

By: Schwertner

S.B. No. 30

A BILL TO BE ENTITLED

AN ACT

relating to recovery of damages in civil actions.

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

SECTION 1. Section 18.001, Civil Practice and Remedies Code, is amended by amending Subsections (b), (e), (e-1), (h), and (i) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Unless notice of intent to controvert the reasonableness of the amounts charged or the necessity for health care services ~~[a-controverting affidavit]~~ is served as provided by this section, an affidavit complying with this section and stating that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary.

(b-1) Except as provided by Section 18.0011, if notice of intent to controvert the reasonableness of the amounts charged or necessity for health care services is served as provided by this section, an affidavit served under Subsection (b) has no effect except the affidavit may prove the authenticity of the health care records described by the affidavit.

(b-2) An ~~[The]~~ affidavit described by Subsection (b) is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.

(e) A party intending to controvert the reasonableness of the amounts charged or necessity for health care services ~~[a claim reflected by the affidavit]~~ must serve notice of that intent ~~[a copy of the counteraffidavit]~~ on each other party or the party's attorney of record by the earlier of:

(1) 120 days after the date the defendant files its answer;

(2) the date the party serving notice ~~[offering the counteraffidavit]~~ must designate expert witnesses under a court order; or

(3) the date the party serving notice ~~[offering the counteraffidavit]~~ must designate any expert witness as required by the Texas Rules of Civil Procedure.

(e-1) Notwithstanding Subsection (e), if the party offering the affidavit ~~[in evidence]~~ serves a copy of the affidavit under Subsection (d-1), notice of intent to controvert the reasonableness of the amounts charged or necessity for health care services must be served ~~[the party offering the counteraffidavit in evidence or the party's attorney must serve a copy of the counteraffidavit]~~ on each other party to the case by the later of:

(1) 30 days after service of the affidavit on the party serving notice ~~[offering the counteraffidavit in evidence]~~;

(2) the date the party serving notice ~~[offering the counteraffidavit]~~ must designate any expert witness under a court order; or

(3) the date the party serving notice ~~[offering the counteraffidavit in evidence]~~ must designate any expert witness as

required by the Texas Rules of Civil Procedure.

(h) If health care ~~[continuing]~~ services are provided after a relevant deadline under this section:

(1) a party may supplement an affidavit served by the party under Subsection (d) or (d-1) on or before the 60th day before the date the trial commences; and

(2) a party that served notice ~~[a counteraffidavit]~~ under Subsection (e) or (e-1) may serve notice related to the supplemental affidavit ~~[supplement the counteraffidavit]~~ on or before the 30th day before the date the trial commences.

(i) Notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), ~~[(g)],~~ and (h), a deadline under this section may be altered by all parties to an action by agreement or with leave of the court.

SECTION 2. Subchapter A, Chapter 18, Civil Practice and Remedies Code, is amended by adding Section 18.0011 to read as follows:

Sec. 18.0011. AFFIDAVIT OF HEALTH CARE FACILITY OR PROVIDER. (a) A party may not controvert the reasonableness of the charges for health care services stated in an affidavit served under Section 18.001 if, as to each health care service provided by the health care facility or provider:

(1) the affidavit states one of the following amounts as the reasonable charge for the service:

(A) the amounts received from all sources by the facility or provider to pay for the service provided to the person whose injury or death is the subject of the action; or

(B) an amount that does not exceed 150 percent of

1 the median amount paid by nongovernmental third-party payors to
2 health care facilities or providers for the same type of service
3 provided to the person whose injury or death is the subject of the
4 action during the month in which the service was provided, as drawn
5 from the Texas All Payor Claims Database established under
6 Subchapter I, Chapter 38, Insurance Code, for the geozip:

7 (i) in which the service was provided, if
8 the service was provided in this state; or

9 (ii) in which The University of Texas
10 Health Science Center at Houston is located, if the service was
11 provided outside of this state; and

12 (2) the affidavit is accompanied by an invoice for the
13 service that would comply with the clean claim requirements of
14 Chapter 1301, Insurance Code.

