

[Existing Rule 173 of the Texas Rules of Civil Procedure, entitled "Guardian Ad Litem", states:

When a minor, lunatic, idiot or a non-compos mentis may be a defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as part of the costs.

It would be replaced with the following rule.]

RULE 173 AD LITEM REPRESENTATION

173.1 Application

This rule applies to civil lawsuits for damages, equitable or declaratory relief, except

- (a) the Family Code governs the appointment of ad litem in suits involving the parent child relationship.
- (b) the Probate Code governs the appointment of ad litem in probate proceedings.
- (c) the Texas Parental Notification Rules govern the appointment of ad litem in parental notification lawsuits.

173.2 Appointments generally

- (a) The court may appoint the same ad litem for parties who are similarly situated in the lawsuit, unless it appears to the court that separate appointments are necessary.
- (b) Unless the parties agree to an earlier appointment, the court must appoint a guardian ad litem for a party represented by a next friend only when the defendant has made an offer to settle that party's claims and there appears to be an adverse interest between the next friend for the party and the party. The court must not appoint an ad litem if no adverse interest exists.
- (c) The court must appoint an attorney ad litem to represent a defendant or defendants served by publication, where the defendant has not appeared.
- (d) Appointments must be by written order.

173.3 Duties of ad litem

- (a) A guardian ad litem acts as a personal, not a legal representative for the party. A guardian ad litem has the limited duty to review the proposed settlement, determine whether the settlement is in the party's best interest, and advise the court as to the fairness of the settlement for the party.
- (b) A guardian ad litem must not participate in discovery, court proceedings or trial, except for mediation, unless ordered by the court for sufficient reasons shown.
- (c) An attorney ad litem must be an attorney and acts as a lawyer for the party.

173.4 Compensation.

- (a) Ad litem may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee, customary in the community in which the case is pending, for necessary services performed.
- (b) At the conclusion of the appointed representation, the court must conduct a hearing to determine the total amount of fees and expenses that are reasonable and necessary. In making this determination, the court must not consider compensation as a percentage of any judgment or settlement.
- (c) The court may tax ad litem fees and expenses as costs of court. [Not recommended: The successful party to the suit must recover from its adversary, those costs, unless the court, for good cause stated on the record, adjudges the costs differently. (source of language, rule 131 and Rule 141)]
- (d) An ad litem may not receive, directly or indirectly, anything of value in consideration of the appointed representation other than as provided by this rule.
- (e) Any party, or the ad litem, may appeal the order awarding ad litem fees and expenses. Such appeal will not affect the finality of the settlement or judgment. The court must grant a motion to sever the ad litem fee order, creating a final appealable order.

1 AN ACT

2 relating to reform of certain procedures and remedies in civil
3 actions.

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

5 ARTICLE 1. CLASS ACTIONS

6 SECTION 1.01. Subtitle B, Title 2, Civil Practice and
7 Remedies Code, is amended by adding Chapter 26 to read as follows:

8 CHAPTER 26. CLASS ACTIONS

9 SUBCHAPTER A. SUPREME COURT RULES

10 Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) The
11 supreme court shall adopt rules to provide for the fair and
12 efficient resolution of class actions.

13 (b) The supreme court shall adopt rules under this chapter
14 on or before December 31, 2003.

15 Sec. 26.002. MANDATORY GUIDELINES. Rules adopted under
16 Section 26.001 must comply with the mandatory guidelines
17 established by this chapter.

18 Sec. 26.003. ATTORNEY'S FEES. (a) If an award of
19 attorney's fees is available under applicable substantive law, the
20 rules adopted under this chapter must provide that the trial court
21 shall use the Lodestar method to calculate the amount of attorney's
22 fees to be awarded class counsel. The rules may give the trial
23 court discretion to increase or decrease the fee award calculated
24 by using the Lodestar method by no more than four times based on

1 specified factors.

2 (b) Rules adopted under this chapter must provide that in a
3 class action, if any portion of the benefits recovered for the class
4 are in the form of coupons or other noncash common benefits, the
5 attorney's fees awarded in the action must be in cash and noncash
6 amounts in the same proportion as the recovery for the class.

7 [Sections 26.004-26.050 reserved for expansion]

8 SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

9 Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY
10 JURISDICTION. (a) Before hearing or deciding a motion to certify a
11 class action, a trial court must hear and rule on all pending pleas
12 to the jurisdiction asserting that an agency of this state has
13 exclusive or primary jurisdiction of the action or a part of the
14 action, or asserting that a party has failed to exhaust
15 administrative remedies. The court's ruling must be reflected in a
16 written order.

17 (b) If a plea to the jurisdiction described by Subsection
18 (a) is denied and a class is subsequently certified, a person may,
19 as part of an appeal of the order certifying the class action,
20 obtain appellate review of the order denying the plea to the
21 jurisdiction.

22 (c) This section does not alter or abrogate a person's right
23 to appeal or pursue an original proceeding in an appellate court in
24 regard to a trial court's order granting or denying a plea to the
25 jurisdiction if the right exists under statutory or common law in
26 effect at the time review is sought.

27 SECTION 1.02. Section 22.225, Government Code, is amended

1 by amending Subsections (b) and (d) and adding Subsection (e) to
2 read as follows:

3 (b) Except as provided by Subsection (c) or (d), a judgment
4 of a court of appeals is conclusive on the law and facts, and a
5 petition for review [~~writ of error~~] is not allowed to [~~from~~] the
6 supreme court, in the following civil cases:

7 (1) a case appealed from a county court or from a
8 district court when, under the constitution, a county court would
9 have had original or appellate jurisdiction of the case, with the
10 exception of a probate matter or a case involving state revenue laws
11 or the validity or construction of a statute;

12 (2) a case of a contested election other than a
13 contested election for a state officer, with the exception of a case
14 where the validity of a statute is questioned by the decision;

15 (3) an appeal from an interlocutory order appointing a
16 receiver or trustee or from other interlocutory appeals that are
17 allowed by law;

18 (4) an appeal from an order or judgment in a suit in
19 which a temporary injunction has been granted or refused or when a
20 motion to dissolve has been granted or overruled; and

21 (5) all other cases except the cases where appellate
22 jurisdiction is given to the supreme court and is not made final in
23 the courts of appeals.

24 (d) A petition for review [~~writ of error~~] is allowed to
25 [~~from~~] the supreme court for an appeal from an interlocutory order
26 described by Section 51.014(a)(3) or (6) [~~51.014(6)~~], Civil
27 Practice and Remedies Code.

1 (e) For purposes of Subsection (c), one court holds
2 differently from another when there is inconsistency in their
3 respective decisions that should be clarified to remove unnecessary
4 uncertainty in the law and unfairness to litigants.

5 SECTION 1.03. Sections 51.014(a), (b), and (c), Civil
6 Practice and Remedies Code, are amended to read as follows:

7 (a) A person may appeal from an interlocutory order of a
8 district court, county court at law, or county court that:

9 (1) appoints a receiver or trustee;

10 (2) overrules a motion to vacate an order that
11 appoints a receiver or trustee;

12 (3) certifies or refuses to certify a class in a suit
13 brought under Rule 42 of the Texas Rules of Civil Procedure;

14 (4) grants or refuses a temporary injunction or grants
15 or overrules a motion to dissolve a temporary injunction as
16 provided by Chapter 65;

17 (5) denies a motion for summary judgment that is based
18 on an assertion of immunity by an individual who is an officer or
19 employee of the state or a political subdivision of the state;

20 (6) denies a motion for summary judgment that is based
21 in whole or in part upon a claim against or defense by a member of
22 the electronic or print media, acting in such capacity, or a person
23 whose communication appears in or is published by the electronic or
24 print media, arising under the free speech or free press clause of
25 the First Amendment to the United States Constitution, or Article I
26 [~~1~~], Section 8, of the Texas Constitution, or Chapter 73;

27 (7) grants or denies the special appearance of a

1 defendant under Rule 120a, Texas Rules of Civil Procedure, except
2 in a suit brought under the Family Code; ~~[or]~~

3 (8) grants or denies a plea to the jurisdiction by a
4 governmental unit as that term is defined in Section 101.001;

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

8 (10) grants relief sought by a motion under Section
9 74.351(1).

10 (b) An interlocutory appeal under Subsection (a), other
11 than an appeal under Subsection (a)(4), stays ~~[shall have the~~
12 ~~effect of staying]~~ the commencement of a trial in the trial court
13 pending resolution of the appeal. An interlocutory appeal under
14 Subsection (a)(3), (5), or (8) also stays all other proceedings in
15 the trial court pending resolution of that appeal.

16 (c) A denial of a motion for summary judgment, special
17 appearance, or plea to the jurisdiction described by Subsection
18 (a)(5), (7), or (8) is not subject to the automatic stay ~~[of the~~
19 ~~commencement of trial]~~ under Subsection (b) unless the motion,
20 special appearance, or plea to the jurisdiction is filed and
21 requested for submission or hearing before the trial court not
22 later than the later of:

23 (1) a date set by the trial court in a scheduling order
24 entered under the Texas Rules of Civil Procedure; or

25 (2) the 180th day after the date the defendant files:

26 (A) the original answer;

27 (B) the first other responsive pleading to the

1 plaintiff's petition; or

2 (C) if the plaintiff files an amended pleading
3 that alleges a new cause of action against the defendant and the
4 defendant is able to raise a defense to the new cause of action
5 under Subsection (a)(5), (7), or (8), the responsive pleading that
6 raises that defense.

7 SECTION 1.04. Section 22.001, Government Code, is amended
8 by adding Subsection (e) to read as follows:

9 (e) For purposes of Subsection (a)(2), one court holds
10 differently from another when there is inconsistency in their
11 respective decisions that should be clarified to remove unnecessary
12 uncertainty in the law and unfairness to litigants.

13 SECTION 1.05. (a) The changes in law made by Section 1.02
14 of this Act to Section 22.225(d), Government Code, apply to any case
15 in which a petition for review to the Supreme Court of Texas is
16 filed on or after the effective date of this Act.

17 (b) The changes in law made by Section 1.03 of this Act to
18 Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply
19 to any case in which an appeal allowed by Section 51.014(a), Civil
20 Practice and Remedies Code, as amended by this Act, is taken and the
21 notice of appeal is filed on or after the effective date of this
22 Act.

23 ARTICLE 2. SETTLEMENT

24 SECTION 2.01. Subtitle C, Title 2, Civil Practice and
25 Remedies Code, is amended by adding Chapter 42 to read as follows:

26 CHAPTER 42. SETTLEMENT

27 Sec. 42.001. DEFINITIONS. In this chapter:

1 (1) "Claim" means a request, including a counterclaim,
2 cross-claim, or third-party claim, to recover monetary damages.

3 (2) "Claimant" means a person making a claim.

4 (3) "Defendant" means a person from whom a claimant
5 seeks recovery on a claim, including a counterdefendant,
6 cross-defendant, or third-party defendant.

7 (4) "Governmental unit" means the state, a unit of
8 state government, or a political subdivision of this state.

9 (5) "Litigation costs" means money actually spent and
10 obligations actually incurred that are directly related to the case
11 in which a settlement offer is made. The term includes:

12 (A) court costs;

13 (B) reasonable fees for not more than two
14 testifying expert witnesses; and

15 (C) reasonable attorney's fees.

16 (6) "Settlement offer" means an offer to settle or
17 compromise a claim made in compliance with this chapter.

18 Sec. 42.002. APPLICABILITY AND EFFECT. (a) The settlement
19 procedures provided in this chapter apply only to claims for
20 monetary relief.

21 (b) This chapter does not apply to:

22 (1) a class action;

23 (2) a shareholder's derivative action;

24 (3) an action by or against a governmental unit;

25 (4) an action brought under the Family Code;

26 (5) an action to collect workers' compensation
27 benefits under Subtitle A, Title 5, Labor Code; or

1 (6) an action filed in a justice of the peace court.

2 (c) This chapter does not apply until a defendant files a
3 declaration that the settlement procedure allowed by this chapter
4 is available in the action. If there is more than one defendant,
5 the settlement procedure allowed by this chapter is available only
6 in relation to the defendant that filed the declaration and to the
7 parties that make or receive offers of settlement in relation to
8 that defendant.

9 (d) This chapter does not limit or affect the ability of any
10 person to:

11 (1) make an offer to settle or compromise a claim that
12 does not comply with this chapter; or

13 (2) offer to settle or compromise a claim to which this
14 chapter does not apply.

15 (e) An offer to settle or compromise that is not made under
16 this chapter or an offer to settle or compromise made in an action
17 to which this chapter does not apply does not entitle the offering
18 party to recover litigation costs under this chapter.

19 Sec. 42.003. MAKING SETTLEMENT OFFER. A settlement offer
20 must:

21 (1) be in writing;

22 (2) state that it is made under this chapter;

23 (3) state the terms by which the claims may be settled;

24 (4) state a deadline by which the settlement offer
25 must be accepted; and

26 (5) be served on all parties to whom the settlement
27 offer is made.

1 Sec. 42.004. AWARDING LITIGATION COSTS. (a) If a
2 settlement offer is made and rejected and the judgment to be
3 rendered will be significantly less favorable to the rejecting
4 party than was the settlement offer, the offering party shall
5 recover litigation costs from the rejecting party.

6 (b) A judgment will be significantly less favorable to the
7 rejecting party than is the settlement offer if:

8 (1) the rejecting party is a claimant and the award
9 will be less than 80 percent of the rejected offer; or

10 (2) the rejecting party is a defendant and the award
11 will be more than 120 percent of the rejected offer.

12 (c) The litigation costs that may be recovered by the
13 offering party under this section are limited to those litigation
14 costs incurred by the offering party after the date the rejecting
15 party rejected the settlement offer.

16 (d) The litigation costs that may be awarded under this
17 chapter may not be greater than an amount computed by:

18 (1) determining the sum of:

19 (A) 50 percent of the economic damages to be
20 awarded to the claimant in the judgment;

21 (B) 100 percent of the noneconomic damages to be
22 awarded to the claimant in the judgment; and

23 (C) 100 percent of the exemplary or additional
24 damages to be awarded to the claimant in the judgment; and

25 (2) subtracting from the amount determined under
26 Subdivision (1) the amount of any statutory or contractual liens in
27 connection with the occurrences or incidents giving rise to the

1 claim.

2 (e) If a claimant or defendant is entitled to recover fees
3 and costs under another law, that claimant or defendant may not
4 recover litigation costs in addition to the fees and costs
5 recoverable under the other law.

6 (f) If a claimant or defendant is entitled to recover fees
7 and costs under another law, the court must not include fees and
8 costs incurred by that claimant or defendant after the date of
9 rejection of the settlement offer when calculating the amount of
10 the judgment to be rendered under Subsection (a).

11 (g) If litigation costs are to be awarded against a
12 claimant, those litigation costs shall be awarded to the defendant
13 in the judgment as an offset against the claimant's recovery from
14 that defendant.

15 Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) The supreme
16 court shall promulgate rules implementing this chapter. The rules
17 must be limited to settlement offers made under this chapter. The
18 rules must be in effect on January 1, 2004.

19 (b) The rules promulgated by the supreme court must provide:

20 (1) the date by which a defendant or defendants must
21 file the declaration required by Section 42.002(c);

22 (2) the date before which a party may not make a
23 settlement offer;

24 (3) the date after which a party may not make a
25 settlement offer; and

26 (4) procedures for:

27 (A) making an initial settlement offer;

- 1 (B) making successive settlement offers;
- 2 (C) withdrawing a settlement offer;
- 3 (D) accepting a settlement offer;
- 4 (E) rejecting a settlement offer; and
- 5 (F) modifying the deadline for making,
6 withdrawing, accepting, or rejecting a settlement offer.

7 (c) The rules promulgated by the supreme court must address
8 actions in which there are multiple parties and must provide that if
9 the offering party joins another party or designates a responsible
10 third party after making the settlement offer, the party to whom the
11 settlement offer was made may declare the offer void.

- 12 (d) The rules promulgated by the supreme court may:
- 13 (1) designate other actions to which the settlement
14 procedure of this chapter does not apply; and
 - 15 (2) address other matters considered necessary by the
16 supreme court to the implementation of this chapter.

17 SECTION 2.02. The changes in law provided by this article
18 apply only to an action filed on or after January 1, 2004.

19 ARTICLE 3. VENUE; FORUM NON CONVENIENS

20 SECTION 3.01. Section 74.024(c), Government Code, is
21 amended to read as follows:

22 (c) The supreme court may consider the adoption of rules
23 relating to:

24 (1) nonbinding time standards for pleading,
25 discovery, motions, and dispositions;

26 (2) nonbinding dismissal of inactive cases from
27 dockets, if the dismissal is warranted;

1 (3) attorney's accountability for and incentives to
2 avoid delay and to meet time standards;

3 (4) penalties for filing frivolous motions;

4 (5) firm trial dates;

5 (6) restrictive devices on discovery;

6 (7) a uniform dockets policy;

7 (8) formalization of settlement conferences or
8 settlement programs; ~~and~~

9 (9) standards for selection and management of
10 nonjudicial personnel; and

11 (10) transfer of related cases for consolidated or
12 coordinated pretrial proceedings.

13 SECTION 3.02. Chapter 74, Government Code, is amended by
14 adding Subchapter H to read as follows:

15 SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

16 Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION.

17 (a) The judicial panel on multidistrict litigation consists of
18 five members designated from time to time by the chief justice of
19 the supreme court. The members of the panel must be active court of
20 appeals justices or administrative judges.

21 (b) The concurrence of three panel members is necessary to
22 any action by the panel.

