-9 Hinojosa	X			
1-10 Creighton	X			
1-11 Hughes	X			
1-12 Johnson	X			

1-14 COMMITTEE SUBSTITUTE FOR S.B. No. 232 By: Huffman

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to service of expert reports for health care liability
 1-18 claims.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 51.014(a), Civil Practice and Remedies
 1-21 Code, is amended to read as follows:

1-22 (a) A person may appeal from an interlocutory order of a
 1-23 district court, county court at law, statutory probate court, or
 1-24 county court that:

1-25 (1) appoints a receiver or trustee;

1-26 (2) overrules a motion to vacate an order that
 1-27 appoints a receiver or trustee;

1-28 (3) certifies or refuses to certify a class in a suit
 1-29 brought under Rule 42 of the Texas Rules of Civil Procedure;

1-30 (4) grants or refuses a temporary injunction or grants
 1-31 or overrules a motion to dissolve a temporary injunction as
 1-32 provided by Chapter 65;

1-33 (5) denies a motion for summary judgment that is based
 1-34 on an assertion of immunity by an individual who is an officer or
 1-35 employee of the state or a political subdivision of the state;

1-36 (6) denies a motion for summary judgment that is based
 1-37 in whole or in part upon a claim against or defense by a member of
 1-38 the electronic or print media, acting in such capacity, or a person
 1-39 whose communication appears in or is published by the electronic or
 1-40 print media, arising under the free speech or free press clause of
 1-41 the First Amendment to the United States Constitution, or Article
 1-42 I, Section 8, of the Texas Constitution, or Chapter 73;

1-43 (7) grants or denies the special appearance of a
 1-44 defendant under Rule 120a, Texas Rules of Civil Procedure, except
 1-45 in a suit brought under the Family Code;

1-46 (8) grants or denies a plea to the jurisdiction by a
 1-47 governmental unit as that term is defined in Section 101.001;

1-48 (9) denies all or part of the relief sought by a motion
 1-49 under Section 74.351(b), except that an appeal may not be taken from
 1-50 an order granting an extension under Section 74.351;

1-51 (10) grants relief sought by a motion under Section
 1-52 74.351(1);

1-53 (11) denies a motion to dismiss filed under Section
 1-54 90.007;

1-55 (12) denies a motion to dismiss filed under Section
 1-56 27.003;

1-57 (13) denies a motion for summary judgment filed by an
 1-58 electric utility regarding liability in a suit subject to Section
 1-59 75.0022; [~~or~~]

1-60 (14) denies a motion filed by a municipality with a

2-1 population of 500,000 or more in an action filed under Section
 2-2 54.012(6) or 214.0012, Local Government Code; or
 2-3 (15) makes a preliminary determination on a claim
 2-4 under Section 74.353.

2-5 SECTION 2. Sections 74.351(a) and (c), Civil Practice and
 2-6 Remedies Code, are amended to read as follows:

2-7 (a) In a health care liability claim, a claimant shall, not
 2-8 later than the 120th day after the date each defendant's original
 2-9 answer is filed or a later date required under Section 74.353, serve
 2-10 on that party or the party's attorney one or more expert reports,
 2-11 with a curriculum vitae of each expert listed in the report for each
 2-12 physician or health care provider against whom a liability claim is
 2-13 asserted. The date for serving the report may be extended by
 2-14 written agreement of the affected parties. Each defendant
 2-15 physician or health care provider whose conduct is implicated in a
 2-16 report must file and serve any objection to the sufficiency of the
 2-17 report not later than the later of the 21st day after the date the
 2-18 report is served or the 21st day after the date the defendant's
 2-19 answer is filed, failing which all objections are waived.

2-20 (c) If an expert report has not been served within the
 2-21 period specified by Subsection (a) because elements of the report
 2-22 are found deficient, the court may grant one 30-day extension to the
 2-23 claimant in order to cure the deficiency. If the claimant does not
 2-24 receive notice of the court's ruling granting the extension until
 2-25 after the applicable ~~[120-day]~~ deadline has passed, then the 30-day
 2-26 extension shall run from the date the plaintiff first received the
 2-27 notice.

2-28 SECTION 3. Subchapter H, Chapter 74, Civil Practice and
 2-29 Remedies Code, is amended by adding Section 74.353 to read as
 2-30 follows:

2-31 Sec. 74.353. PRELIMINARY DETERMINATION FOR EXPERT REPORT
 2-32 REQUIREMENT. (a) On motion of a claimant filed not later than 30
 2-33 days after the date each defendant's original answer is filed, a
 2-34 court may issue a preliminary determination regarding whether a
 2-35 claim made by the claimant is a health care liability claim for the
 2-36 purposes of Section 74.351.

2-37 (b) If a court determines under Subsection (a) or (c) that a
 2-38 claim is a health care liability claim for purposes of Section
 2-39 74.351, the claimant shall serve an expert report as required by
 2-40 Section 74.351 not later than the later of:

2-41 (1) 120 days after the date each defendant's original
 2-42 answer is filed;

2-43 (2) 60 days after the date the court issues the
 2-44 preliminary determination under Subsection (a) or (c); or

2-45 (3) a date agreed to in writing by the affected
 2-46 parties.

2-47 (c) If a court does not issue a preliminary determination
 2-48 under Subsection (a) before the 91st day after the date that a
 2-49 claimant files a motion under that subsection, the court shall
 2-50 issue a preliminary determination that the claim is a health care
 2-51 liability claim for the purposes of Section 74.351.

2-52 (d) A preliminary determination under this section is
 2-53 subject to interlocutory appeal by either the claimant or
 2-54 defendant.

2-55 (e) If on interlocutory appeal an appellate court reverses a
 2-56 trial court's preliminary determination that a claim is not a
 2-57 health care liability claim, the claimant shall serve an expert
 2-58 report as required by Section 74.351 not later than 120 days after
 2-59 the date that the appellate court issues an opinion reversing the
 2-60 preliminary determination.

2-61 (f) A preliminary determination under this section applies
 2-62 only to the issue of whether a claimant is required to serve an
 2-63 expert report under Section 74.351.

2-64 SECTION 4. The change in law made by this Act applies only
 2-65 to an action commenced on or after the effective date of this Act.
 2-66 An action commenced before the effective date of this Act is
 2-67 governed by the law as it existed immediately before the effective
 2-68 date of this Act, and that law is continued in effect for that
 2-69 purpose.

3-1 SECTION 5. This Act takes effect September 1, 2021.

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