15 (b) If an affidavit of a health care facility or provider
16 served under Section 18.001 complies with Subsection (a) and
17 includes a statement that the facility or provider does not intend
18 to appear at trial to testify regarding the reasonableness of the
19 facility's or provider's charges or the necessity for the facility's
20 or provider's services, then:

21 (1) a party may not seek to obtain through any pretrial
22 discovery procedure information from the facility or provider about
23 the reasonableness of the facility's or provider's charges or the
24 necessity for the facility's or provider's services; and

25 (2) the trial court shall exclude trial testimony by
26 the facility or provider regarding the reasonableness of the
27 facility's or provider's charges or the necessity for the facility's

1 or provider's services unless:

2 (A) the court finds there is good cause to allow
3 the testimony;

4 (B) the testimony will not unfairly surprise or
5 unfairly prejudice any party to the action; and

6 (C) a party opposing admission of the testimony
7 into evidence is given a reasonable opportunity to conduct
8 discovery and present evidence relevant to the testimony to be
9 offered by the facility or provider.

10 (c) An affidavit of a health care facility or provider
11 described by Subsection (a) and the statements made in the
12 affidavit may be used only in the civil action in which the
13 affidavit is served and not in other actions or for other purposes.

14 SECTION 3. Chapter 41, Civil Practice and Remedies Code, is
15 amended by designating Sections 41.001, 41.002, 41.008, 41.009,
16 41.0105, and 41.014 as Subchapter A and adding a subchapter heading
17 to read as follows:

18 SUBCHAPTER A. GENERAL PROVISIONS

19 SECTION 4. Section 41.001, Civil Practice and Remedies
20 Code, is amended by amending Subdivisions (9), (10), and (12) and
21 adding Subdivisions (11-a) and (14) to read as follows:

22 (9) "Future damages" means damages that in reasonable
23 probability can be expected to be ~~[are]~~ incurred after the date of
24 the judgment. The term does ~~[Future damages do]~~ not include
25 exemplary damages.

26 (10) "Future loss of earnings" means a pecuniary loss
27 from reductions in income, wages, or earning capacity that in

1 reasonable probability can be expected to be incurred after the
2 date of the judgment. The term does not include [~~, including:~~

3 ~~[(A) loss of income, wages, or earning capacity,~~
4 ~~and~~

5 ~~[(B)]~~ loss of inheritance.

6 (11-a) "Mental or emotional pain or anguish" means
7 grievous and debilitating angst, distress, torment, or emotional
8 suffering or turmoil that:

9 (A) causes a substantial disruption in a person's
10 daily routine; and

11 (B) arises from loss of consortium, loss of
12 companionship and society, loss of enjoyment of life, or a similar
13 mental or emotional injury.

14 (12) "Noneconomic damages" means damages awarded for
15 the purpose of compensating a claimant for nonpecuniary losses for
16 physical pain and suffering, mental or emotional pain or anguish,
17 and [~~loss of consortium, disfigurement, physical impairment, loss~~
18 ~~of companionship and society, inconvenience, loss of enjoyment of~~
19 ~~life,~~] injury to reputation[, ~~and all other nonpecuniary losses of~~
20 ~~any kind other than exemplary damages~~]. The term does not include
21 economic or exemplary damages.

22 (14) "Physical pain and suffering" means a painful or
23 distressing sensation associated with an injury or damage to a part
24 of a person's body that:

25 (A) is consciously felt;

26 (B) is significant in magnitude; and

27 (C) arises from an observable injury or

1 impairment or is shown to exist through objectively verifiable
2 medical evaluation or testing.

3 SECTION 5. Section 41.002(d), Civil Practice and Remedies
4 Code, is amended to read as follows:

5 (d) Notwithstanding any provision to the contrary, the
6 provisions of this chapter regarding exemplary damages do ~~does~~
7 not apply to:

8 (1) Section 15.21, Business & Commerce Code (Texas
9 Free Enterprise and Antitrust Act of 1983);

10 (2) an action brought under the Deceptive Trade
11 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
12 Business & Commerce Code) except as specifically provided in
13 Section 17.50 of that Act;

14 (3) an action brought under Chapter 36, Human
15 Resources Code; or

16 (4) an action brought under Chapter 21, Insurance
17 Code.