23 Sec. 74.162. TRANSFER OF CASES BY PANEL. Notwithstanding
24 any other law to the contrary, the judicial panel on multidistrict
25 litigation may transfer civil actions involving one or more common
26 questions of fact pending in the same or different constitutional
27 courts, county courts at law, probate courts, or district courts to

1 any district court for consolidated or coordinated pretrial
2 proceedings, including summary judgment or other dispositive
3 motions, but not for trial on the merits. A transfer may be made by
4 the judicial panel on multidistrict litigation on its determination
5 that the transfer will:

6 (1) be for the convenience of the parties and
7 witnesses; and

8 (2) promote the just and efficient conduct of the
9 actions.

10 Sec. 74.163. OPERATION; RULES. (a) The judicial panel on
11 multidistrict litigation must operate according to rules of
12 practice and procedure adopted by the supreme court under Section
13 74.024. The rules adopted by the supreme court must:

14 (1) allow the panel to transfer related civil actions
15 for consolidated or coordinated pretrial proceedings;

16 (2) allow transfer of civil actions only on the panel's
17 written finding that transfer is for the convenience of the parties
18 and witnesses and will promote the just and efficient conduct of the
19 actions;

20 (3) require the remand of transferred actions to the
21 transferor court for trial on the merits; and

22 (4) provide for appellate review of certain or all
23 panel orders by extraordinary writ.

24 (b) The panel may prescribe additional rules for the conduct
25 of its business not inconsistent with the law or rules adopted by
26 the supreme court.

27 Sec. 74.164. AUTHORITY TO PRESIDE. Notwithstanding any

1 other law to the contrary, a judge who is qualified and authorized
2 by law to preside in the court to which an action is transferred
3 under this subchapter may preside over the transferred action as if
4 the transferred action were originally filed in the transferor
5 court.

6 SECTION 3.03. Section 15.003, Civil Practice and Remedies
7 Code, is amended to read as follows:

8 Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING
9 PLAINTIFFS. (a) In a suit in which there is ~~[where]~~ more than one
10 plaintiff, whether the plaintiffs are included by joinder, by
11 intervention, because the lawsuit was begun by more than one
12 plaintiff, or otherwise, ~~[is joined]~~ each plaintiff must,
13 independently of every ~~[any]~~ other plaintiff, establish proper
14 venue. If a plaintiff cannot independently ~~[Any person who is~~
15 ~~unable to]~~ establish proper venue, that plaintiff's part of the
16 suit, including all of that plaintiff's claims and causes of
17 action, must be transferred to a county of proper venue or
18 dismissed, as is appropriate, ~~[may not join or maintain venue for~~
19 ~~the suit as a plaintiff]~~ unless that plaintiff ~~[the person],~~
20 independently of every ~~[any]~~ other plaintiff, establishes that:

21 (1) joinder of that plaintiff or intervention in the
22 suit by that plaintiff is proper under the Texas Rules of Civil
23 Procedure;

24 (2) maintaining venue as to that plaintiff in the
25 county of suit does not unfairly prejudice another party to the
26 suit;

27 (3) there is an essential need to have that plaintiff's

1 ~~[the person's]~~ claim tried in the county in which the suit is
2 pending; and

3 (4) the county in which the suit is pending is a fair
4 and convenient venue for that plaintiff ~~[the person seeking to join~~
5 ~~in or maintain venue for the suit]~~ and all ~~[the]~~ persons against
6 whom the suit is brought.

7 (b) An interlocutory appeal may be taken of a trial court's
8 determination under Subsection (a) that:

9 (1) a plaintiff did or did not independently establish
10 proper venue; or

11 (2) a plaintiff that did not independently establish
12 proper venue did or did not establish the items prescribed by
13 Subsections (a)(1)-(4) ~~[A person may not intervene or join in a~~
14 ~~pending suit as a plaintiff unless the person, independently of any~~
15 ~~other plaintiff.~~

16 ~~[(1) establishes proper venue for the county in which~~
17 ~~the suit is pending; or~~

18 ~~[(2) satisfies the requirements of Subdivisions (1)~~
19 ~~through (4) of Subsection (a)].~~

20 (c) An ~~[Any person seeking intervention or joinder, who is~~
21 ~~unable to independently establish proper venue, or a party opposing~~
22 ~~intervention or joinder of such a person may contest the decision of~~
23 ~~the trial court allowing or denying intervention or joinder by~~
24 ~~taking an]~~ interlocutory appeal permitted by Subsection (b) must be
25 taken to the court of appeals district in which the trial court is
26 located under the procedures established for interlocutory
27 appeals. The appeal may be taken by a party that is affected by the

1 trial court's determination under Subsection (a). [~~The appeal must~~
2 ~~be perfected not later than the 20th day after the date the trial~~
3 ~~court signs the order denying or allowing the intervention or~~
4 ~~joinder.~~] The court of appeals shall:

5 (1) determine whether the trial court's order [~~joinder~~
6 ~~or intervention~~] is proper based on an independent determination
7 from the record and not under either an abuse of discretion or
8 substantial evidence standard; and

9 (2) render judgment [~~its decision~~] not later than the
10 120th day after the date the appeal is perfected [~~by the complaining~~
11 ~~party~~].

12 (d) An interlocutory appeal under Subsection (b) has the
13 effect of staying the commencement of trial in the trial court
14 pending resolution of the appeal.

15 SECTION 3.04. Section 71.051(b), Civil Practice and
16 Remedies Code, is amended to read as follows:

17 (b) If a court of this state, on written motion of a party,
18 finds that in the interest of justice and for the convenience of the
19 parties a claim or action to which this section applies would be
20 more properly heard in a forum outside this state, the court shall
21 decline to exercise jurisdiction under the doctrine of forum non
22 conveniens and shall stay or dismiss the claim or action. In
23 determining whether to grant a motion to stay or dismiss an action
24 under the doctrine of forum non conveniens, the court may consider
25 whether [~~With respect to a plaintiff who is a legal resident of the~~
26 ~~United States, on written motion of a party, a claim or action to~~
27 ~~which this section applies may be stayed or dismissed in whole or in~~

1 ~~part under the doctrine of forum non conveniens if the party seeking~~
2 ~~to stay or dismiss the claim or action proves by a preponderance of~~
3 ~~the evidence that]:~~

4 (1) an alternate [~~alternative~~] forum exists in which
5 the claim or action may be tried;

6 (2) the alternate forum provides an adequate remedy;

7 (3) maintenance of the claim or action in the courts of
8 this state would work a substantial injustice to the moving party;

9 (4) the alternate forum, as a result of the submission
10 of the parties or otherwise, can exercise jurisdiction over all the
11 defendants properly joined to the plaintiff's claim;

12 (5) the balance of the private interests of the
13 parties and the public interest of the state predominate in favor of
14 the claim or action being brought in an alternate forum; and

15 (6) the stay or dismissal would not result in
16 unreasonable duplication or proliferation of litigation.

17 SECTION 3.05. Section 5A, Texas Probate Code, is amended by
18 adding Subsection (f) to read as follows:

19 (f) Notwithstanding any other provision of this chapter,
20 the proper venue for an action by or against a personal
21 representative for personal injury, death, or property damages is
22 determined under Section 15.007, Civil Practice and Remedies Code.

23 SECTION 3.06. Section 5B, Texas Probate Code, is amended to
24 read as follows:

25 Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a
26 statutory probate court, on the motion of a party to the action or
27 on the motion of a person interested in an estate, may transfer to

1 his court from a district, county, or statutory court a cause of
2 action appertaining to or incident to an estate pending in the
3 statutory probate court or a cause of action in which a personal
4 representative of an estate pending in the statutory probate court
5 is a party and may consolidate the transferred cause of action with
6 the other proceedings in the statutory probate court relating to
7 that estate.

8 (b) Notwithstanding any other provision of this chapter,
9 the proper venue for an action by or against a personal
10 representative for personal injury, death, or property damages is
11 determined under Section 15.007, Civil Practice and Remedies Code.

12 SECTION 3.07. Section 607, Texas Probate Code, is amended
13 by adding Subsection (e) to read as follows:

14 (e) Notwithstanding any other provision of this chapter,
15 the proper venue for an action by or against a personal
16 representative for personal injury, death, or property damages is
17 determined under Section 15.007, Civil Practice and Remedies Code.

18 SECTION 3.08. Section 281.056(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The board may sue and be sued. A health care liability
21 claim, as defined by Section 74.001, Civil Practice and Remedies
22 Code, may be brought against the district only in the county in
23 which the district is established.

24 SECTION 3.09. Sections 71.051(a) and 71.052, Civil Practice
25 and Remedies Code, are repealed.

26 ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND

27 DESIGNATION OF RESPONSIBLE PARTIES

1 SECTION 4.01. Section 33.002(a), Civil Practice and
2 Remedies Code, is amended to read as follows:

3 (a) This [~~Except as provided by Subsections (b) and (c),~~
4 ~~this~~] chapter applies to:

5 (1) any cause of action based on tort in which a
6 defendant, settling person, or responsible third party is found
7 responsible for a percentage of the harm for which relief is sought;
8 or

9 (2) any action brought under the Deceptive Trade
10 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
11 Business & Commerce Code) in which a defendant, settling person, or
12 responsible third party is found responsible for a percentage of
13 the harm for which relief is sought.

14 SECTION 4.02. Section 33.003, Civil Practice and Remedies
15 Code, is amended to read as follows:

16 Sec. 33.003. DETERMINATION OF PERCENTAGE OF
17 RESPONSIBILITY. (a) The trier of fact, as to each cause of action
18 asserted, shall determine the percentage of responsibility, stated
19 in whole numbers, for the following persons with respect to each
20 person's causing or contributing to cause in any way the harm for
21 which recovery of damages is sought, whether by negligent act or
22 omission, by any defective or unreasonably dangerous product, by
23 other conduct or activity that violates an applicable legal
24 standard, or by any combination of these:

- 25 (1) each claimant;
26 (2) each defendant;
27 (3) each settling person; and

1 (4) each responsible third party who has been
2 designated [~~joined~~] under Section 33.004.

3 (b) This section does not allow a submission to the jury of a
4 question regarding conduct by any person without sufficient
5 evidence to support the submission.

6 SECTION 4.03. The heading to Section 33.004, Civil Practice
7 and Remedies Code, is amended to read as follows:

8 Sec. 33.004. DESIGNATION [~~JOINER~~] OF RESPONSIBLE THIRD
9 PARTY [~~PARTIES~~].

10 SECTION 4.04. Section 33.004, Civil Practice and Remedies
11 Code, is amended by amending Subsections (a), (b), and (e) and
12 adding Subsections (f)-(l) to read as follows:

13 (a) A [~~Except as provided in Subsections (d) and (e), prior~~
14 ~~to the expiration of limitations on the claimant's claim for~~
15 ~~damages against the defendant and on timely motion made for that~~
16 ~~purpose, a~~] defendant may seek to designate a person as [~~join~~] a
17 responsible third party by filing a motion for leave to designate
18 that person as a responsible third party [~~who has not been sued by~~
19 ~~the claimant~~]. The motion must be filed on or before the 60th day
20 before the trial date unless the court finds good cause to allow the
21 motion to be filed at a later date.

22 (b) Nothing in this section affects [~~shall affect~~] the
23 third-party practice as previously recognized in the rules and
24 statutes of this state with regard to the assertion by a defendant
25 of rights to contribution or indemnity. Nothing in this section
26 affects [~~shall affect~~] the filing of cross-claims or counterclaims.

27 (e) If a person is designated under this section as a

1 responsible third party, a [A] claimant is not barred by
2 limitations from seeking to [may] join that person [a responsible
3 third party], even though such joinder would otherwise be barred by
4 limitations, if the claimant seeks to join that person [the
5 responsible third party] not later than 60 days after that person is
6 designated as a responsible third party [a third party claim is
7 filed under Subsection (d)].

8 (f) A court shall grant leave to designate the named person
9 as a responsible third party unless another party files an
10 objection to the motion for leave on or before the 15th day after
11 the date the motion is served.

12 (g) If an objection to the motion for leave is timely filed,
13 the court shall grant leave to designate the person as a responsible
14 third party unless the objecting party establishes:

15 (1) the defendant did not plead sufficient facts
16 concerning the alleged responsibility of the person to satisfy the
17 pleading requirement of the Texas Rules of Civil Procedure; and

18 (2) after having been granted leave to replead, the
19 defendant failed to plead sufficient facts concerning the alleged
20 responsibility of the person to satisfy the pleading requirements
21 of the Texas Rules of Civil Procedure.

22 (h) By granting a motion for leave to designate a person as a
23 responsible third party, the person named in the motion is
24 designated as a responsible third party for purposes of this
25 chapter without further action by the court or any party.

26 (i) The filing or granting of a motion for leave to
27 designate a person as a responsible third party or a finding of

1 fault against the person:

2 (1) does not by itself impose liability on the person;

3 and

4 (2) may not be used in any other proceeding, on the
5 basis of res judicata, collateral estoppel, or any other legal
6 theory, to impose liability on the person.

7 (j) Notwithstanding any other provision of this section,
8 if, not later than 60 days after the filing of the defendant's
9 original answer, the defendant alleges in an answer filed with the
10 court that an unknown person committed a criminal act that was a
11 cause of the loss or injury that is the subject of the lawsuit, the
12 court shall grant a motion for leave to designate the unknown person
13 as a responsible third party if:

14 (1) the court determines that the defendant has
15 pleaded facts sufficient for the court to determine that there is a
16 reasonable probability that the act of the unknown person was
17 criminal;

18 (2) the defendant has stated in the answer all
19 identifying characteristics of the unknown person, known at the
20 time of the answer; and

21 (3) the allegation satisfies the pleading
22 requirements of the Texas Rules of Civil Procedure.

23 (k) An unknown person designated as a responsible third
24 party under Subsection (j) is denominated as "Jane Doe" or "John
25 Doe" until the person's identity is known.

26 (l) After adequate time for discovery, a party may move to
27 strike the designation of a responsible third party on the ground

1 that there is no evidence that the designated person is responsible
2 for any portion of the claimant's alleged injury or damage. The
3 court shall grant the motion to strike unless a defendant produces
4 sufficient evidence to raise a genuine issue of fact regarding the
5 designated person's responsibility for the claimant's injury or
6 damage.

7 SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil
8 Practice and Remedies Code, are amended to read as follows:

9 (1) "Claimant" means a person [~~party~~] seeking recovery
10 of damages [~~pursuant to the provisions of Section 33.001~~],
11 including a plaintiff, counterclaimant, cross-claimant, or
12 third-party plaintiff [~~seeking recovery of damages~~]. In an action
13 in which a party seeks recovery of damages for injury to another
14 person, damage to the property of another person, death of another
15 person, or other harm to another person, "claimant" includes:

16 (A) the person who was injured, was harmed, or
17 died or whose property was damaged; and

18 (B) any person who is [~~both that other person and~~
19 ~~the party~~] seeking, has sought, or could seek recovery of damages
20 for the injury, harm, or death of that person or for the damage to
21 the property of that person [~~pursuant to the provisions of Section~~
22 ~~33.001~~].

23 (2) "Defendant" includes any person [~~party~~] from whom,
24 at the time of the submission of the case to the trier of fact, a
25 claimant seeks recovery of damages [~~pursuant to the provisions of~~
26 ~~Section 33.001 at the time of the submission of the case to the~~
27 ~~trier of fact~~].

1 (5) "Settling person" means a person who [~~at the time~~
2 ~~of submission~~] has, at any time, paid or promised to pay money or
3 anything of monetary value to a claimant [~~at any time~~] in
4 consideration of potential liability [~~pursuant to the provisions of~~
5 ~~Section 33.001~~] with respect to the personal injury, property
6 damage, death, or other harm for which recovery of damages is
7 sought.

8 (6) [~~(A)~~] "Responsible third party" means any person
9 who is alleged to have caused or contributed to causing in any way
10 the harm for which recovery of damages is sought, whether by
11 negligent act or omission, by any defective or unreasonably
12 dangerous product, by other conduct or activity that violates an
13 applicable legal standard, or by any combination of these. [~~to whom~~
14 ~~all of the following apply:~~

15 [~~(i) the court in which the action was filed~~
16 ~~could exercise jurisdiction over the person;~~

17 [~~(ii) the person could have been, but was~~
18 ~~not, sued by the claimant; and~~

19 [~~(iii) the person is or may be liable to the~~
20 ~~plaintiff for all or a part of the damages claimed against the named~~
21 ~~defendant or defendants.~~

22 [~~(B)~~] The term "responsible third party" does not
23 include a seller eligible for indemnity under Section 82.002 [~~+~~

24 [~~(i) the claimant's employer, if the~~
25 ~~employer maintained workers' compensation insurance coverage, as~~
26 ~~defined by Section 401.011(44), Labor Code, at the time of the act,~~
27 ~~event, or occurrence made the basis of the claimant's suit; or~~

1 ~~[(ii) a person or entity that is a debtor in~~
2 ~~bankruptcy proceedings or a person or entity against whom this~~
3 ~~claimant's claim has been discharged in bankruptcy, except to the~~
4 ~~extent that liability insurance or other source of third party~~
5 ~~funding may be available to pay claims asserted against the~~
6 ~~debtor].~~

7 SECTION 4.06. Section 33.012, Civil Practice and Remedies
8 Code, is amended by amending Subsection (b) and adding Subsection
9 (c) to read as follows:

10 (b) If the claimant has settled with one or more persons,
11 the court shall further reduce the amount of damages to be recovered
12 by the claimant with respect to a cause of action by a percentage
13 equal to each settling person's percentage of responsibility
14 ~~[credit equal to one of the following, as elected in accordance with~~
15 ~~Section 33.014:~~

16 ~~[(1) the sum of the dollar amounts of all settlements,~~
17 ~~or~~

18 ~~[(2) a dollar amount equal to the sum of the following~~
19 ~~percentages of damages found by the trier of fact:~~

- 20 ~~[(A) 5 percent of those damages up to \$200,000,~~
21 ~~[(B) 10 percent of those damages from \$200,001 to~~
22 ~~\$400,000,~~
23 ~~[(C) 15 percent of those damages from \$400,001 to~~
24 ~~\$500,000, and~~
25 ~~[(D) 20 percent of those damages greater than~~
26 ~~\$500,000].~~

27 (c) Notwithstanding Subsection (b), if the claimant in a

1 health care liability claim filed under Chapter 74 has settled with
2 one or more persons, the court shall further reduce the amount of
3 damages to be recovered by the claimant with respect to a cause of
4 action by an amount equal to one of the following, as elected by the
5 defendant:

6 (1) the sum of the dollar amounts of all settlements;
7 or

8 (2) a percentage equal to each settling person's
9 percentage of responsibility as found by the trier of fact.

10 (d) An election made under Subsection (c) shall be made by
11 any defendant filing a written election before the issues of the
12 action are submitted to the trier of fact and when made, shall be
13 binding on all defendants. If no defendant makes this election or
14 if conflicting elections are made, all defendants are considered to
15 have elected Subsection (c)(1).

16 SECTION 4.07. Section 33.013, Civil Practice and Remedies
17 Code, is amended by amending Subsections (a) and (b) and adding
18 Subsections (e) and (f) to read as follows:

19 (a) Except as provided in Subsection [~~Subsections~~] (b) [~~and~~
20 ~~(c)~~], a liable defendant is liable to a claimant only for the
21 percentage of the damages found by the trier of fact equal to that
22 defendant's percentage of responsibility with respect to the
23 personal injury, property damage, death, or other harm for which
24 the damages are allowed.

25 (b) Notwithstanding Subsection (a), each liable defendant
26 is, in addition to his liability under Subsection (a), jointly and
27 severally liable for the damages recoverable by the claimant under

1 Section 33.012 with respect to a cause of action if:

2 (1) the percentage of responsibility attributed to the
3 defendant with respect to a cause of action is greater than 50
4 percent; or

5 (2) the defendant, with the specific intent to do harm
6 to others, acted in concert with another person to engage in the
7 conduct described in the following provisions of the Penal Code and
8 in so doing proximately caused the damages legally recoverable by
9 the claimant:

10 (A) Section 19.02 (murder);

11 (B) Section 19.03 (capital murder);

12 (C) Section 20.04 (aggravated kidnapping);

13 (D) Section 22.02 (aggravated assault);

14 (E) Section 22.011 (sexual assault);

15 (F) Section 22.021 (aggravated sexual assault);

16 (G) Section 22.04 (injury to a child, elderly
17 individual, or disabled individual);

18 (H) Section 32.21 (forgery);

19 (I) Section 32.43 (commercial bribery);

20 (J) Section 32.45 (misapplication of fiduciary
21 property or property of financial institution);

22 (K) Section 32.46 (securing execution of
23 document by deception);

24 (L) Section 32.47 (fraudulent destruction,
25 removal, or concealment of writing); or

26 (M) conduct described in Chapter 31 the
27 punishment level for which is a felony of the third degree or

1 higher.

2 (e) Notwithstanding anything to the contrary stated in the
3 provisions of the Penal Code listed in Subsection (b)(2), that
4 subsection applies only if the claimant proves the defendant acted
5 or failed to act with specific intent to do harm. A defendant acts
6 with specific intent to do harm with respect to the nature of the
7 defendant's conduct and the result of the person's conduct when it
8 is the person's conscious effort or desire to engage in the conduct
9 for the purpose of doing substantial harm to others.

10 (f) The jury may not be made aware through voir dire,
11 introduction into evidence, instruction, or any other means that
12 the conduct to which Subsection (b)(2) refers is defined by the
13 Penal Code.

14 SECTION 4.08. Section 33.017, Civil Practice and Remedies
15 Code, is amended to read as follows:

16 Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY.
17 Nothing in this chapter shall be construed to affect any rights of
18 indemnity granted by [~~to a seller eligible for indemnity by Chapter~~
19 ~~82, the Texas Motor Vehicle Commission Code (Article 4413(36),~~
20 ~~Vernon's Texas Civil Statutes), or]~~ any [~~other~~] statute, [~~nor shall~~
21 ~~it affect rights of indemnity granted]~~ by contract, or by [~~at~~
22 common law. To the extent of any conflict between this chapter and
23 any right to indemnification granted by [~~Section 82.002, the Texas~~
24 ~~Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas~~
25 ~~Civil Statutes), or any other]~~ statute, contract, or common law,
26 those rights of indemnification shall prevail over the provisions
27 of this chapter.

1 SECTION 4.09. Section 417.001(b), Labor Code, is amended to
2 read as follows:

3 (b) If a benefit is claimed by an injured employee or a legal
4 beneficiary of the employee, the insurance carrier is subrogated to
5 the rights of the injured employee and may enforce the liability of
6 the third party in the name of the injured employee or the legal
7 beneficiary. The insurance carrier's subrogation interest is
8 limited to the amount of the total benefits paid or assumed by the
9 carrier to the employee or the legal beneficiary, less the amount by
10 which the court reduces the judgment based on the percentage of
11 responsibility determined by the trier of fact under Section
12 33.003, Civil Practice and Remedies Code, attributable to the
13 employer. If the recovery is for an amount greater than the amount
14 of the insurance carrier's subrogation interest [~~that paid or~~
15 ~~assumed by the insurance carrier to the employee or the legal~~
16 ~~beneficiary~~], the insurance carrier shall:

17 (1) reimburse itself and pay the costs from the amount
18 recovered; and

19 (2) pay the remainder of the amount recovered to the
20 injured employee or the legal beneficiary.

21 SECTION 4.10. The following sections of the Civil Practice
22 and Remedies Code are repealed:

23 (1) 33.002(b), (d), (e), (f), (g), and (h);

24 (2) 33.004(c) and (d);

25 (3) 33.011(7);

26 (4) 33.012(c);

27 (5) 33.013(c); and

1 (6) 33.014.

2 SECTION 4.11. Nothing in the changes to Chapter 33, Civil
3 Practice and Remedies Code, made by this article allowing an
4 employer covered by workers' compensation insurance to be
5 designated as a responsible third party affects or impairs the
6 immunity granted to the employer by workers' compensation law.

7 SECTION 4.12. The supreme court shall amend Rule 194.2,
8 Texas Rules of Civil Procedure, as soon as practical following the
9 effective date of this article, to include disclosures of the name,
10 address, and telephone number of any person who may be designated as
11 a responsible third party.

12 ARTICLE 5. PRODUCTS LIABILITY

13 SECTION 5.01. Section 16.012, Civil Practice and Remedies
14 Code, is amended to read as follows:

15 Sec. 16.012. PRODUCTS LIABILITY[:~~MANUFACTURING~~
16 ~~EQUIPMENT~~]. (a) In this section:

17 (1) "Claimant," [~~"products liability action,"~~]
18 "seller," and "manufacturer" have the meanings assigned by Section
19 82.001.

20 (2) "Products liability action" means any action
21 against a manufacturer or seller for recovery of damages or other
22 relief for harm allegedly caused by a defective product, whether
23 the action is based in strict tort liability, strict products
24 liability, negligence, misrepresentation, breach of express or
25 implied warranty, or any other theory or combination of theories,
26 and whether the relief sought is recovery of damages or any other
27 legal or equitable relief, including a suit for:

1 (A) injury or damage to or loss of real or
2 personal property;

3 (B) personal injury;

4 (C) wrongful death;

5 (D) economic loss; or

6 (E) declaratory, injunctive, or other equitable
7 relief. ["Manufacturing equipment" means equipment and machinery
8 used in the manufacturing, processing, or fabrication of tangible
9 personal property but does not include agricultural equipment or
10 machinery.]

11 (b) Except as provided by Subsections [~~Subsection~~] (c),
12 (d), and (d-1), a claimant must commence a products liability
13 action against a manufacturer or seller of a product [~~manufacturing~~
14 ~~equipment~~] before the end of 15 years after the date of the sale of
15 the product [~~equipment~~] by the defendant.

16 (c) If a manufacturer or seller expressly warrants in
17 writing [~~represents~~] that the product [~~manufacturing equipment~~]
18 has a useful safe life of longer than 15 years, a claimant must
19 commence a products liability action against that manufacturer or
20 seller of the product [~~equipment~~] before the end of the number of
21 years warranted [~~represented~~] after the date of the sale of the
22 product [~~equipment~~] by that seller.

23 (d) This section does not apply to a products liability
24 action seeking damages for personal injury or wrongful death in
25 which the claimant alleges:

26 (1) the claimant was exposed to the product that is the
27 subject of the action before the end of 15 years after the date the

1 product was first sold;

2 (2) the claimant's exposure to the product caused the
3 claimant's disease that is the basis of the action; and

4 (3) the symptoms of the claimant's disease did not,
5 before the end of 15 years after the date of the first sale of the
6 product by the defendant, manifest themselves to a degree and for a
7 duration that would put a reasonable person on notice that the
8 person suffered some injury.

9 (d-1) This section does not reduce a limitations period for
10 a cause of action described by Subsection (d) [~~that applies to a~~
11 ~~products liability action involving manufacturing equipment~~] that
12 accrues before the end of the limitations period under this
13 section.

14 (e) This section does not extend the limitations period
15 within which a products liability action involving the product
16 [~~manufacturing equipment~~] may be commenced under any other law.

17 (f) This section applies only to the sale and not to the
18 lease of a product [~~manufacturing equipment~~].

19 (g) This section does not apply to any claim to which the
20 General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298,
21 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101)
22 or its exceptions are applicable.

23 SECTION 5.02. Chapter 82, Civil Practice and Remedies Code,
24 is amended by adding Sections 82.003, 82.007, and 82.008 to read as
25 follows:

26 Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A
27 seller that did not manufacture a product is not liable for harm

1 caused to the claimant by that product unless the claimant proves:

2 (1) that the seller participated in the design of the
3 product;

4 (2) that the seller altered or modified the product
5 and the claimant's harm resulted from that alteration or
6 modification;

7 (3) that the seller installed the product, or had the
8 product installed, on another product and the claimant's harm
9 resulted from the product's installation onto the assembled
10 product;

11 (4) that:

12 (A) the seller exercised substantial control
13 over the content of a warning or instruction that accompanied the
14 product;

15 (B) the warning or instruction was inadequate;
16 and

17 (C) the claimant's harm resulted from the
18 inadequacy of the warning or instruction;

19 (5) that:

20 (A) the seller made an express factual
21 representation about an aspect of the product;

22 (B) the representation was incorrect;

23 (C) the claimant relied on the representation in
24 obtaining or using the product; and

25 (D) if the aspect of the product had been as
26 represented, the claimant would not have been harmed by the product
27 or would not have suffered the same degree of harm;

1 (6) that:

2 (A) the seller actually knew of a defect to the
3 product at the time the seller supplied the product; and

4 (B) the claimant's harm resulted from the defect;
5 or

6 (7) that the manufacturer of the product is:

7 (A) insolvent; or

8 (B) not subject to the jurisdiction of the court.

9 (b) This section does not apply to a manufacturer or seller
10 whose liability in a products liability action is governed by
11 Chapter 2301, Occupations Code. In the event of a conflict, Chapter
12 2301, Occupations Code, prevails over this section.

13 Sec. 82.007. MEDICINES. (a) In a products liability action
14 alleging that an injury was caused by a failure to provide adequate
15 warnings or information with regard to a pharmaceutical product,
16 there is a rebuttable presumption that the defendant or defendants,
17 including a health care provider, manufacturer, distributor, and
18 prescriber, are not liable with respect to the allegations
19 involving failure to provide adequate warnings or information if:

20 (1) the warnings or information that accompanied the
21 product in its distribution were those approved by the United
22 States Food and Drug Administration for a product approved under
23 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
24 seq.), as amended, or Section 351, Public Health Service Act (42
25 U.S.C. Section 262), as amended; or

26 (2) the warnings provided were those stated in
27 monographs developed by the United States Food and Drug

1 Administration for pharmaceutical products that may be distributed
2 without an approved new drug application.

3 (b) The claimant may rebut the presumption in Subsection (a)
4 as to each defendant by establishing that:

5 (1) the defendant, before or after pre-market approval
6 or licensing of the product, withheld from or misrepresented to the
7 United States Food and Drug Administration required information
8 that was material and relevant to the performance of the product and
9 was causally related to the claimant's injury;

10 (2) the pharmaceutical product was sold or prescribed
11 in the United States by the defendant after the effective date of an
12 order of the United States Food and Drug Administration to remove
13 the product from the market or to withdraw its approval of the
14 product;

15 (3)(A) the defendant recommended, promoted, or
16 advertised the pharmaceutical product for an indication not
17 approved by the United States Food and Drug Administration;

18 (B) the product was used as recommended,
19 promoted, or advertised; and

20 (C) the claimant's injury was causally related to
21 the recommended, promoted, or advertised use of the product;

22 (4)(A) the defendant prescribed the pharmaceutical
23 product for an indication not approved by the United States Food and
24 Drug Administration;

25 (B) the product was used as prescribed; and

26 (C) the claimant's injury was causally related to
27 the prescribed use of the product; or

1 (5) the defendant, before or after pre-market approval
2 or licensing of the product, engaged in conduct that would
3 constitute a violation of 18 U.S.C. Section 201 and that conduct
4 caused the warnings or instructions approved for the product by the
5 United States Food and Drug Administration to be inadequate.

6 Sec. 82.008. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) In
7 a products liability action brought against a product manufacturer
8 or seller, there is a rebuttable presumption that the product
9 manufacturer or seller is not liable for any injury to a claimant
10 caused by some aspect of the formulation, labeling, or design of a
11 product if the product manufacturer or seller establishes that the
12 product's formula, labeling, or design complied with mandatory
13 safety standards or regulations adopted and promulgated by the
14 federal government, or an agency of the federal government, that
15 were applicable to the product at the time of manufacture and that
16 governed the product risk that allegedly caused harm.

17 (b) The claimant may rebut the presumption in Subsection (a)
18 by establishing that:

19 (1) the mandatory federal safety standards or
20 regulations applicable to the product were inadequate to protect
21 the public from unreasonable risks of injury or damage; or

22 (2) the manufacturer, before or after marketing the
23 product, withheld or misrepresented information or material
24 relevant to the federal government's or agency's determination of
25 adequacy of the safety standards or regulations at issue in the
26 action.

27 (c) In a products liability action brought against a product

1 manufacturer or seller, there is a rebuttable presumption that the
2 product manufacturer or seller is not liable for any injury to a
3 claimant allegedly caused by some aspect of the formulation,
4 labeling, or design of a product if the product manufacturer or
5 seller establishes that the product was subject to pre-market
6 licensing or approval by the federal government, or an agency of the
7 federal government, that the manufacturer complied with all of the
8 government's or agency's procedures and requirements with respect
9 to pre-market licensing or approval, and that after full
10 consideration of the product's risks and benefits the product was
11 approved or licensed for sale by the government or agency. The
12 claimant may rebut this presumption by establishing that:

13 (1) the standards or procedures used in the particular
14 pre-market approval or licensing process were inadequate to protect
15 the public from unreasonable risks of injury or damage; or

16 (2) the manufacturer, before or after pre-market
17 approval or licensing of the product, withheld from or
18 misrepresented to the government or agency information that was
19 material and relevant to the performance of the product and was
20 causally related to the claimant's injury.

21 (d) This section does not extend to manufacturing flaws or
22 defects even though the product manufacturer has complied with all
23 quality control and manufacturing practices mandated by the federal
24 government or an agency of the federal government.

25 (e) This section does not extend to products covered by
26 Section 82.007.

27 SECTION 5.03. As soon as practicable after the effective

1 date of this Act, the supreme court shall amend Rule 407(a), Texas
2 Rules of Evidence, to conform that rule to Rule 407, Federal Rules
3 of Evidence.

4 ARTICLE 6. INTEREST

5 SECTION 6.01. Section 304.003(c), Finance Code, is amended
6 to read as follows:

7 (c) The postjudgment interest rate is:

8 (1) the prime rate as published by the Federal Reserve
9 Bank of New York on [~~auction rate quoted on a discount basis for~~
10 ~~52-week treasury bills issued by the United States government as~~
11 ~~most recently published by the Federal Reserve Board before~~] the
12 date of computation;

13 (2) five [~~10~~] percent a year if the prime rate as
14 published by the Federal Reserve Bank of New York [~~auction rate~~]
15 described by Subdivision (1) is less than five [~~10~~] percent; or

16 (3) 15 [~~20~~] percent a year if the prime rate as
17 published by the Federal Reserve Bank of New York [~~auction rate~~]
18 described by Subdivision (1) is more than 15 [~~20~~] percent.

19 SECTION 6.02. Subchapter B, Chapter 304, Finance Code, is
20 amended by adding Section 304.1045 to read as follows:

21 Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may
22 not be assessed or recovered on an award of future damages.

23 SECTION 6.03. Section 304.108, Finance Code, is repealed.

24 SECTION 6.04. The changes in law made by this article apply
25 in any case in which a final judgment is signed or subject to appeal
26 on or after the effective date of this Act.

27 ARTICLE 7. APPEAL BONDS

1 SECTION 7.01. Section 35.006, Civil Practice and Remedies
2 Code, is amended to read as follows:

3 Sec. 35.006. STAY. (a) If the judgment debtor shows the
4 court that an appeal from the foreign judgment is pending or will be
5 taken, that the time for taking an appeal has not expired, or that a
6 stay of execution has been granted, has been requested, or will be
7 requested, and proves that the judgment debtor has furnished or
8 will furnish the security for the satisfaction of the judgment
9 required by the state in which it was rendered, the court shall stay
10 enforcement of the foreign judgment until the appeal is concluded,
11 the time for appeal expires, or the stay of execution expires or is
12 vacated.