18 SECTION 6. Chapter 41, Civil Practice and Remedies Code, is
19 amended by adding Subchapter B, and a heading is added to that
20 subchapter to read as follows:

21 SUBCHAPTER B. EXEMPLARY DAMAGES

22 SECTION 7. Sections 41.003, 41.004, 41.005, 41.006, 41.007,
23 41.010, 41.011, 41.0115, 41.012, and 41.013, Civil Practice and
24 Remedies Code, are transferred to Subchapter B, Chapter 41, Civil
25 Practice and Remedies Code, as added by this Act, redesignated as
26 Sections 41.051, 41.052, 41.053, 41.054, 41.055, 41.056, 41.057,
27 41.058, 41.059, and 41.060, Civil Practice and Remedies Code,

respectively, and amended to read as follows:

Sec. 41.051 [~~41.003~~]. STANDARDS FOR RECOVERY [~~OF~~
~~EXEMPLARY DAMAGES~~]. (a) Except as provided by Subsection (c),
exemplary damages may be awarded only if the claimant proves by
clear and convincing evidence that the harm with respect to which
the claimant seeks recovery of exemplary damages results from:

- (1) fraud;
- (2) malice; or
- (3) gross negligence.

(b) The claimant must prove by clear and convincing evidence
the elements of exemplary damages as provided by this section. This
burden of proof may not be shifted to the defendant or satisfied by
evidence of ordinary negligence, bad faith, or a deceptive trade
practice.

(c) If the claimant relies on a statute establishing a cause
of action and authorizing exemplary damages in specified
circumstances or in conjunction with a specified culpable mental
state, exemplary damages may be awarded only if the claimant proves
by clear and convincing evidence that the damages result from the
specified circumstances or culpable mental state.

(d) Exemplary damages may be awarded only if the jury was
unanimous in regard to finding liability for and the amount of
exemplary damages.

(e) In all cases where the issue of exemplary damages is
submitted to the jury, the following instruction shall be included
in the charge of the court:

"You are instructed that, in order for you to find exemplary

1 damages, your answer to the question regarding the amount of such
2 damages must be unanimous."

3 Sec. 41.052 [~~41.004~~]. FACTORS PRECLUDING RECOVERY. (a)
4 Except as provided by Subsection (b), exemplary damages may be
5 awarded only if damages other than nominal damages are awarded.

6 (b) Exemplary damages may not be awarded to a claimant who
7 elects to have his recovery multiplied under another statute.

8 Sec. 41.053 [~~41.005~~]. HARM RESULTING FROM CRIMINAL ACT.

9 (a) In an action arising from harm resulting from an assault,
10 theft, or other criminal act, a court may not award exemplary
11 damages against a defendant because of the criminal act of another.

12 (b) The exemption provided by Subsection (a) does not apply
13 if:

14 (1) the criminal act was committed by an employee of
15 the defendant;

16 (2) the defendant is criminally responsible as a party
17 to the criminal act under the provisions of Chapter 7, Penal Code;

18 (3) the criminal act occurred at a location where, at
19 the time of the criminal act, the defendant was maintaining a common
20 nuisance under the provisions of Chapter 125, Civil Practice and
21 Remedies Code, and had not made reasonable attempts to abate the
22 nuisance; or

23 (4) the criminal act resulted from the defendant's
24 intentional or knowing violation of a statutory duty under
25 Subchapter D, Chapter 92, Property Code, and the criminal act
26 occurred after the statutory deadline for compliance with that
27 duty.

1 (c) In an action arising out of a criminal act committed by
2 an employee, the employer may be liable for punitive damages but
3 only if:

4 (1) the principal authorized the doing and the manner
5 of the act;

6 (2) the agent was unfit and the principal acted with
7 malice in employing or retaining the agent ~~[him]~~;

8 (3) the agent was employed in a managerial capacity
9 and was acting in the scope of employment; or

10 (4) the employer or a manager of the employer ratified
11 or approved the act.

12 Sec. 41.054 [~~41.006~~]. AWARD SPECIFIC TO DEFENDANT. In any
13 action in which there are two or more defendants, an award of
14 exemplary damages must be specific as to a defendant, and each
15 defendant is liable only for the amount of the award made against
16 that defendant.

17 Sec. 41.055 [~~41.007~~]. PREJUDGMENT INTEREST. Prejudgment
18 interest may not be assessed or recovered on an award of exemplary
19 damages.