13 (b) If the judgment debtor shows the court a ground on which
14 enforcement of a judgment of the court of this state would be
15 stayed, the court shall stay enforcement of the foreign judgment
16 for an appropriate period and require the same security for
17 suspending enforcement [~~satisfaction~~] of the judgment that is
18 required in this state in accordance with Section 52.006.

19 SECTION 7.02. Chapter 52, Civil Practice and Remedies Code,
20 is amended by adding Section 52.006 to read as follows:

21 Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a)
22 Subject to Subsection (b), when a judgment is for money, the amount
23 of security must equal the sum of:

24 (1) the amount of compensatory damages awarded in the
25 judgment;

26 (2) interest for the estimated duration of the appeal;

27 and

1 (3) costs awarded in the judgment.

2 (b) Notwithstanding any other law or rule of court, when a
3 judgment is for money, the amount of security must not exceed the
4 lesser of:

5 (1) 50 percent of the judgment debtor's net worth; or

6 (2) \$25 million.

7 (c) On a showing by the judgment debtor that the judgment
8 debtor is likely to suffer substantial economic harm if required to
9 post security in an amount required under Subsection (a) or (b), the
10 trial court shall lower the amount of the security to an amount that
11 will not cause the judgment debtor substantial economic harm.

12 (d) An appellate court may review the amount of security as
13 allowed under Rule 24, Texas Rules of Appellate Procedure, except
14 that when a judgment is for money, the appellate court may not
15 modify the amount of security to exceed the amount allowed under
16 this section.

17 (e) Nothing in this section prevents a trial court from
18 enjoining the judgment debtor from dissipating or transferring
19 assets to avoid satisfaction of the judgment, but the trial court
20 may not make any order that interferes with the judgment debtor's
21 use, transfer, conveyance, or dissipation of assets in the normal
22 course of business.

23 SECTION 7.03. The following sections of the Civil Practice
24 and Remedies Code are repealed:

25 (1) 52.002;

26 (2) 52.003; and

27 (3) 52.004.

1 SECTION 7.04. (a) The changes in law made in Section 7.01
2 of this article apply to any judgment filed in this state under
3 Chapter 35, Civil Practice and Remedies Code, on or after the
4 effective date of this Act.

5 (b) The changes in law made in Sections 7.02 and 7.03 of this
6 article apply to any case in which a final judgment is signed on or
7 after the effective date of this Act.

8 ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

9 SECTION 8.01. Sections 545.412(d) and 545.413(g),
10 Transportation Code, are repealed.

11 ARTICLE 9. RESERVED

12 ARTICLE 10. HEALTH CARE

13 SECTION 10.01. Chapter 74, Civil Practice and Remedies
14 Code, is amended to read as follows:

15 CHAPTER 74. MEDICAL LIABILITY [~~GOOD SAMARITAN LAW.~~
16 ~~LIABILITY FOR EMERGENCY CARE~~]

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 74.001. DEFINITIONS. (a) In this chapter:

19 (1) "Affiliate" means a person who, directly or
20 indirectly, through one or more intermediaries, controls, is
21 controlled by, or is under common control with a specified person,
22 including any direct or indirect parent or subsidiary.

23 (2) "Claimant" means a person, including a decedent's
24 estate, seeking or who has sought recovery of damages in a health
25 care liability claim. All persons claiming to have sustained
26 damages as the result of the bodily injury or death of a single
27 person are considered a single claimant.

1 (3) "Control" means the possession, directly or
2 indirectly, of the power to direct or cause the direction of the
3 management and policies of the person, whether through ownership of
4 equity or securities, by contract, or otherwise.

5 (4) "Court" means any federal or state court.

6 (5) "Disclosure panel" means the Texas Medical
7 Disclosure Panel.

8 (6) "Economic damages" has the meaning assigned by
9 Section 41.001.

10 (7) "Emergency medical care" means bona fide emergency
11 services provided after the sudden onset of a medical or traumatic
12 condition manifesting itself by acute symptoms of sufficient
13 severity, including severe pain, such that the absence of immediate
14 medical attention could reasonably be expected to result in placing
15 the patient's health in serious jeopardy, serious impairment to
16 bodily functions, or serious dysfunction of any bodily organ or
17 part. The term does not include medical care or treatment that
18 occurs after the patient is stabilized and is capable of receiving
19 medical treatment as a nonemergency patient or that is unrelated to
20 the original medical emergency.

21 (8) "Emergency medical services provider" means a
22 licensed public or private provider to which Chapter 773, Health
23 and Safety Code, applies.

24 (9) "Gross negligence" has the meaning assigned by
25 Section 41.001.

26 (10) "Health care" means any act or treatment
27 performed or furnished, or that should have been performed or

1 furnished, by any health care provider for, to, or on behalf of a
2 patient during the patient's medical care, treatment, or
3 confinement.

4 (11) "Health care institution" includes:

5 (A) an ambulatory surgical center;

6 (B) an assisted living facility licensed under
7 Chapter 247, Health and Safety Code;

8 (C) an emergency medical services provider;

9 (D) a health services district created under
10 Chapter 287, Health and Safety Code;

11 (E) a home and community support services agency;

12 (F) a hospice;

13 (G) a hospital;

14 (H) a hospital system;

15 (I) an intermediate care facility for the
16 mentally retarded or a home and community-based services waiver
17 program for persons with mental retardation adopted in accordance
18 with Section 1915(c) of the federal Social Security Act (42 U.S.C.
19 Section 1396n), as amended;

20 (J) a nursing home; or

21 (K) an end stage renal disease facility licensed
22 under Section 251.011, Health and Safety Code.

23 (12)(A) "Health care provider" means any person,
24 partnership, professional association, corporation, facility, or
25 institution duly licensed, certified, registered, or chartered by
26 the State of Texas to provide health care, including:

27 (i) a registered nurse;

- 1 (ii) a dentist;
- 2 (iii) a podiatrist;
- 3 (iv) a pharmacist;
- 4 (v) a chiropractor;
- 5 (vi) an optometrist; or
- 6 (vii) a health care institution.

7 (B) The term includes:

8 (i) an officer, director, shareholder,
9 member, partner, manager, owner, or affiliate of a health care
10 provider or physician; and

11 (ii) an employee, independent contractor,
12 or agent of a health care provider or physician acting in the course
13 and scope of the employment or contractual relationship.

14 (13) "Health care liability claim" means a cause of
15 action against a health care provider or physician for treatment,
16 lack of treatment, or other claimed departure from accepted
17 standards of medical care, or health care, or safety or
18 professional or administrative services directly related to health
19 care, which proximately results in injury to or death of a claimant,
20 whether the claimant's claim or cause of action sounds in tort or
21 contract.

22 (14) "Home and community support services agency"
23 means a licensed public or provider agency to which Chapter 142,
24 Health and Safety Code, applies.

25 (15) "Hospice" means a hospice facility or activity to
26 which Chapter 142, Health and Safety Code, applies.

27 (16) "Hospital" means a licensed public or private

1 institution as defined in Chapter 241, Health and Safety Code, or
2 licensed under Chapter 577, Health and Safety Code.

3 (17) "Hospital system" means a system of hospitals
4 located in this state that are under the common governance or
5 control of a corporate parent.

6 (18) "Intermediate care facility for the mentally
7 retarded" means a licensed public or private institution to which
8 Chapter 252, Health and Safety Code, applies.

9 (19) "Medical care" means any act defined as
10 practicing medicine under Section 151.002, Occupations Code,
11 performed or furnished, or which should have been performed, by one
12 licensed to practice medicine in this state for, to, or on behalf of
13 a patient during the patient's care, treatment, or confinement.

14 (20) "Noneconomic damages" has the meaning assigned by
15 Section 41.001.

16 (21) "Nursing home" means a licensed public or private
17 institution to which Chapter 242, Health and Safety Code, applies.

18 (22) "Pharmacist" means one licensed under Chapter
19 551, Occupations Code, who, for the purposes of this chapter,
20 performs those activities limited to the dispensing of prescription
21 medicines which result in health care liability claims and does not
22 include any other cause of action that may exist at common law
23 against them, including but not limited to causes of action for the
24 sale of mishandled or defective products.

25 (23) "Physician" means:

26 (A) an individual licensed to practice medicine
27 in this state;

1 (B) a professional association organized under
2 the Texas Professional Association Act (Article 1528f, Vernon's
3 Texas Civil Statutes) by an individual physician or group of
4 physicians;

5 (C) a partnership or limited liability
6 partnership formed by a group of physicians;

7 (D) a nonprofit health corporation certified
8 under Section 162.001, Occupations Code; or

9 (E) a company formed by a group of physicians
10 under the Texas Limited Liability Company Act (Article 1528n,
11 Vernon's Texas Civil Statutes).

12 (24) "Professional or administrative services" means
13 those duties or services that a physician or health care provider is
14 required to provide as a condition of maintaining the physician's
15 or health care provider's license, accreditation status, or
16 certification to participate in state or federal health care
17 programs.

18 (25) "Representative" means the spouse, parent,
19 guardian, trustee, authorized attorney, or other authorized legal
20 agent of the patient or claimant.

21 (b) Any legal term or word of art used in this chapter, not
22 otherwise defined in this chapter, shall have such meaning as is
23 consistent with the common law.

24 Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL
25 PROCEDURE. (a) In the event of a conflict between this chapter and
26 another law, including a rule of procedure or evidence or court
27 rule, this chapter controls to the extent of the conflict.

1 (b) Notwithstanding Subsection (a), in the event of a
2 conflict between this chapter and Section 101.023, 102.003, or
3 108.002, those sections of this code control to the extent of the
4 conflict.

5 (c) The district courts and statutory county courts in a
6 county may not adopt local rules in conflict with this chapter.

7 Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. This chapter
8 does not waive sovereign immunity from suit or from liability.

9 Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a)
10 Notwithstanding any other law, Sections 17.41-17.63, Business &
11 Commerce Code, do not apply to physicians or health care providers
12 with respect to claims for damages for personal injury or death
13 resulting, or alleged to have resulted, from negligence on the part
14 of any physician or health care provider.

15 (b) This section does not apply to pharmacists.

16 [Sections 74.005-74.050 reserved for expansion]

17 SUBCHAPTER B. NOTICE AND PLEADINGS

18 Sec. 74.051. NOTICE. (a) Any person or his authorized
19 agent asserting a health care liability claim shall give written
20 notice of such claim by certified mail, return receipt requested,
21 to each physician or health care provider against whom such claim is
22 being made at least 60 days before the filing of a suit in any court
23 of this state based upon a health care liability claim. The notice
24 must be accompanied by the authorization form for release of
25 protected health information as required under Section 74.052.

26 (b) In such pleadings as are subsequently filed in any
27 court, each party shall state that it has fully complied with the

1 provisions of this section and Section 74.052 and shall provide
2 such evidence thereof as the judge of the court may require to
3 determine if the provisions of this chapter have been met.

4 (c) Notice given as provided in this chapter shall toll the
5 applicable statute of limitations to and including a period of 75
6 days following the giving of the notice, and this tolling shall
7 apply to all parties and potential parties.

8 (d) All parties shall be entitled to obtain complete and
9 unaltered copies of the patient's medical records from any other
10 party within 45 days from the date of receipt of a written request
11 for such records; provided, however, that the receipt of a medical
12 authorization in the form required by Section 74.052 executed by
13 the claimant herein shall be considered compliance by the claimant
14 with this subsection.

15 (e) For the purposes of this section, and notwithstanding
16 Chapter 159, Occupations Code, or any other law, a request for the
17 medical records of a deceased person or a person who is incompetent
18 shall be deemed to be valid if accompanied by an authorization in
19 the form required by Section 74.052 signed by a parent, spouse, or
20 adult child of the deceased or incompetent person.

21 Sec. 74.052. AUTHORIZATION FORM FOR RELEASE OF PROTECTED
22 HEALTH INFORMATION. (a) Notice of a health care claim under
23 Section 74.051 must be accompanied by a medical authorization in
24 the form specified by this section. Failure to provide this
25 authorization along with the notice of health care claim shall
26 abate all further proceedings against the physician or health care
27 provider receiving the notice until 60 days following receipt by

1 the physician or health care provider of the required
2 authorization.

3 (b) If the authorization required by this section is
4 modified or revoked, the physician or health care provider to whom
5 the authorization has been given shall have the option to abate all
6 further proceedings until 60 days following receipt of a
7 replacement authorization that must comply with the form specified
8 by this section.

9 (c) The medical authorization required by this section
10 shall be in the following form and shall be construed in accordance
11 with the "Standards for Privacy of Individually Identifiable Health
12 Information" (45 C.F.R. Parts 160 and 164).

13 AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

14 A. I, _____(name of patient or authorized
15 representative), hereby authorize _____(name of physician or
16 other health care provider to whom the notice of health care claim
17 is directed) to obtain and disclose (within the parameters set out
18 below) the protected health information described below for the
19 following specific purposes:

20 1. To facilitate the investigation and evaluation of
21 the health care claim described in the accompanying Notice of
22 Health Care Claim; or

23 2. Defense of any litigation arising out of the claim
24 made the basis of the accompanying Notice of Health Care Claim.

25 B. The health information to be obtained, used, or disclosed
26 extends to and includes the verbal as well as the written and is
27 specifically described as follows:

1 1. The health information in the custody of the
2 following physicians or health care providers who have examined,
3 evaluated, or treated _____ (patient) in connection with the
4 injuries alleged to have been sustained in connection with the
5 claim asserted in the accompanying Notice of Health Care Claim.
6 (Here list the name and current address of all treating physicians
7 or health care providers). This authorization shall extend to any
8 additional physicians or health care providers that may in the
9 future evaluate, examine, or treat _____ (patient) for
10 injuries alleged in connection with the claim made the basis of the
11 attached Notice of Health Care Claim;

12 2. The health information in the custody of the
13 following physicians or health care providers who have examined,
14 evaluated, or treated _____ (patient) during a period
15 commencing five years prior to the incident made the basis of the
16 accompanying Notice of Health Care Claim. (Here list the name and
17 current address of such physicians or health care providers, if
18 applicable.)

19 C. Excluded Health Information - the following constitutes
20 a list of physicians or health care providers possessing health
21 care information concerning _____ (patient) to which this
22 authorization does not apply because I contend that such health
23 care information is not relevant to the damages being claimed or to
24 the physical, mental, or emotional condition of _____ (patient)
25 arising out of the claim made the basis of the accompanying Notice
26 of Health Care Claim. (Here state "none" or list the name of each
27 physician or health care provider to whom this authorization does

1 not extend and the inclusive dates of examination, evaluation, or
2 treatment to be withheld from disclosure.)

3 D. The persons or class of persons to whom the health
4 information of _____ (patient) will be disclosed or who will
5 make use of said information are:

6 1. Any and all physicians or health care providers
7 providing care or treatment to _____ (patient);

8 2. Any liability insurance entity providing liability
9 insurance coverage or defense to any physician or health care
10 provider to whom Notice of Health Care Claim has been given with
11 regard to the care and treatment of _____ (patient);

12 3. Any consulting or testifying experts employed by or
13 on behalf of _____ (name of physician or health care provider
14 to whom Notice of Health Care Claim has been given) with regard to
15 the matter set out in the Notice of Health Care Claim accompanying
16 this authorization;

17 4. Any attorneys (including secretarial, clerical, or
18 paralegal staff) employed by or on behalf of _____ (name of
19 physician or health care provider to whom Notice of Health Care
20 Claim has been given) with regard to the matter set out in the
21 Notice of Health Care Claim accompanying this authorization;

22 5. Any trier of the law or facts relating to any suit
23 filed seeking damages arising out of the medical care or treatment
24 of _____ (patient).

25 E. This authorization shall expire upon resolution of the
26 claim asserted or at the conclusion of any litigation instituted in
27 connection with the subject matter of the Notice of Health Care

1 Claim accompanying this authorization, whichever occurs sooner.

2 F. I understand that, without exception, I have the right to
3 revoke this authorization in writing. I further understand the
4 consequence of any such revocation as set out in Section 74.052,
5 Civil Practice and Remedies Code.

6 G. I understand that the signing of this authorization is
7 not a condition for continued treatment, payment, enrollment, or
8 eligibility for health plan benefits.

9 H. I understand that information used or disclosed pursuant
10 to this authorization may be subject to redisclosure by the
11 recipient and may no longer be protected by federal HIPAA privacy
12 regulations.

13 Signature of Patient/Representative

14 _____

15 Date

16 _____

17 Name of Patient/ Representative

18 _____

19 Description of Representative's Authority

20 _____

21 Sec. 74.053. PLEADINGS NOT TO STATE DAMAGE AMOUNT; SPECIAL
22 EXCEPTION; EXCLUSION FROM SECTION. Pleadings in a suit based on a
23 health care liability claim shall not specify an amount of money
24 claimed as damages. The defendant may file a special exception to
25 the pleadings on the ground the suit is not within the court's
26 jurisdiction, in which event the plaintiff shall inform the court
27 and defendant in writing of the total dollar amount claimed. This

1 section does not prevent a party from mentioning the total dollar
2 amount claimed in examining prospective jurors on voir dire or in
3 argument to the court or jury.

4 [Sections 74.054-74.100 reserved for expansion]

5 SUBCHAPTER C. INFORMED CONSENT

6 Sec. 74.101. THEORY OF RECOVERY. In a suit against a
7 physician or health care provider involving a health care liability
8 claim that is based on the failure of the physician or health care
9 provider to disclose or adequately disclose the risks and hazards
10 involved in the medical care or surgical procedure rendered by the
11 physician or health care provider, the only theory on which
12 recovery may be obtained is that of negligence in failing to
13 disclose the risks or hazards that could have influenced a
14 reasonable person in making a decision to give or withhold consent.

15 Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) The Texas
16 Medical Disclosure Panel is created to determine which risks and
17 hazards related to medical care and surgical procedures must be
18 disclosed by health care providers or physicians to their patients
19 or persons authorized to consent for their patients and to
20 establish the general form and substance of such disclosure.

21 (b) The disclosure panel established herein is
22 administratively attached to the Texas Department of Health. The
23 Texas Department of Health, at the request of the disclosure panel,
24 shall provide administrative assistance to the panel; and the Texas
25 Department of Health and the disclosure panel shall coordinate
26 administrative responsibilities in order to avoid unnecessary
27 duplication of facilities and services. The Texas Department of

1 Health, at the request of the panel, shall submit the panel's budget
2 request to the legislature. The panel shall be subject, except
3 where inconsistent, to the rules and procedures of the Texas
4 Department of Health; however, the duties and responsibilities of
5 the panel as set forth in this chapter shall be exercised solely by
6 the disclosure panel, and the board or Texas Department of Health
7 shall have no authority or responsibility with respect to same.

8 (c) The disclosure panel is composed of nine members, with
9 three members licensed to practice law in this state and six members
10 licensed to practice medicine in this state. Members of the
11 disclosure panel shall be selected by the commissioner of health.

12 (d) At the expiration of the term of each member of the
13 disclosure panel so appointed, the commissioner shall select a
14 successor, and such successor shall serve for a term of six years,
15 or until his successor is selected. Any member who is absent for
16 three consecutive meetings without the consent of a majority of the
17 disclosure panel present at each such meeting may be removed by the
18 commissioner at the request of the disclosure panel submitted in
19 writing and signed by the chairman. Upon the death, resignation, or
20 removal of any member, the commissioner shall fill the vacancy by
21 selection for the unexpired portion of the term.

22 (e) Members of the disclosure panel are not entitled to
23 compensation for their services, but each panelist is entitled to
24 reimbursement of any necessary expense incurred in the performance
25 of his duties on the panel, including necessary travel expenses.

26 (f) Meetings of the panel shall be held at the call of the
27 chairman or on petition of at least three members of the panel.

1 (g) At the first meeting of the panel each year after its
2 members assume their positions, the panelists shall select one of
3 the panel members to serve as chairman and one of the panel members
4 to serve as vice chairman, and each such officer shall serve for a
5 term of one year. The chairman shall preside at meetings of the
6 panel, and in his absence, the vice chairman shall preside.

7 (h) Employees of the Texas Department of Health shall serve
8 as the staff for the panel.

9 Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) To the extent
10 feasible, the panel shall identify and make a thorough examination
11 of all medical treatments and surgical procedures in which
12 physicians and health care providers may be involved in order to
13 determine which of those treatments and procedures do and do not
14 require disclosure of the risks and hazards to the patient or person
15 authorized to consent for the patient.

16 (b) The panel shall prepare separate lists of those medical
17 treatments and surgical procedures that do and do not require
18 disclosure and, for those treatments and procedures that do require
19 disclosure, shall establish the degree of disclosure required and
20 the form in which the disclosure will be made.

21 (c) Lists prepared under Subsection (b) together with
22 written explanations of the degree and form of disclosure shall be
23 published in the Texas Register.

24 (d) At least annually, or at such other period the panel may
25 determine from time to time, the panel will identify and examine any
26 new medical treatments and surgical procedures that have been
27 developed since its last determinations, shall assign them to the

1 proper list, and shall establish the degree of disclosure required
2 and the form in which the disclosure will be made. The panel will
3 also examine such treatments and procedures for the purpose of
4 revising lists previously published. These determinations shall be
5 published in the Texas Register.

6 Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER.

7 Before a patient or a person authorized to consent for a patient
8 gives consent to any medical care or surgical procedure that
9 appears on the disclosure panel's list requiring disclosure, the
10 physician or health care provider shall disclose to the patient or
11 person authorized to consent for the patient the risks and hazards
12 involved in that kind of care or procedure. A physician or health
13 care provider shall be considered to have complied with the
14 requirements of this section if disclosure is made as provided in
15 Section 74.105.

16 Sec. 74.105. MANNER OF DISCLOSURE. Consent to medical care

17 that appears on the disclosure panel's list requiring disclosure
18 shall be considered effective under this chapter if it is given in
19 writing, signed by the patient or a person authorized to give the
20 consent and by a competent witness, and if the written consent
21 specifically states the risks and hazards that are involved in the
22 medical care or surgical procedure in the form and to the degree
23 required by the disclosure panel under Section 74.103.

24 Sec. 74.106. EFFECT OF DISCLOSURE. (a) In a suit against a

25 physician or health care provider involving a health care liability
26 claim that is based on the negligent failure of the physician or
27 health care provider to disclose or adequately disclose the risks

1 and hazards involved in the medical care or surgical procedure
2 rendered by the physician or health care provider:

3 (1) both disclosure made as provided in Section 74.104
4 and failure to disclose based on inclusion of any medical care or
5 surgical procedure on the panel's list for which disclosure is not
6 required shall be admissible in evidence and shall create a
7 rebuttable presumption that the requirements of Sections 74.104 and
8 74.105 have been complied with and this presumption shall be
9 included in the charge to the jury; and

10 (2) failure to disclose the risks and hazards involved
11 in any medical care or surgical procedure required to be disclosed
12 under Sections 74.104 and 74.105 shall be admissible in evidence
13 and shall create a rebuttable presumption of a negligent failure to
14 conform to the duty of disclosure set forth in Sections 74.104 and
15 74.105, and this presumption shall be included in the charge to the
16 jury; but failure to disclose may be found not to be negligent if
17 there was an emergency or if for some other reason it was not
18 medically feasible to make a disclosure of the kind that would
19 otherwise have been negligence.

20 (b) If medical care or surgical procedure is rendered with
21 respect to which the disclosure panel has made no determination
22 either way regarding a duty of disclosure, the physician or health
23 care provider is under the duty otherwise imposed by law.

24 Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) The
25 disclosure panel shall develop and prepare written materials to
26 inform a patient or person authorized to consent for a patient of
27 the risks and hazards of a hysterectomy.

1 (b) The materials shall be available in English, Spanish,
2 and any other language the panel considers appropriate. The
3 information must be presented in a manner understandable to a
4 layperson.

5 (c) The materials must include:

6 (1) a notice that a decision made at any time to refuse
7 to undergo a hysterectomy will not result in the withdrawal or
8 withholding of any benefits provided by programs or projects
9 receiving federal funds or otherwise affect the patient's right to
10 future care or treatment;

11 (2) the name of the person providing and explaining
12 the materials;

13 (3) a statement that the patient or person authorized
14 to consent for the patient understands that the hysterectomy is
15 permanent and nonreversible and that the patient will not be able to
16 become pregnant or bear children if she undergoes a hysterectomy;

17 (4) a statement that the patient has the right to seek
18 a consultation from a second physician;

19 (5) a statement that the patient or person authorized
20 to consent for the patient has been informed that a hysterectomy is
21 a removal of the uterus through an incision in the lower abdomen or
22 vagina and that additional surgery may be necessary to remove or
23 repair other organs, including an ovary, tube, appendix, bladder,
24 rectum, or vagina;

25 (6) a description of the risks and hazards involved in
26 the performance of the procedure; and

27 (7) a written statement to be signed by the patient or

1 person authorized to consent for the patient indicating that the
2 materials have been provided and explained to the patient or person
3 authorized to consent for the patient and that the patient or person
4 authorized to consent for the patient understands the nature and
5 consequences of a hysterectomy.

6 (d) The physician or health care provider shall obtain
7 informed consent under this section and Section 74.104 from the
8 patient or person authorized to consent for the patient before
9 performing a hysterectomy unless the hysterectomy is performed in a
10 life-threatening situation in which the physician determines
11 obtaining informed consent is not reasonably possible. If
12 obtaining informed consent is not reasonably possible, the
13 physician or health care provider shall include in the patient's
14 medical records a written statement signed by the physician
15 certifying the nature of the emergency.

16 (e) The disclosure panel may not prescribe materials under
17 this section without first consulting with the Texas State Board of
18 Medical Examiners.

19 [Sections 74.108-74.150 reserved for expansion]

20 SUBCHAPTER D. EMERGENCY CARE

21 Sec. 74.151. LIABILITY FOR EMERGENCY CARE. (a) A person
22 who in good faith administers emergency care, including using an
23 automated external defibrillator, [~~at the scene of an emergency but~~
24 ~~not in a hospital or other health care facility or means of medical~~
25 ~~transport]~~ is not liable in civil damages for an act performed
26 during the emergency unless the act is wilfully or wantonly
27 negligent.

1 (b) This section does not apply to care administered:

2 (1) for or in expectation of remuneration, provided
3 that being legally entitled to receive remuneration for the
4 emergency care rendered shall not determine whether or not the care
5 was administered for or in anticipation of remuneration; or

6 (2) by a person who was at the scene of the emergency
7 because he or a person he represents as an agent was soliciting
8 business or seeking to perform a service for remuneration.

9 ~~[(c) If the scene of an emergency is in a hospital or other~~
10 ~~health care facility or means of medical transport, a person who in~~
11 ~~good faith administers emergency care is not liable in civil~~
12 ~~damages for an act performed during the emergency unless the act is~~
13 ~~wilfully or wantonly negligent, provided that this subsection does~~
14 ~~not apply to care administered:~~

15 ~~[(1) by a person who regularly administers care in a~~
16 ~~hospital emergency room unless such person is at the scene of the~~
17 ~~emergency for reasons wholly unrelated to the person's work in~~
18 ~~administering health care; or~~

19 ~~[(2) by an admitting or attending physician of the~~
20 ~~patient or a treating physician associated by the admitting or~~
21 ~~attending physician of the patient in question.~~

22 ~~[(d) For purposes of Subsections (b)(1) and (c)(1), a person~~
23 ~~who would ordinarily receive or be entitled to receive a salary,~~
24 ~~fee, or other remuneration for administering care under such~~
25 ~~circumstances to the patient in question shall be deemed to be~~
26 ~~acting for or in expectation of remuneration even if the person~~
27 ~~waives or elects not to charge or receive remuneration on the~~

1 ~~occasion in question.]~~

2 (e) This section does not apply to a person whose negligent
3 act or omission was a producing cause of the emergency for which
4 care is being administered.

5 Sec. 74.152 [~~74.002~~]. UNLICENSED MEDICAL PERSONNEL.
6 Persons not licensed or certified in the healing arts who in good
7 faith administer emergency care as emergency medical service
8 personnel are not liable in civil damages for an act performed in
9 administering the care unless the act is wilfully or wantonly
10 negligent. This section applies without regard to whether the care
11 is provided for or in expectation of remuneration.

12 Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY
13 MEDICAL CARE. In a suit involving a health care liability claim
14 against a physician or health care provider for injury to or death
15 of a patient arising out of the provision of emergency medical care
16 in a hospital emergency department or obstetrical unit or in a
17 surgical suite immediately following the evaluation or treatment of
18 a patient in a hospital emergency department, the claimant bringing
19 the suit may prove that the treatment or lack of treatment by the
20 physician or health care provider departed from accepted standards
21 of medical care or health care only if the claimant shows by a
22 preponderance of the evidence that the physician or health care
23 provider, with wilful and wanton negligence, deviated from the
24 degree of care and skill that is reasonably expected of an
25 ordinarily prudent physician or health care provider in the same or
26 similar circumstances.

27 Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY

1 MEDICAL CARE. (a) In an action for damages that involves a claim of
2 negligence arising from the provision of emergency medical care in
3 a hospital emergency department or obstetrical unit or in a
4 surgical suite immediately following the evaluation or treatment of
5 a patient in a hospital emergency department, the court shall
6 instruct the jury to consider, together with all other relevant
7 matters:

8 (1) whether the person providing care did or did not
9 have the patient's medical history or was able or unable to obtain a
10 full medical history, including the knowledge of preexisting
11 medical conditions, allergies, and medications;

12 (2) the presence or lack of a preexisting
13 physician-patient relationship or health care provider-patient
14 relationship;

15 (3) the circumstances constituting the emergency; and

16 (4) the circumstances surrounding the delivery of the
17 emergency medical care.

18 (b) The provisions of Subsection (a) do not apply to medical
19 care or treatment:

20 (1) that occurs after the patient is stabilized and is
21 capable of receiving medical treatment as a nonemergency patient;

22 (2) that is unrelated to the original medical
23 emergency; or

24 (3) that is related to an emergency caused in whole or
25 in part by the negligence of the defendant.

26 [Sections 74.155-74.200 reserved for expansion]

27 SUBCHAPTER E. RES IPSA LOQUITUR

1 Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. The common
2 law doctrine of res ipsa loquitur shall only apply to health care
3 liability claims against health care providers or physicians in
4 those cases to which it has been applied by the appellate courts of
5 this state as of August 29, 1977.

6 [Sections 74.202-74.250 reserved for expansion]

7 SUBCHAPTER F. STATUTE OF LIMITATIONS

8 Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE
9 LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to
10 Subsection (b), no health care liability claim may be commenced
11 unless the action is filed within two years from the occurrence of
12 the breach or tort or from the date the medical or health care
13 treatment that is the subject of the claim or the hospitalization
14 for which the claim is made is completed; provided that, minors
15 under the age of 12 years shall have until their 14th birthday in
16 which to file, or have filed on their behalf, the claim. Except as
17 herein provided this section applies to all persons regardless of
18 minority or other legal disability.

19 (b) A claimant must bring a health care liability claim not
20 later than 10 years after the date of the act or omission that gives
21 rise to the claim. This subsection is intended as a statute of
22 repose so that all claims must be brought within 10 years or they
23 are time barred.

24 [Sections 74.252-74.300 reserved for expansion]

25 SUBCHAPTER G. LIABILITY LIMITS

26 Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) In an
27 action on a health care liability claim where final judgment is

1 rendered against a physician or health care provider other than a
2 health care institution, the limit of civil liability for
3 noneconomic damages of the physician or health care provider other
4 than a health care institution, inclusive of all persons and
5 entities for which vicarious liability theories may apply, shall be
6 limited to an amount not to exceed \$250,000 for each claimant,
7 regardless of the number of defendant physicians or health care
8 providers other than a health care institution against whom the
9 claim is asserted or the number of separate causes of action on
10 which the claim is based.

11 (b) In an action on a health care liability claim where
12 final judgment is rendered against a single health care
13 institution, the limit of civil liability for noneconomic damages
14 inclusive of all persons and entities for which vicarious liability
15 theories may apply, shall be limited to an amount not to exceed
16 \$250,000 for each claimant.

17 (c) In an action on a health care liability claim where
18 final judgment is rendered against more than one health care
19 institution, the limit of civil liability for noneconomic damages
20 for each health care institution, inclusive of all persons and
21 entities for which vicarious liability theories may apply, shall be
22 limited to an amount not to exceed \$250,000 for each claimant and
23 the limit of civil liability for noneconomic damages for all health
24 care institutions, inclusive of all persons and entities for which
25 vicarious liability theories may apply, shall be limited to an
26 amount not to exceed \$500,000 for each claimant.

27 Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC

1 DAMAGES. (a) In the event that Section 74.301 is stricken from
2 this subchapter or is otherwise to any extent invalidated by a
3 method other than through legislative means, the following, subject
4 to the provisions of this section, shall become effective:

5 (1) In an action on a health care liability claim where
6 final judgment is rendered against a physician or health care
7 provider other than a health care institution, the limit of civil
8 liability for noneconomic damages of the physician or health care
9 provider other than a health care institution, inclusive of all
10 persons and entities for which vicarious liability theories may
11 apply, shall be limited to an amount not to exceed \$250,000 for each
12 claimant, regardless of the number of defendant physicians or
13 health care providers other than a health care institution against
14 whom the claim is asserted or the number of separate causes of
15 action on which the claim is based.

16 (2) In an action on a health care liability claim where
17 final judgment is rendered against a single health care
18 institution, the limit of civil liability for noneconomic damages
19 inclusive of all persons and entities for which vicarious liability
20 theories may apply, shall be limited to an amount not to exceed
21 \$250,000 for each claimant.

22 (3) In an action on a health care liability claim where
23 final judgment is rendered against more than one health care
24 institution, the limit of civil liability for noneconomic damages
25 for each health care institution, inclusive of all persons and
26 entities for which vicarious liability theories may apply, shall be
27 limited to an amount not to exceed \$250,000 for each claimant and

1 the limit of civil liability for noneconomic damages for all health
2 care institutions, inclusive of all persons and entities for which
3 vicarious liability theories may apply, shall be limited to an
4 amount not to exceed \$500,000 for each claimant.

5 (b) Effective before September 1, 2005, Subsection (a) of
6 this section applies to any physician or health care provider that
7 provides evidence of financial responsibility in the following
8 amounts in effect for any act or omission to which this subchapter
9 applies:

10 (1) at least \$100,000 for each health care liability
11 claim and at least \$300,000 in aggregate for all health care
12 liability claims occurring in an insurance policy year, calendar
13 year, or fiscal year for a physician participating in an approved
14 residency program;

15 (2) at least \$200,000 for each health care liability
16 claim and at least \$600,000 in aggregate for all health care
17 liability claims occurring in an insurance policy year, calendar
18 year, or fiscal year for a physician or health care provider, other
19 than a hospital; and

20 (3) at least \$500,000 for each health care liability
21 claim and at least \$1.5 million in aggregate for all health care
22 liability claims occurring in an insurance policy year, calendar
23 year, or fiscal year for a hospital.