20 Sec. 41.056 [~~41.010~~]. CONSIDERATIONS IN MAKING AWARD. (a)
21 Before making an award of exemplary damages, the trier of fact shall
22 consider the definition and purposes of exemplary damages as
23 provided by Section 41.001.

24 (b) Subject to Section 41.008, the determination of whether
25 to award exemplary damages and the amount of exemplary damages to be
26 awarded is within the discretion of the trier of fact.

27 Sec. 41.057 [~~41.011~~]. EVIDENCE RELATING TO AMOUNT OF

1 EXEMPLARY DAMAGES. (a) In determining the amount of exemplary
2 damages, the trier of fact shall consider evidence, if any,
3 relating to:

- 4 (1) the nature of the wrong;
- 5 (2) the character of the conduct involved;
- 6 (3) the degree of culpability of the wrongdoer;
- 7 (4) the situation and sensibilities of the parties
8 concerned;
- 9 (5) the extent to which such conduct offends a public
10 sense of justice and propriety; and
- 11 (6) the net worth of the defendant.

12 (b) Evidence that is relevant only to the amount of
13 exemplary damages that may be awarded is not admissible during the
14 first phase of a bifurcated trial.

15 Sec. 41.058 [~~41.0115~~]. DISCOVERY OF EVIDENCE OF NET WORTH
16 FOR EXEMPLARY DAMAGES CLAIM. (a) On the motion of a party and after
17 notice and a hearing, a trial court may authorize discovery of
18 evidence of a defendant's net worth if the court finds in a written
19 order that the claimant has demonstrated a substantial likelihood
20 of success on the merits of a claim for exemplary damages. Evidence
21 submitted by a party to the court in support of or in opposition to a
22 motion made under this subsection may be in the form of an affidavit
23 or a response to discovery.

24 (b) If a trial court authorizes discovery under Subsection
25 (a), the court's order may only authorize use of the least
26 burdensome method available to obtain the net worth evidence.

27 (c) When reviewing an order authorizing or denying

discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion described by Subsection (a).

(d) If a party requests net worth discovery under this section, the court shall presume that the requesting party has had adequate time for the discovery of facts relating to exemplary damages for purposes of allowing the party from whom net worth discovery is sought to move for summary judgment on the requesting party's claim for exemplary damages under Rule 166a(i), Texas Rules of Civil Procedure.

Sec. 41.059 [~~41.012~~]. JURY INSTRUCTIONS. In a trial to a jury, the court shall instruct the jury with regard to Sections 41.001, 41.051 [~~41.003~~], 41.056 [~~41.010~~], and 41.057 [~~41.011~~].

Sec. 41.060 [~~41.013~~]. JUDICIAL REVIEW OF AWARD. (a) Except as provided for in Subsection (b), an appellate court that reviews the evidence with respect to a finding by a trier of fact concerning liability for exemplary damages or with respect to the amount of exemplary damages awarded shall state, in a written opinion, the court's reasons for upholding or disturbing the finding or award. The written opinion shall address the evidence or lack of evidence with specificity, as it relates to the liability for or amount of exemplary damages, in light of the requirements of this chapter.

(b) This section does not apply to the supreme court with respect to its consideration of a petition for review [~~an application for writ of error~~].

SECTION 8. Chapter 41, Civil Practice and Remedies Code, is amended by adding Subchapters C and D to read as follows:

SUBCHAPTER C. RECOVERY OF HEALTH CARE EXPENSES AS ECONOMIC DAMAGES

Sec. 41.101. DEFINITIONS. In this subchapter:

(1) "Database" means the Texas All Payor Claims Database established under Subchapter I, Chapter 38, Insurance Code.

(2) "Health care expenses" means amounts paid or owed or that may be paid or owed to a provider for health care services, supplies, or devices provided to a patient.

(3) "Health care services" means services provided by a provider to an individual to diagnose, prevent, alleviate, cure, treat, or heal the individual's condition, illness, or injury, including:

(A) rehabilitative services provided to the individual; or

(B) personal care provided to the individual on a short-term or long-term basis.

(4) "Injured individual" means the individual whose injury or death is the subject of a civil action to which this subchapter applies.