24 (c) Effective September 1, 2005, Subsection (a) of this
25 section applies to any physician or health care provider that
26 provides evidence of financial responsibility in the following
27 amounts in effect for any act or omission to which this subchapter

1 applies:

2 (1) at least \$100,000 for each health care liability
3 claim and at least \$300,000 in aggregate for all health care
4 liability claims occurring in an insurance policy year, calendar
5 year, or fiscal year for a physician participating in an approved
6 residency program;

7 (2) at least \$300,000 for each health care liability
8 claim and at least \$900,000 in aggregate for all health care
9 liability claims occurring in an insurance policy year, calendar
10 year, or fiscal year for a physician or health care provider, other
11 than a hospital; and

12 (3) at least \$750,000 for each health care liability
13 claim and at least \$2.25 million in aggregate for all health care
14 liability claims occurring in an insurance policy year, calendar
15 year, or fiscal year for a hospital.

16 (d) Effective September 1, 2007, Subsection (a) of this
17 section applies to any physician or health care provider that
18 provides evidence of financial responsibility in the following
19 amounts in effect for any act or omission to which this subchapter
20 applies:

21 (1) at least \$100,000 for each health care liability
22 claim and at least \$300,000 in aggregate for all health care
23 liability claims occurring in an insurance policy year, calendar
24 year, or fiscal year for a physician participating in an approved
25 residency program;

26 (2) at least \$500,000 for each health care liability
27 claim and at least \$1 million in aggregate for all health care

1 liability claims occurring in an insurance policy year, calendar
2 year, or fiscal year for a physician or health care provider, other
3 than a hospital; and

4 (3) at least \$1 million for each health care liability
5 claim and at least \$3 million in aggregate for all health care
6 liability claims occurring in an insurance policy year, calendar
7 year, or fiscal year for a hospital.

8 (e) Evidence of financial responsibility may be established
9 at the time of judgment by providing proof of:

10 (1) the purchase of a contract of insurance or other
11 plan of insurance authorized by this state or federal law or
12 regulation;

13 (2) the purchase of coverage from a trust organized
14 and operating under Article 21.49-4, Insurance Code;

15 (3) the purchase of coverage or another plan of
16 insurance provided by or through a risk retention group or
17 purchasing group authorized under applicable laws of this state or
18 under the Product Liability Risk Retention Act of 1981 (15 U.S.C.
19 Section 3901 et seq.), as amended, or the Liability Risk Retention
20 Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any
21 other contract or arrangement for transferring and distributing
22 risk relating to legal liability for damages, including cost or
23 defense, legal costs, fees, and other claims expenses; or

24 (4) the maintenance of financial reserves in or an
25 irrevocable letter of credit from a federally insured financial
26 institution that has its main office or a branch office in this
27 state.

1 Sec. 74.303. LIMITATION ON DAMAGES. (a) In a wrongful
2 death or survival action on a health care liability claim where
3 final judgment is rendered against a physician or health care
4 provider, the limit of civil liability for all damages, including
5 exemplary damages, shall be limited to an amount not to exceed
6 \$500,000 for each claimant, regardless of the number of defendant
7 physicians or health care providers against whom the claim is
8 asserted or the number of separate causes of action on which the
9 claim is based.

10 (b) When there is an increase or decrease in the consumer
11 price index with respect to the amount of that index on August 29,
12 1977, the liability limit prescribed in Subsection (a) shall be
13 increased or decreased, as applicable, by a sum equal to the amount
14 of such limit multiplied by the percentage increase or decrease in
15 the consumer price index, as published by the Bureau of Labor
16 Statistics of the United States Department of Labor, that measures
17 the average changes in prices of goods and services purchased by
18 urban wage earners and clerical workers' families and single
19 workers living alone (CPI-W: Seasonally Adjusted U.S. City Average
20 - All Items), between August 29, 1977, and the time at which damages
21 subject to such limits are awarded by final judgment or settlement.

22 (c) Subsection (a) does not apply to the amount of damages
23 awarded on a health care liability claim for the expenses of
24 necessary medical, hospital, and custodial care received before
25 judgment or required in the future for treatment of the injury.

26 (d) The liability of any insurer under the common law theory
27 of recovery commonly known in Texas as the "Stowers Doctrine" shall

1 not exceed the liability of the insured.

2 (e) In any action on a health care liability claim that is
3 tried by a jury in any court in this state, the following shall be
4 included in the court's written instructions to the jurors:

5 (1) "Do not consider, discuss, nor speculate whether
6 or not liability, if any, on the part of any party is or is not
7 subject to any limit under applicable law."

8 (2) "A finding of negligence may not be based solely on
9 evidence of a bad result to the claimant in question, but a bad
10 result may be considered by you, along with other evidence, in
11 determining the issue of negligence. You are the sole judges of the
12 weight, if any, to be given to this kind of evidence."

13 [Sections 74.304-74.350 reserved for expansion]

14 SUBCHAPTER H. PROCEDURAL PROVISIONS

15 Sec. 74.351. EXPERT REPORT. (a) In a health care liability
16 claim, a claimant shall, not later than the 120th day after the date
17 the claim was filed, serve on each party or the party's attorney one
18 or more expert reports, with a curriculum vitae of each expert
19 listed in the report for each physician or health care provider
20 against whom a liability claim is asserted. The date for serving
21 the report may be extended by written agreement of the affected
22 parties. Each defendant physician or health care provider whose
23 conduct is implicated in a report must file and serve any objection
24 to the sufficiency of the report not later than the 21st day after
25 the date it was served, failing which all objections are waived.

26 (b) If, as to a defendant physician or health care provider,
27 an expert report has not been served within the period specified by

1 Subsection (a), the court, on the motion of the affected physician
2 or health care provider, shall, subject to Subsection (c), enter an
3 order that:

4 (1) awards to the affected physician or health care
5 provider reasonable attorney's fees and costs of court incurred by
6 the physician or health care provider; and

7 (2) dismisses the claim with respect to the physician
8 or health care provider, with prejudice to the refiling of the
9 claim.

10 (c) If an expert report has not been served within the
11 period specified by Subsection (a) because elements of the report
12 are found deficient, the court may grant one 30-day extension to the
13 claimant in order to cure the deficiency. If the claimant does not
14 receive notice of the court's ruling granting the extension until
15 after the 120-day deadline has passed, then the 30-day extension
16 shall run from the date the plaintiff first received the notice.

17 [Subsections (d)-(h) reserved]

18 (i) Notwithstanding any other provision of this section, a
19 claimant may satisfy any requirement of this section for serving an
20 expert report by serving reports of separate experts regarding
21 different physicians or health care providers or regarding
22 different issues arising from the conduct of a physician or health
23 care provider, such as issues of liability and causation. Nothing
24 in this section shall be construed to mean that a single expert must
25 address all liability and causation issues with respect to all
26 physicians or health care providers or with respect to both
27 liability and causation issues for a physician or health care

1 provider.

2 (j) Nothing in this section shall be construed to require
3 the serving of an expert report regarding any issue other than an
4 issue relating to liability or causation.

5 (k) Subject to Subsection (t), an expert report served under
6 this section:

7 (1) is not admissible in evidence by any party;

8 (2) shall not be used in a deposition, trial, or other
9 proceeding; and

10 (3) shall not be referred to by any party during the
11 course of the action for any purpose.

12 (l) A court shall grant a motion challenging the adequacy of
13 an expert report only if it appears to the court, after hearing,
14 that the report does not represent an objective good faith effort to
15 comply with the definition of an expert report in Subsection
16 (r)(6).

17 [Subsections (m)-(q) reserved]

18 (r) In this section:

19 (1) "Affected parties" means the claimant and the
20 physician or health care provider who are directly affected by an
21 act or agreement required or permitted by this section and does not
22 include other parties to an action who are not directly affected by
23 that particular act or agreement.

24 (2) "Claim" means a health care liability claim.

25 [(3) reserved]

26 (4) "Defendant" means a physician or health care
27 provider against whom a health care liability claim is asserted.

1 The term includes a third-party defendant, cross-defendant, or
2 counterdefendant.

3 (5) "Expert" means:

4 (A) with respect to a person giving opinion
5 testimony regarding whether a physician departed from accepted
6 standards of medical care, an expert qualified to testify under the
7 requirements of Section 74.401;

8 (B) with respect to a person giving opinion
9 testimony regarding whether a health care provider departed from
10 accepted standards of health care, an expert qualified to testify
11 under the requirements of Section 74.402;

12 (C) with respect to a person giving opinion
13 testimony about the causal relationship between the injury, harm,
14 or damages claimed and the alleged departure from the applicable
15 standard of care in any health care liability claim, a physician who
16 is otherwise qualified to render opinions on such causal
17 relationship under the Texas Rules of Evidence;

18 (D) with respect to a person giving opinion
19 testimony about the causal relationship between the injury, harm,
20 or damages claimed and the alleged departure from the applicable
21 standard of care for a dentist, a dentist or physician who is
22 otherwise qualified to render opinions on such causal relationship
23 under the Texas Rules of Evidence; or

24 (E) with respect to a person giving opinion
25 testimony about the causal relationship between the injury, harm,
26 or damages claimed and the alleged departure from the applicable
27 standard of care for a podiatrist, a podiatrist or physician who is

1 otherwise qualified to render opinions on such causal relationship
2 under the Texas Rules of Evidence.

3 (6) "Expert report" means a written report by an
4 expert that provides a fair summary of the expert's opinions as of
5 the date of the report regarding applicable standards of care, the
6 manner in which the care rendered by the physician or health care
7 provider failed to meet the standards, and the causal relationship
8 between that failure and the injury, harm, or damages claimed.

9 (s) Until a claimant has served the expert report and
10 curriculum vitae as required by Subsection (a), all discovery in a
11 health care liability claim is stayed except for the acquisition by
12 the claimant of information, including medical or hospital records
13 or other documents or tangible things, related to the patient's
14 health care through:

15 (1) written discovery as defined in Rule 192.7, Texas
16 Rules of Civil Procedure;

17 (2) depositions on written questions under Rule 200,
18 Texas Rules of Civil Procedure; and

19 (3) discovery from nonparties under Rule 205, Texas
20 Rules of Civil Procedure.

21 (t) If an expert report is used by the claimant in the course
22 of the action for any purpose other than to meet the service
23 requirement of Subsection (a), the restrictions imposed by
24 Subsection (k) on use of the expert report by any party are waived.

25 (u) Notwithstanding any other provision of this section,
26 after a claim is filed all claimants, collectively, may take not
27 more than two depositions before the expert report is served as

1 required by Subsection (a).

2 Sec. 74.352. DISCOVERY PROCEDURES. (a) In every health
3 care liability claim the plaintiff shall within 45 days after the
4 date of filing of the original petition serve on the defendant's
5 attorney or, if no attorney has appeared for the defendant, on the
6 defendant full and complete answers to the appropriate standard set
7 of interrogatories and full and complete responses to the
8 appropriate standard set of requests for production of documents
9 and things promulgated by the Health Care Liability Discovery
10 Panel.

11 (b) Every physician or health care provider who is a
12 defendant in a health care liability claim shall within 45 days
13 after the date on which an answer to the petition was due serve on
14 the plaintiff's attorney or, if the plaintiff is not represented by
15 an attorney, on the plaintiff full and complete answers to the
16 appropriate standard set of interrogatories and complete responses
17 to the standard set of requests for production of documents and
18 things promulgated by the Health Care Liability Discovery Panel.

19 (c) Except on motion and for good cause shown, no objection
20 may be asserted regarding any standard interrogatory or request for
21 production of documents and things, but no response shall be
22 required where a particular interrogatory or request is clearly
23 inapplicable under the circumstances of the case.

24 (d) Failure to file full and complete answers and responses
25 to standard interrogatories and requests for production of
26 documents and things in accordance with Subsections (a) and (b) or
27 the making of a groundless objection under Subsection (c) shall be

1 grounds for sanctions by the court in accordance with the Texas
2 Rules of Civil Procedure on motion of any party.

3 (e) The time limits imposed under Subsections (a) and (b)
4 may be extended by the court on the motion of a responding party for
5 good cause shown and shall be extended if agreed in writing between
6 the responding party and all opposing parties. In no event shall an
7 extension be for a period of more than an additional 30 days.

8 (f) If a party is added by an amended pleading,
9 intervention, or otherwise, the new party shall file full and
10 complete answers to the appropriate standard set of interrogatories
11 and full and complete responses to the standard set of requests for
12 production of documents and things no later than 45 days after the
13 date of filing of the pleading by which the party first appeared in
14 the action.

15 (g) If information or documents required to provide full and
16 complete answers and responses as required by this section are not
17 in the possession of the responding party or attorney when the
18 answers or responses are filed, the party shall supplement the
19 answers and responses in accordance with the Texas Rules of Civil
20 Procedure.

21 (h) Nothing in this section shall preclude any party from
22 taking additional non-duplicative discovery of any other party.
23 The standard sets of interrogatories provided for in this section
24 shall not constitute, as to each plaintiff and each physician or
25 health care provider who is a defendant, the first of the two sets
26 of interrogatories permitted under the Texas Rules of Civil
27 Procedure.

1 [Sections 74.353-74.400 reserved for expansion]

2 SUBCHAPTER I. EXPERT WITNESSES

3 Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT
4 AGAINST PHYSICIAN. (a) In a suit involving a health care liability
5 claim against a physician for injury to or death of a patient, a
6 person may qualify as an expert witness on the issue of whether the
7 physician departed from accepted standards of medical care only if
8 the person is a physician who:

9 (1) is practicing medicine at the time such testimony
10 is given or was practicing medicine at the time the claim arose;

11 (2) has knowledge of accepted standards of medical
12 care for the diagnosis, care, or treatment of the illness, injury,
13 or condition involved in the claim; and

14 (3) is qualified on the basis of training or
15 experience to offer an expert opinion regarding those accepted
16 standards of medical care.

17 (b) For the purpose of this section, "practicing medicine"
18 or "medical practice" includes, but is not limited to, training
19 residents or students at an accredited school of medicine or
20 osteopathy or serving as a consulting physician to other physicians
21 who provide direct patient care, upon the request of such other
22 physicians.

23 (c) In determining whether a witness is qualified on the
24 basis of training or experience, the court shall consider whether,
25 at the time the claim arose or at the time the testimony is given,
26 the witness:

27 (1) is board certified or has other substantial

1 training or experience in an area of medical practice relevant to
2 the claim; and

3 (2) is actively practicing medicine in rendering
4 medical care services relevant to the claim.

5 (d) The court shall apply the criteria specified in
6 Subsections (a), (b), and (c) in determining whether an expert is
7 qualified to offer expert testimony on the issue of whether the
8 physician departed from accepted standards of medical care, but may
9 depart from those criteria if, under the circumstances, the court
10 determines that there is a good reason to admit the expert's
11 testimony. The court shall state on the record the reason for
12 admitting the testimony if the court departs from the criteria.

13 (e) A pretrial objection to the qualifications of a witness
14 under this section must be made not later than the later of the 21st
15 day after the date the objecting party receives a copy of the
16 witness's curriculum vitae or the 21st day after the date of the
17 witness's deposition. If circumstances arise after the date on
18 which the objection must be made that could not have been reasonably
19 anticipated by a party before that date and that the party believes
20 in good faith provide a basis for an objection to a witness's
21 qualifications, and if an objection was not made previously, this
22 subsection does not prevent the party from making an objection as
23 soon as practicable under the circumstances. The court shall
24 conduct a hearing to determine whether the witness is qualified as
25 soon as practicable after the filing of an objection and, if
26 possible, before trial. If the objecting party is unable to object
27 in time for the hearing to be conducted before the trial, the

1 hearing shall be conducted outside the presence of the jury. This
2 subsection does not prevent a party from examining or
3 cross-examining a witness at trial about the witness's
4 qualifications.

5 (f) This section does not prevent a physician who is a
6 defendant from qualifying as an expert.

7 (g) In this subchapter, "physician" means a person who is:

8 (1) licensed to practice medicine in one or more
9 states in the United States; or

10 (2) a graduate of a medical school accredited by the
11 Liaison Committee on Medical Education or the American Osteopathic
12 Association only if testifying as a defendant and that testimony
13 relates to that defendant's standard of care, the alleged departure
14 from that standard of care, or the causal relationship between the
15 alleged departure from that standard of care and the injury, harm,
16 or damages claimed.

17 Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT
18 AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section,
19 "practicing health care" includes:

20 (1) training health care providers in the same field
21 as the defendant health care provider at an accredited educational
22 institution; or

23 (2) serving as a consulting health care provider and
24 being licensed, certified, or registered in the same field as the
25 defendant health care provider.

26 (b) In a suit involving a health care liability claim
27 against a health care provider, a person may qualify as an expert

1 witness on the issue of whether the health care provider departed
2 from accepted standards of care only if the person:

3 (1) is practicing health care in a field of practice
4 that involves the same type of care or treatment as that delivered
5 by the defendant health care provider, if the defendant health care
6 provider is an individual, at the time the testimony is given or was
7 practicing that type of health care at the time the claim arose;

8 (2) has knowledge of accepted standards of care for
9 health care providers for the diagnosis, care, or treatment of the
10 illness, injury, or condition involved in the claim; and

11 (3) is qualified on the basis of training or
12 experience to offer an expert opinion regarding those accepted
13 standards of health care.

14 (c) In determining whether a witness is qualified on the
15 basis of training or experience, the court shall consider whether,
16 at the time the claim arose or at the time the testimony is given,
17 the witness:

18 (1) is certified by a licensing agency of one or more
19 states of the United States or a national professional certifying
20 agency, or has other substantial training or experience, in the
21 area of health care relevant to the claim; and

22 (2) is actively practicing health care in rendering
23 health care services relevant to the claim.

24 (d) The court shall apply the criteria specified in
25 Subsections (a), (b), and (c) in determining whether an expert is
26 qualified to offer expert testimony on the issue of whether the
27 defendant health care provider departed from accepted standards of

1 health care but may depart from those criteria if, under the
2 circumstances, the court determines that there is good reason to
3 admit the expert's testimony. The court shall state on the record
4 the reason for admitting the testimony if the court departs from the
5 criteria.