(5) "Letter of protection" means an agreement, regardless of the name, that includes an express or implied promise of payment to a health care provider from a judgment or settlement of an injured individual's civil action or that makes a payment to the provider contingent on the resolution of the action.

(6) "Physician" means:

1 (A) an individual licensed to practice medicine;
2 and

3 (B) a professional association, partnership,
4 limited liability partnership, or other type of entity formed or
5 organized by an individual physician or group of physicians to
6 provide medical care to patients.

7 (7) "Provider" means a person, including an
8 individual, partnership, professional association, corporation,
9 facility, or institution, who is licensed, certified, registered,
10 chartered, or otherwise authorized, in this state or elsewhere, to
11 provide health care services, including:

12 (A) an acupuncturist;
13 (B) a chiropractor;
14 (C) a dentist;
15 (D) a health care institution of a type described
16 by Section [74.001\(11\)](#);

17 (E) a health care collaborative;
18 (F) a nonprofit health organization;
19 (G) a nurse, including a licensed vocational
20 nurse, nurse practitioner, and registered nurse;

21 (H) an occupational therapist;
22 (I) an ophthalmologist;
23 (J) an optometrist;
24 (K) a pharmacist;
25 (L) a physical therapist;
26 (M) a physician;
27 (N) a physician's assistant; and

1 (O) a podiatrist.

2 (8) "Third-party payor" means an entity, plan, or
3 program that has a legal or contractual obligation to pay,
4 reimburse, or otherwise contract with a provider to pay the
5 provider for the provision of a health care service, supply, or
6 device to a patient, including:

7 (A) an insurance company providing health or
8 dental insurance;

9 (B) an employer-provided plan or any other
10 sponsor or administrator of a health or dental plan;

11 (C) a health maintenance organization operating
12 under Chapter 843, Insurance Code, an insurer providing a preferred
13 provider benefit plan under Chapter 1301, Insurance Code, or other
14 similar entity;

15 (D) Medicare;

16 (E) the state Medicaid program, including the
17 Medicaid managed care program operating under Chapter 540,
18 Government Code; and

19 (F) workers' compensation insurance or insurance
20 provided instead of subscribing to workers' compensation
21 insurance.

22 Sec. 41.102. APPLICABILITY OF SUBCHAPTER. This subchapter
23 applies to any civil action in which the claimant seeks recovery of
24 health care expenses as economic damages in a personal injury or
25 wrongful death action.

26 Sec. 41.103. CONFLICT WITH OTHER LAW. If there is a
27 conflict between this subchapter and Section 41.0105, this

1 subchapter controls.

2 Sec. 41.104. LIMITATIONS ON AMOUNT OF RECOVERY. (a) In
3 addition to any other limitation provided by law, the economic
4 damages that may be awarded to a claimant for health care services
5 provided in the past to an injured individual are limited to the sum
6 of:

7 (1) amounts third-party payors paid to providers for
8 health care services provided to the injured individual;

9 (2) amounts paid by the injured individual or paid on
10 behalf of the injured individual by non-third-party payors to
11 providers for health care services provided to the injured
12 individual, but not to purchase an account receivable, if paid
13 without a formal or informal agreement for the provider to refund,
14 rebate, or remit money to the payor, injured individual, claimant,
15 or claimant's attorney or anyone associated with the payor, injured
16 individual, claimant, or claimant's attorney; and

17 (3) if Subdivisions (1) and (2) do not apply, an amount
18 that does not exceed 150 percent of the median amount paid by
19 nongovernmental third-party payors to health care providers for the
20 same types of services provided to the injured individual during
21 the month in which the services were provided, as drawn from the
22 database for the geozip:

23 (A) in which the services were provided, if the
24 services were provided in this state; or

25 (B) in which The University of Texas Health
26 Science Center at Houston is located, if the services were provided
27 outside of this state.

1 (b) In addition to any other limitation provided by law,
2 economic damages awarded for health care expenses that in
3 reasonable probability can be expected to be incurred by the
4 injured individual in the future because of the injury-causing
5 event shall be limited to the reasonable value of necessary
6 services, determined in the manner provided by Subsection (a)(3)
7 for determination of past health care expenses, except that the
8 determination must use data from the database for the month
9 preceding the date the trial commenced.