6 (e) This section does not prevent a health care provider who
7 is a defendant, or an employee of the defendant health care
8 provider, from qualifying as an expert.

9 (f) A pretrial objection to the qualifications of a witness
10 under this section must be made not later than the later of the 21st
11 day after the date the objecting party receives a copy of the
12 witness's curriculum vitae or the 21st day after the date of the
13 witness's deposition. If circumstances arise after the date on
14 which the objection must be made that could not have been reasonably
15 anticipated by a party before that date and that the party believes
16 in good faith provide a basis for an objection to a witness's
17 qualifications, and if an objection was not made previously, this
18 subsection does not prevent the party from making an objection as
19 soon as practicable under the circumstances. The court shall
20 conduct a hearing to determine whether the witness is qualified as
21 soon as practicable after the filing of an objection and, if
22 possible, before trial. If the objecting party is unable to object
23 in time for the hearing to be conducted before the trial, the
24 hearing shall be conducted outside the presence of the jury. This
25 subsection does not prevent a party from examining or
26 cross-examining a witness at trial about the witness's
27 qualifications.

1 Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION
2 IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by
3 Subsections (b) and (c), in a suit involving a health care liability
4 claim against a physician or health care provider, a person may
5 qualify as an expert witness on the issue of the causal relationship
6 between the alleged departure from accepted standards of care and
7 the injury, harm, or damages claimed only if the person is a
8 physician and is otherwise qualified to render opinions on that
9 causal relationship under the Texas Rules of Evidence.

10 (b) In a suit involving a health care liability claim
11 against a dentist, a person may qualify as an expert witness on the
12 issue of the causal relationship between the alleged departure from
13 accepted standards of care and the injury, harm, or damages claimed
14 if the person is a dentist or physician and is otherwise qualified
15 to render opinions on that causal relationship under the Texas
16 Rules of Evidence.

17 (c) In a suit involving a health care liability claim
18 against a podiatrist, a person may qualify as an expert witness on
19 the issue of the causal relationship between the alleged departure
20 from accepted standards of care and the injury, harm, or damages
21 claimed if the person is a podiatrist or physician and is otherwise
22 qualified to render opinions on that causal relationship under the
23 Texas Rules of Evidence.

24 (d) A pretrial objection to the qualifications of a witness
25 under this section must be made not later than the later of the 21st
26 day after the date the objecting party receives a copy of the
27 witness's curriculum vitae or the 21st day after the date of the

1 witness's deposition. If circumstances arise after the date on
2 which the objection must be made that could not have been reasonably
3 anticipated by a party before that date and that the party believes
4 in good faith provide a basis for an objection to a witness's
5 qualifications, and if an objection was not made previously, this
6 subsection does not prevent the party from making an objection as
7 soon as practicable under the circumstances. The court shall
8 conduct a hearing to determine whether the witness is qualified as
9 soon as practicable after the filing of an objection and, if
10 possible, before trial. If the objecting party is unable to object
11 in time for the hearing to be conducted before the trial, the
12 hearing shall be conducted outside the presence of the jury. This
13 subsection does not prevent a party from examining or
14 cross-examining a witness at trial about the witness's
15 qualifications.

16 [Sections 74.404-74.450 reserved for expansion]

17 SUBCHAPTER J. ARBITRATION AGREEMENTS

18 Sec. 74.451. ARBITRATION AGREEMENTS. (a) No physician,
19 professional association of physicians, or other health care
20 provider shall request or require a patient or prospective patient
21 to execute an agreement to arbitrate a health care liability claim
22 unless the form of agreement delivered to the patient contains a
23 written notice in 10-point boldface type clearly and conspicuously
24 stating:

25 UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT
26 UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS
27 AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING

1 YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT
2 FIRST CONSULTING WITH AN ATTORNEY.

3 (b) A violation of this section by a physician or
4 professional association of physicians constitutes a violation of
5 Subtitle B, Title 3, Occupations Code, and shall be subject to the
6 enforcement provisions and sanctions contained in that subtitle.

7 (c) A violation of this section by a health care provider
8 other than a physician shall constitute a false, misleading, or
9 deceptive act or practice in the conduct of trade or commerce within
10 the meaning of Section 17.46 of the Deceptive Trade
11 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
12 Business & Commerce Code), and shall be subject to an enforcement
13 action by the consumer protection division under that act and
14 subject to the penalties and remedies contained in Section 17.47,
15 Business & Commerce Code, notwithstanding Section 74.004 or any
16 other law.

17 (d) Notwithstanding any other provision of this section, a
18 person who is found to be in violation of this section for the first
19 time shall be subject only to injunctive relief or other
20 appropriate order requiring the person to cease and desist from
21 such violation, and not to any other penalty or sanction.

22 [Sections 74.452-74.500 reserved for expansion]

23 SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

24 Sec. 74.501. DEFINITIONS. In this subchapter:

25 (1) "Future damages" means damages that are incurred
26 after the date of judgment for:

27 (A) medical, health care, or custodial care

1 services;

2 (B) physical pain and mental anguish,
3 disfigurement, or physical impairment;

4 (C) loss of consortium, companionship, or
5 society; or

6 (D) loss of earnings.

7 (2) "Future loss of earnings" means the following
8 losses incurred after the date of the judgment:

9 (A) loss of income, wages, or earning capacity
10 and other pecuniary losses; and

11 (B) loss of inheritance.

12 (3) "Periodic payments" means the payment of money or
13 its equivalent to the recipient of future damages at defined
14 intervals.

15 Sec. 74.502. SCOPE OF SUBCHAPTER. This subchapter applies
16 only to an action on a health care liability claim against a
17 physician or health care provider in which the present value of the
18 award of future damages, as determined by the court, equals or
19 exceeds \$100,000.

20 Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the
21 request of a defendant physician or health care provider or
22 claimant, the court shall order that medical, health care, or
23 custodial services awarded in a health care liability claim be paid
24 in whole or in part in periodic payments rather than by a lump-sum
25 payment.

26 (b) At the request of a defendant physician or health care
27 provider or claimant, the court may order that future damages other

1 than medical, health care, or custodial services awarded in a
2 health care liability claim be paid in whole or in part in periodic
3 payments rather than by a lump sum payment.

4 (c) The court shall make a specific finding of the dollar
5 amount of periodic payments that will compensate the claimant for
6 the future damages.

7 (d) The court shall specify in its judgment ordering the
8 payment of future damages by periodic payments the:

9 (1) recipient of the payments;

10 (2) dollar amount of the payments;

11 (3) interval between payments; and

12 (4) number of payments or the period of time over which
13 payments must be made.

14 Sec. 74.504. RELEASE. The entry of an order for the payment
15 of future damages by periodic payments constitutes a release of the
16 health care liability claim filed by the claimant.

17 Sec. 74.505. FINANCIAL RESPONSIBILITY. (a) As a condition
18 to authorizing periodic payments of future damages, the court shall
19 require a defendant who is not adequately insured to provide
20 evidence of financial responsibility in an amount adequate to
21 assure full payment of damages awarded by the judgment.

22 (b) The judgment must provide for payments to be funded by:

23 (1) an annuity contract issued by a company licensed
24 to do business as an insurance company, including an assignment
25 within the meaning of Section 130, Internal Revenue Code of 1986, as
26 amended;

27 (2) an obligation of the United States;

1 (3) applicable and collectible liability insurance
2 from one or more qualified insurers; or

3 (4) any other satisfactory form of funding approved by
4 the court.

5 (c) On termination of periodic payments of future damages,
6 the court shall order the return of the security, or as much as
7 remains, to the defendant.

8 Sec. 74.506. DEATH OF RECIPIENT. (a) On the death of the
9 recipient, money damages awarded for loss of future earnings
10 continue to be paid to the estate of the recipient of the award
11 without reduction.

12 (b) Periodic payments, other than future loss of earnings,
13 terminate on the death of the recipient.

14 (c) If the recipient of periodic payments dies before all
15 payments required by the judgment are paid, the court may modify the
16 judgment to award and apportion the unpaid damages for future loss
17 of earnings in an appropriate manner.

18 (d) Following the satisfaction or termination of any
19 obligations specified in the judgment for periodic payments, any
20 obligation of the defendant physician or health care provider to
21 make further payments ends and any security given reverts to the
22 defendant.

23 Sec. 74.507. AWARD OF ATTORNEY'S FEES. For purposes of
24 computing the award of attorney's fees when the claimant is awarded
25 a recovery that will be paid in periodic payments, the court shall:

26 (1) place a total value on the payments based on the
27 claimant's projected life expectancy; and

1 (2) reduce the amount in Subdivision (1) to present
2 value.

3 SECTION 10.02. Section 84.003(1), Civil Practice and
4 Remedies Code, is amended to read as follows:

5 (1) "Charitable organization" means:

6 (A) any organization exempt from federal income
7 tax under Section 501(a) of the Internal Revenue Code of 1986 by
8 being listed as an exempt organization in Section 501(c)(3) or
9 501(c)(4) of the code, if it is a nonprofit corporation,
10 foundation, community chest, or fund organized and operated
11 exclusively for charitable, religious, prevention of cruelty to
12 children or animals, youth sports and youth recreational,
13 neighborhood crime prevention or patrol, fire protection or
14 prevention, emergency medical or hazardous material response
15 services, or educational purposes, including ~~[excluding]~~ private
16 primary or secondary schools if accredited by a member association
17 of the Texas Private School Accreditation Commission but excluding
18 fraternities, sororities, and secret societies, [alumni
19 ~~associations and related on-campus organizations,~~] or is organized
20 and operated exclusively for the promotion of social welfare by
21 being primarily engaged in promoting the common good and general
22 welfare of the people in a community;

23 (B) any bona fide charitable, religious,
24 prevention of cruelty to children or animals, youth sports and
25 youth recreational, neighborhood crime prevention or patrol, or
26 educational organization, excluding fraternities, sororities, and
27 secret societies ~~[alumni associations and related on-campus~~

1 ~~organizations~~], or other organization organized and operated
2 exclusively for the promotion of social welfare by being primarily
3 engaged in promoting the common good and general welfare of the
4 people in a community, and that:

5 (i) is organized and operated exclusively
6 for one or more of the above purposes;

7 (ii) does not engage in activities which in
8 themselves are not in furtherance of the purpose or purposes;

9 (iii) does not directly or indirectly
10 participate or intervene in any political campaign on behalf of or
11 in opposition to any candidate for public office;

12 (iv) dedicates its assets to achieving the
13 stated purpose or purposes of the organization;

14 (v) does not allow any part of its net
15 assets on dissolution of the organization to inure to the benefit of
16 any group, shareholder, or individual; and

17 (vi) normally receives more than one-third
18 of its support in any year from private or public gifts, grants,
19 contributions, or membership fees;

20 (C) a homeowners association as defined by
21 Section 528(c) of the Internal Revenue Code of 1986 or which is
22 exempt from federal income tax under Section 501(a) of the Internal
23 Revenue Code of 1986 by being listed as an exempt organization in
24 Section 501(c)(4) of the code; or

25 (D) a volunteer center, as that term is defined
26 by Section 411.126, Government Code.

27 SECTION 10.03. Section 84.003, Civil Practice and Remedies

1 Code, is amended by adding Subdivision (6) to read as follows:

2 (6) "Hospital system" means a system of hospitals and
3 other health care providers located in this state that are under the
4 common governance or control of a corporate parent.

5 SECTION 10.04. Section 84.003, Civil Practice and Remedies
6 Code, is amended by adding Subdivision (7) to read as follows:

7 (7) "Person responsible for the patient" means:

8 (A) the patient's parent, managing conservator,
9 or guardian;

10 (B) the patient's grandparent;

11 (C) the patient's adult brother or sister;

12 (D) another adult who has actual care, control,
13 and possession of the patient and has written authorization to
14 consent for the patient from the parent, managing conservator, or
15 guardian of the patient;

16 (E) an educational institution in which the
17 patient is enrolled that has written authorization to consent for
18 the patient from the parent, managing conservator, or guardian of
19 the patient; or

20 (F) any other person with legal responsibility
21 for the care of the patient.

22 SECTION 10.05. Section 84.004, Civil Practice and Remedies
23 Code, is amended by adding Subsection (f) to read as follows:

24 (f) Subsection (c) applies even if:

25 (1) the patient is incapacitated due to illness or
26 injury and cannot sign the acknowledgment statement required by
27 that subsection; or

1 (2) the patient is a minor or is otherwise legally
2 incompetent and the person responsible for the patient is not
3 reasonably available to sign the acknowledgment statement required
4 by that subsection.

5 SECTION 10.06. Chapter 84, Civil Practice and Remedies
6 Code, is amended by adding Section 84.0065 to read as follows:

7 Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a)
8 Except as provided by Section 84.007, in any civil action brought
9 against a hospital or hospital system, or its employees, officers,
10 directors, or volunteers, for damages based on an act or omission by
11 the hospital or hospital system, or its employees, officers,
12 directors, or volunteers, the liability of the hospital or hospital
13 system is limited to money damages in a maximum amount of \$500,000
14 for any act or omission resulting in death, damage, or injury to a
15 patient if the patient or, if the patient is a minor or is otherwise
16 legally incompetent, the person responsible for the patient signs a
17 written statement that acknowledges:

18 (1) that the hospital is providing care that is not
19 administered for or in expectation of compensation; and

20 (2) the limitations on the recovery of damages from
21 the hospital in exchange for receiving the health care services.

22 (b) Subsection (a) applies even if:

23 (1) the patient is incapacitated due to illness or
24 injury and cannot sign the acknowledgment statement required by
25 that subsection; or

26 (2) the patient is a minor or is otherwise legally
27 incompetent and the person responsible for the patient is not

1 reasonably available to sign the acknowledgment statement required
2 by that subsection.

3 SECTION 10.07. Section 242.0372, Health and Safety Code, is
4 amended by adding Subsection (f) to read as follows:

5 (f) An institution is not required to comply with this
6 section before September 1, 2005. This subsection expires
7 September 2, 2005.

8 SECTION 10.08. Article 5.15-1, Insurance Code, is amended
9 by adding Section 11 to read as follows:

10 Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude
11 or otherwise limit coverage for physicians or health care providers
12 under a vendor's endorsement issued to a manufacturer, as that term
13 is defined by Section 82.001, Civil Practice and Remedies Code. A
14 physician or health care provider shall be considered a vendor for
15 purposes of coverage under a vendor's endorsement or a
16 manufacturer's general liability or products liability policy.

17 SECTION 10.09. The Medical Liability and Insurance
18 Improvement Act of Texas (Article 4590i, Vernon's Texas Civil
19 Statutes) is repealed.

20 SECTION 10.10. Unless otherwise removed as provided by law,
21 a member of the Texas Medical Disclosure Panel serving on the
22 effective date of this Act continues to serve for the term to which
23 the member was appointed.

24 SECTION 10.11. (a) The Legislature of the State of Texas
25 finds that:

26 (1) the number of health care liability claims
27 (frequency) has increased since 1995 inordinately;

1 (2) the filing of legitimate health care liability
2 claims in Texas is a contributing factor affecting medical
3 professional liability rates;

4 (3) the amounts being paid out by insurers in
5 judgments and settlements (severity) have likewise increased
6 inordinately in the same short period;

7 (4) the effect of the above has caused a serious public
8 problem in availability of and affordability of adequate medical
9 professional liability insurance;

10 (5) the situation has created a medical malpractice
11 insurance crisis in Texas;

12 (6) this crisis has had a material adverse effect on
13 the delivery of medical and health care in Texas, including
14 significant reductions of availability of medical and health care
15 services to the people of Texas and a likelihood of further
16 reductions in the future;

17 (7) the crisis has had a substantial impact on the
18 physicians and hospitals of Texas and the cost to physicians and
19 hospitals for adequate medical malpractice insurance has
20 dramatically risen, with cost impact on patients and the public;

21 (8) the direct cost of medical care to the patient and
22 public of Texas has materially increased due to the rising cost of
23 malpractice insurance protection for physicians and hospitals in
24 Texas;

25 (9) the crisis has increased the cost of medical care
26 both directly through fees and indirectly through additional
27 services provided for protection against future suits or claims,

1 and defensive medicine has resulted in increasing cost to patients,
2 private insurers, and Texas and has contributed to the general
3 inflation that has marked health care in recent years;

4 (10) satisfactory insurance coverage for adequate
5 amounts of insurance in this area is often not available at any
6 price;

7 (11) the combined effect of the defects in the
8 medical, insurance, and legal systems has caused a serious public
9 problem both with respect to the availability of coverage and to the
10 high rates being charged by insurers for medical professional
11 liability insurance to some physicians, health care providers, and
12 hospitals; and

13 (12) the adoption of certain modifications in the
14 medical, insurance, and legal systems, the total effect of which is
15 currently undetermined, will have a positive effect on the rates
16 charged by insurers for medical professional liability insurance.

17 (b) Because of the conditions stated in Subsection (a) of
18 this section, it is the purpose of this article to improve and
19 modify the system by which health care liability claims are
20 determined in order to:

21 (1) reduce excessive frequency and severity of health
22 care liability claims through reasonable improvements and
23 modifications in the Texas insurance, tort, and medical practice
24 systems;

25 (2) decrease the cost of those claims and ensure that
26 awards are rationally related to actual damages;

27 (3) do so in a manner that will not unduly restrict a

1 claimant's rights any more than necessary to deal with the crisis;

2 (4) make available to physicians, hospitals, and other
3 health care providers protection against potential liability
4 through the insurance mechanism at reasonably affordable rates;

5 (5) make affordable medical and health care more
6 accessible and available to the citizens of Texas;

7 (6) make certain modifications in the medical,
8 insurance, and legal systems in order to determine whether or not
9 there will be an effect on rates charged by insurers for medical
10 professional liability insurance; and

11 (7) make certain modifications to the liability laws
12 as they relate to health care liability claims only and with an
13 intention of the legislature to not extend or apply such
14 modifications of liability laws to any other area of the Texas legal
15 system or tort law.