10 (c) Health care provider statements or invoices presented
11 for purposes of Subsection (a) or (b) must be in a form that would
12 comply with the clean claim requirements of Chapter 1301, Insurance
13 Code. If a service does not have an industry-recognized billing
14 code, no amount of money may be awarded to the claimant for that
15 service.

16 (d) The failure of the injured individual to use available
17 health benefit coverage shall be considered a failure to mitigate
18 damages.

19 Sec. 41.105. CLAIMANT DISCLOSURE REQUIREMENTS. (a) In
20 addition to other items required to be provided by law, in an action
21 to which this subchapter applies, the claimant shall provide to
22 each other party a copy of:

23 (1) all statements or invoices generated by health
24 care providers showing health care services provided to the injured
25 individual because of the injury-causing event that is the basis
26 for the action;

27 (2) any letter of protection related to the action;

1 and

2 (3) any written agreement under which a provider may
3 refund, rebate, or remit money to a payor, injured individual,
4 claimant, claimant's attorney, or person associated with the payor,
5 injured individual, claimant, or claimant's attorney.

6 (b) In a civil action to which this subchapter applies, the
7 claimant shall, in addition to other requirements of law:

8 (1) identify any provider who provided health care
9 services to the injured individual in relation to the injury caused
10 to the injured individual in the event giving rise to the action and
11 provide an authorization to all other parties to the case that will
12 allow those parties to obtain from the provider all of the injured
13 individual's medical records;

14 (2) identify any third-party payor that may have had a
15 legal or contractual obligation to pay for health care services
16 provided to the injured individual, regardless of whether the third
17 party was legally or contractually obligated to pay for the
18 specific services provided to the injured individual;

19 (3) disclose any unwritten agreement under which a
20 provider may refund, rebate, or remit money to a payor, injured
21 individual, claimant, claimant's attorney, or person associated
22 with the payor, injured individual, claimant, or claimant's
23 attorney; and

24 (4) if the injured individual was referred to a
25 provider for services, disclose:

26 (A) the name, address, and telephone number of
27 the person who made the referral, regardless of whether that person

1 is the injured individual's attorney;

2 (B) if the person making the referral was not the
3 injured individual's attorney, the relationship between the person
4 making the referral and the injured individual or the injured
5 individual's attorney; and

6 (C) if the person making the referral was the
7 injured individual's attorney:

8 (i) an anonymized list of persons referred
9 by the attorney to the provider in the preceding two years;

10 (ii) the date and amount of each payment
11 made to the provider in the preceding two years by or at the
12 direction of the attorney;

13 (iii) if applicable, each person
14 anonymously described under Subparagraph (i) on whose behalf a
15 payment described by Subparagraph (ii) was made; and

16 (iv) other aspects of any financial
17 relationship between the attorney and the provider.

18 (c) For purposes of Subsection (b)(4)(C), a referral is
19 considered to have been made by the injured individual's attorney
20 even if made by another person when the injured individual's
21 attorney knew or had reason to know that the referral would be made.

22 Sec. 41.106. CLAIMANT'S OBLIGATION OF PROOF NOT AFFECTED.
23 Nothing in this subchapter affects the claimant's obligation to
24 prove that the health care services provided to the injured
25 individual were necessary and causally connected to a defendant's
26 acts or omissions.

27 Sec. 41.107. MATTERS ADMISSIBLE INTO EVIDENCE. In an

action to which this subchapter applies, the following matters are admissible into evidence by any party:

(1) a document or information provided, disclosed, or obtained under Section 41.105(a) or (b);

(2) an injured individual's health care expenses incurred as a result of the injury-causing event, regardless of whether the claimant seeks to recover health care expenses in the action;

(3) evidence of health benefit plan coverage that is available to the injured individual to pay for past or future health care services; and

(4) treatment guidelines and drug formularies approved by the Workers' Compensation Division of the Texas Department of Insurance as evidence relating to the necessity of health care services provided to the injured individual.

SUBCHAPTER D. NONECONOMIC DAMAGES

Sec. 41.151. STANDARDS FOR RECOVERY OF CERTAIN NONECONOMIC DAMAGES. (a) Damages for physical pain and suffering or for mental or emotional pain or anguish may be awarded only if the trier of fact is unanimous in finding the amount of money that will fairly and reasonably compensate the claimant for those injuries.

(b) An award of damages for physical pain and suffering or mental or emotional pain or anguish:

(1) must provide fair and reasonable compensation to a claimant for the claimant's injury for the period of time the pain, suffering, or anguish has persisted or reasonably can be expected to persist in the future;

1 (2) must be based on evidence of the nature, duration,
2 and severity of the injury and reflect a rational connection,
3 grounded in the evidence, between the injury suffered and the
4 dollar amount necessary to provide fair and reasonable compensation
5 to a claimant;

6 (3) may not be used to penalize or punish a defendant,
7 make an example to others, or serve a social good; and

8 (4) may not include amounts that are properly
9 considered economic losses, such as lost earnings caused by
10 physical impairment or medical expenses incurred for emotional or
11 psychological care.

12 (c) In an action to which this chapter applies, it is
13 reversible error for a court to allow an attorney, witness, or other
14 person through argument, the introduction of evidence, or otherwise
15 to:

16 (1) state or suggest that the trier of fact should
17 determine the amount of damages to award to a claimant for physical
18 pain and suffering or mental or emotional pain or anguish by
19 referring to objects, values, or repeating metrics having no
20 rational connection to the facts of the case; or

21 (2) characterize an award of damages for physical pain
22 and suffering or mental or emotional pain or anguish as
23 establishing a valuation of human life.

24 (d) Except to the extent of a conflict, this section
25 supplements court decisions and rules of procedure and evidence.

26 Sec. 41.152. JURY INSTRUCTIONS. In a trial to a jury in
27 which noneconomic damages are sought, the court shall provide the

jury definitions and instructions required by this chapter and other law and ask the jury, if appropriate, to determine the amount of money that will fairly and reasonably compensate the claimant for:

- (1) past physical pain and suffering;
- (2) future physical pain and suffering;
- (3) past mental or emotional pain or anguish;
- (4) future mental or emotional pain or anguish;
- (5) past injury to reputation; and
- (6) future injury to reputation.

Sec. 41.153. MOTION TO REMIT NONECONOMIC DAMAGES IN CERTAIN ACTIONS. (a) Except in an action in which another law limits recovery of noneconomic damages, in a trial to a jury in a personal injury or wrongful death action, a trial court shall state the legal and factual support for the amount of noneconomic damages awarded to a claimant in a judgment if a defendant requests remittitur of noneconomic damages awarded to the claimant and the award exceeds:

(1) \$1 million for past and future mental or emotional pain or anguish in a wrongful death action;

(2) for past and future damages for physical pain and suffering in a personal injury action, the lesser of:

(A) three times the amount awarded for past and future health care expenses; or

(B) \$100,000 per year for each year of the claimant's life expectancy;

(3) \$1 million for past and future mental or emotional pain or anguish in a personal injury action arising from an event

1 primarily causing emotional injury to a claimant; or

2 (4) \$250,000 for past and future mental or emotional
3 pain or anguish in a personal injury action arising from an event
4 primarily causing bodily injury to the claimant.

5 (b) In a statement of legal support for the amount of
6 noneconomic damages awarded in the judgment, the court shall
7 include references to judgments rendered in this state and affirmed
8 on appeal of comparable amounts awarded under comparable facts.

9 SECTION 9. Section 304.102, Finance Code, is amended to
10 read as follows:

11 Sec. 304.102. PREJUDGMENT INTEREST REQUIRED IN CERTAIN
12 CASES. A judgment in a wrongful death, personal injury, or property
13 damage case earns prejudgment interest on amounts awarded in the
14 judgment for economic losses, calculated from the date:

15 (1) the health care expenses are actually paid by the
16 claimant, if applicable; or

17 (2) other economic losses are actually suffered by the
18 claimant.

19 SECTION 10. Sections 18.001(f) and (g), Civil Practice and
20 Remedies Code, are repealed.

21 SECTION 11. The changes in law made by this Act apply only
22 to an action commenced on or after the effective date of this Act.
23 An action commenced before the effective date of this Act is
24 governed by the law applicable to the action immediately before the
25 effective date of this Act, and that law is continued in effect for
26 that purpose.

27 SECTION 12. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2025.