16 ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A
17 GOVERNMENTAL UNIT

18 SECTION 11.01. Sections 108.002(a) and (b), Civil Practice
19 and Remedies Code, are amended to read as follows:

20 (a) Except in an action arising under the constitution or
21 laws of the United States, a public servant [~~other than a provider~~
22 ~~of health care as that term is defined in Section 108.002(c),~~] is
23 not personally liable for damages in excess of \$100,000 arising
24 from personal injury, death, or deprivation of a right, privilege,
25 or immunity if:

26 (1) the damages are the result of an act or omission by
27 the public servant in the course and scope of the public servant's

1 office, employment, or contractual performance for or service on
2 behalf of a state agency, institution, department, or local
3 government; and

4 (2) for the amount not in excess of \$100,000, the
5 public servant is covered:

6 (A) by the state's obligation to indemnify under
7 Chapter 104;

8 (B) by a local government's authorization to
9 indemnify under Chapter 102;

10 (C) by liability or errors and omissions
11 insurance; or

12 (D) by liability or errors and omissions coverage
13 under an interlocal agreement.

14 (b) Except in an action arising under the constitution or
15 laws of the United States, a public servant [~~, other than a provider~~
16 ~~of health care as that term is defined in Section 108.002(c),~~] is
17 not liable for damages in excess of \$100,000 for property damage if:

18 (1) the damages are the result of an act or omission by
19 the public servant in the course and scope of the public servant's
20 office, employment, or contractual performance for or service on
21 behalf of a state agency, institution, department, or local
22 government; and

23 (2) for the amount not in excess of \$100,000, the
24 public servant is covered:

25 (A) by the state's obligation to indemnify under
26 Chapter 104;

27 (B) by a local government's authorization to

1 indemnify under Chapter 102;

2 (C) by liability or errors and omissions
3 insurance; or

4 (D) by liability or errors and omissions coverage
5 under an interlocal agreement.

6 SECTION 11.02. Chapter 261, Health and Safety Code, is
7 amended by adding Subchapter C to read as follows:

8 SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

9 Sec. 261.051. DEFINITION. In this subchapter, "municipal
10 hospital management contractor" means a nonprofit corporation,
11 partnership, or sole proprietorship that manages or operates a
12 hospital or provides services under a contract with a municipality.

13 Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT
14 CONTRACTOR. A municipal hospital management contractor in its
15 management or operation of a hospital under a contract with a
16 municipality is considered a governmental unit for purposes of
17 Chapters 101, 102, and 108, Civil Practice and Remedies Code, and
18 any employee of the contractor is, while performing services under
19 the contract for the benefit of the hospital, an employee of the
20 municipality for the purposes of Chapters 101, 102, and 108, Civil
21 Practice and Remedies Code.

22 SECTION 11.03. Section 285.071, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 285.071. DEFINITION. In this chapter, "hospital
25 district management contractor" means a nonprofit corporation,
26 partnership, or sole proprietorship that manages or operates a
27 hospital or provides services [~~as a part of a rural health network~~

1 ~~as defined under 42 U.S.C. Section 1395i-4(g)]~~ under contract with
2 a hospital district that was created by general or special law [~~and~~
3 ~~that has a population under 50,000~~].

4 SECTION 11.04. Section 285.072, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT
7 CONTRACTOR. A hospital district management contractor in its
8 management or operation of a hospital under a contract with a
9 hospital district is considered a governmental unit for purposes of
10 Chapters 101, 102, and 108, Civil Practice and Remedies Code, and
11 any employee of the contractor is [~~are~~], while performing services
12 under the contract for the benefit of the hospital, an employee
13 [~~employees~~] of the hospital district for the purposes of Chapters
14 101, [~~and~~] 102, and 108, Civil Practice and Remedies Code.

15 SECTION 11.05. Section 101.106, Civil Practice and Remedies
16 Code, is amended to read as follows:

17 Sec. 101.106. ELECTION OF REMEDIES. (a) The filing of a
18 suit under this chapter against a governmental unit constitutes an
19 irrevocable election by the plaintiff and immediately and forever
20 bars any suit or recovery by the plaintiff against any individual
21 employee of the governmental unit regarding the same subject
22 matter.

23 (b) The filing of a suit against any employee of a
24 governmental unit constitutes an irrevocable election by the
25 plaintiff and immediately and forever bars any suit or recovery by
26 the plaintiff against the governmental unit regarding the same
27 subject matter unless the governmental unit consents.

1 (c) The settlement of a claim arising under this chapter
2 shall immediately and forever bar the claimant from any suit
3 against or recovery from any employee of the same governmental unit
4 regarding the same subject matter.

5 (d) A judgment against an employee of a governmental unit
6 shall immediately and forever bar the party obtaining the judgment
7 from any suit against or recovery from the governmental unit.

8 (e) If a suit is filed under this chapter against both a
9 governmental unit and any of its employees, the employees shall
10 immediately be dismissed on the filing of a motion by the
11 governmental unit.

12 (f) If a suit is filed against an employee of a governmental
13 unit based on conduct within the general scope of that employee's
14 employment and if it could have been brought under this chapter
15 against the governmental unit, the suit is considered to be against
16 the employee in the employee's official capacity only. On the
17 employee's motion, the suit against the employee shall be dismissed
18 unless the plaintiff files amended pleadings dismissing the
19 employee and naming the governmental unit as defendant on or before
20 the 30th day after the date the motion is filed. [EMPLOYEES NOT
21 LIABLE AFTER SETTLEMENT OR JUDGMENT. A judgment in an action or a
22 settlement of a claim under this chapter bars any action involving
23 the same subject matter by the claimant against the employee of the
24 governmental unit whose act or omission gave rise to the claim.]

25 SECTION 11.06. Section 108.001, Civil Practice and Remedies
26 Code, is amended by adding Subdivision (3) to read as follows:

27 (3) "Public servant" includes a licensed physician who

1 provides emergency or postemergency stabilization services to
2 patients in a hospital owned or operated by a unit of local
3 government.

4 SECTION 11.07. Section 108.002(c), Civil Practice and
5 Remedies Code, is repealed.

6 ARTICLE 12. RESERVED

7 ARTICLE 13. DAMAGES

8 SECTION 13.01. The heading to Chapter 41, Civil Practice
9 and Remedies Code, is amended to read as follows:

10 CHAPTER 41. [~~EXEMPLARY~~] DAMAGES

11 SECTION 13.02. Section 41.001, Civil Practice and Remedies
12 Code, is amended by amending Subdivisions (1), (3), (4), (5), and
13 (7) and adding Subdivisions (8)-(13) to read as follows:

14 (1) "Claimant" means a party, including a plaintiff,
15 counterclaimant, cross-claimant, or third-party plaintiff, seeking
16 recovery of [~~exemplary~~] damages. In a cause of action in which a
17 party seeks recovery of [~~exemplary~~] damages related to injury to
18 another person, damage to the property of another person, death of
19 another person, or other harm to another person, "claimant"
20 includes both that other person and the party seeking recovery of
21 [~~exemplary~~] damages.

22 (3) "Defendant" means a party, including a
23 counterdefendant, cross-defendant, or third-party defendant, from
24 whom a claimant seeks relief [~~with respect to exemplary damages~~].

25 (4) "Economic damages" means compensatory damages
26 intended to compensate a claimant for actual economic or [~~for~~]
27 pecuniary loss; the term does not include exemplary damages or

1 noneconomic damages [~~for physical pain and mental anguish, loss of~~
2 ~~consortium, disfigurement, physical impairment, or loss of~~
3 ~~companionship and society~~].

4 (5) "Exemplary damages" means any damages awarded as a
5 penalty or by way of punishment but not for compensatory purposes.
6 Exemplary damages are neither economic nor noneconomic damages.
7 "Exemplary damages" includes punitive damages.

8 (7) "Malice" means[+
9 [~~(A)~~] a specific intent by the defendant to cause
10 substantial injury or harm to the claimant[~~, or~~
11 [~~(B)~~ ~~an act or omission.~~

12 [~~(i)~~ ~~which when viewed objectively from the~~
13 ~~standpoint of the actor at the time of its occurrence involves an~~
14 ~~extreme degree of risk, considering the probability and magnitude~~
15 ~~of the potential harm to others; and~~

16 [~~(ii)~~ ~~of which the actor has actual,~~
17 ~~subjective awareness of the risk involved, but nevertheless~~
18 ~~proceeds with conscious indifference to the rights, safety, or~~
19 ~~welfare of others~~].

20 (8) "Compensatory damages" means economic and
21 noneconomic damages. The term does not include exemplary damages.

22 (9) "Future damages" means damages that are incurred
23 after the date of the judgment. Future damages do not include
24 exemplary damages.

25 (10) "Future loss of earnings" means a pecuniary loss
26 incurred after the date of the judgment, including:

27 (A) loss of income, wages, or earning capacity;

1 and

2 (B) loss of inheritance.

3 (11) "Gross negligence" means an act or omission:

4 (A) which when viewed objectively from the
5 standpoint of the actor at the time of its occurrence involves an
6 extreme degree of risk, considering the probability and magnitude
7 of the potential harm to others; and

8 (B) of which the actor has actual, subjective
9 awareness of the risk involved, but nevertheless proceeds with
10 conscious indifference to the rights, safety, or welfare of others.

11 (12) "Noneconomic damages" means damages awarded for
12 the purpose of compensating a claimant for physical pain and
13 suffering, mental or emotional pain or anguish, loss of consortium,
14 disfigurement, physical impairment, loss of companionship and
15 society, inconvenience, loss of enjoyment of life, injury to
16 reputation, and all other nonpecuniary losses of any kind other
17 than exemplary damages.

18 (13) "Periodic payments" means the payment of money or
19 its equivalent to the recipient of future damages at defined
20 intervals.

21 SECTION 13.03. Sections 41.002(a) and (b), Civil Practice
22 and Remedies Code, are amended to read as follows:

23 (a) This chapter applies to any action in which a claimant
24 seeks [~~exemplary~~] damages relating to a cause of action.

25 (b) This chapter establishes the maximum [~~exemplary~~]
26 damages that may be awarded in an action subject to this chapter,
27 including an action for which [~~exemplary~~] damages are awarded under

1 another law of this state. This chapter does not apply to the
2 extent another law establishes a lower maximum amount of
3 ~~[exemplary]~~ damages for a particular claim.

4 SECTION 13.04. Section 41.003, Civil Practice and Remedies
5 Code, is amended by amending Subsection (a) and adding Subsections
6 (d) and (e) to read as follows:

7 (a) Except as provided by Subsection (c), exemplary damages
8 may be awarded only if the claimant proves by clear and convincing
9 evidence that the harm with respect to which the claimant seeks
10 recovery of exemplary damages results from:

- 11 (1) fraud;
- 12 (2) malice; or
- 13 (3) gross negligence ~~[wilful act or omission or gross~~
14 ~~neglect in wrongful death actions brought by or on behalf of a~~
15 ~~surviving spouse or heirs of the decedent's body, under a statute~~
16 ~~enacted pursuant to Section 26, Article XVI, Texas Constitution.~~
17 ~~In such cases, the definition of "gross neglect" in the instruction~~
18 ~~submitted to the jury shall be the definition stated in Section~~
19 ~~41.001(7)(B)].~~

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

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

26 "You are instructed that, in order for you to find exemplary
27 damages, your answer to the question regarding the amount of such

1 damages must be unanimous."

2 SECTION 13.05. Section 41.004(b), Civil Practice and
3 Remedies Code, is amended to read as follows:

4 (b) [~~A claimant may recover exemplary damages, even if only~~
5 ~~nominal damages are awarded, if the claimant establishes by clear~~
6 ~~and convincing evidence that the harm with respect to which the~~
7 ~~claimant seeks recovery of exemplary damages results from malice as~~
8 ~~defined in Section 41.001(7)(A).]~~ Exemplary damages may not be
9 awarded to a claimant who elects to have his recovery multiplied
10 under another statute.

11 SECTION 13.06. Section 41.008, Civil Practice and Remedies
12 Code, is amended to read as follows:

13 Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an
14 action in which a claimant seeks recovery of [~~exemplary~~] damages,
15 the trier of fact shall determine the amount of economic damages
16 separately from the amount of other compensatory damages.

17 (b) Exemplary damages awarded against a defendant may not
18 exceed an amount equal to the greater of:

19 (1)(A) two times the amount of economic damages; plus
20 (B) an amount equal to any noneconomic damages
21 found by the jury, not to exceed \$750,000; or

22 (2) \$200,000.

23 (c) This section [~~Subsection (b)~~] does not apply to a cause
24 of action against a defendant from whom a plaintiff seeks recovery
25 of exemplary damages based on conduct described as a felony in the
26 following sections of the Penal Code if, except for Sections 49.07
27 and 49.08, the conduct was committed knowingly or intentionally:

- 1 (1) Section 19.02 (murder);
- 2 (2) Section 19.03 (capital murder);
- 3 (3) Section 20.04 (aggravated kidnapping);
- 4 (4) Section 22.02 (aggravated assault);
- 5 (5) Section 22.011 (sexual assault);
- 6 (6) Section 22.021 (aggravated sexual assault);
- 7 (7) Section 22.04 (injury to a child, elderly
- 8 individual, or disabled individual, but not if the conduct occurred
- 9 while providing health care as defined by Section 74.001);
- 10 (8) Section 32.21 (forgery);
- 11 (9) Section 32.43 (commercial bribery);
- 12 (10) Section 32.45 (misapplication of fiduciary
- 13 property or property of financial institution);
- 14 (11) Section 32.46 (securing execution of document by
- 15 deception);
- 16 (12) Section 32.47 (fraudulent destruction, removal,
- 17 or concealment of writing);
- 18 (13) Chapter 31 (theft) the punishment level for which
- 19 is a felony of the third degree or higher;
- 20 (14) Section 49.07 (intoxication assault); or
- 21 (15) Section 49.08 (intoxication manslaughter).

22 (d) In this section, "intentionally" and "knowingly" have
23 the same meanings assigned those terms in Sections 6.03(a) and (b),
24 Penal Code.

25 (e) The provisions of this section [~~Subsections (a) and (b)~~]
26 may not be made known to a jury by any means, including voir dire,
27 introduction into evidence, argument, or instruction.

1 (f) This section [~~Subsection (b)~~] does not apply to a cause
2 of action for damages arising from the manufacture of
3 methamphetamine as described by Chapter 99.

4 SECTION 13.07. Section 41.010(b), Civil Practice and
5 Remedies Code, is amended to read as follows:

6 (b) Subject to Section 41.008, the [~~The~~] determination of
7 whether to award exemplary damages and the amount of exemplary
8 damages to be awarded is within the discretion of the trier of fact.

9 SECTION 13.08. Chapter 41, Civil Practice and Remedies
10 Code, is amended by adding Section 41.0105 to read as follows:

11 Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC
12 DAMAGES. In addition to any other limitation under law, recovery of
13 medical or health care expenses incurred is limited to the amount
14 actually paid or incurred by or on behalf of the claimant.

15 SECTION 13.09. Chapter 18, Civil Practice and Remedies
16 Code, is amended by adding Subchapter D to read as follows:

17 SUBCHAPTER D. CERTAIN LOSSES

18 Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION.

19 (a) Notwithstanding any other law, if any claimant seeks recovery
20 for loss of earnings, loss of earning capacity, loss of
21 contributions of a pecuniary value, or loss of inheritance,
22 evidence to prove the loss must be presented in the form of a net
23 loss after reduction for income tax payments or unpaid tax
24 liability pursuant to any federal income tax law.

25 (b) If any claimant seeks recovery for loss of earnings,
26 loss of earning capacity, loss of contributions of a pecuniary
27 value, or loss of inheritance, the court shall instruct the jury as

1 to whether any recovery for compensatory damages sought by the
2 claimant is subject to federal or state income taxes.

3 ARTICLE 14. RESERVED

4 ARTICLE 15. SCHOOL EMPLOYEES

5 SECTION 15.01. Subchapter B, Chapter 22, Education Code, is
6 amended by amending Section 22.051 and adding Sections 22.0511,
7 22.0513, 22.0514, 22.0516, and 22.0517 to read as follows:

8 Sec. 22.051. DEFINITION. In this subchapter, "professional
9 employee of a school district" includes:

10 (1) a superintendent, principal, teacher, including a
11 substitute teacher, supervisor, social worker, counselor, nurse,
12 and teacher's aide employed by a school district;

13 (2) a teacher employed by a company that contracts
14 with a school district to provide the teacher's services to the
15 district;

16 (3) a student in an education preparation program
17 participating in a field experience or internship;

18 (4) a school bus driver certified in accordance with
19 standards and qualifications adopted by the Department of Public
20 Safety of the State of Texas;

21 (5) a member of the board of trustees of an independent
22 school district; and

23 (6) any other person employed by a school district
24 whose employment requires certification and the exercise of
25 discretion.

26 Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL~~
27 EMPLOYEES]. (a) A professional employee of a school district is

1 not personally liable for any act that is incident to or within the
2 scope of the duties of the employee's position of employment and
3 that involves the exercise of judgment or discretion on the part of
4 the employee, except in circumstances in which a professional
5 employee uses excessive force in the discipline of students or
6 negligence resulting in bodily injury to students.

7 (b) This section does not apply to the operation, use, or
8 maintenance of any motor vehicle.

9 (c) In addition to the immunity provided under this section
10 and under other provisions of state law, an individual is entitled
11 to any immunity and any other protections afforded under the Paul D.
12 Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et
13 seq.), as amended. Nothing in this subsection shall be construed to
14 limit or abridge any immunity or protection afforded an individual
15 under state law. For purposes of this subsection, "individual"
16 includes a person who provides services to private schools, to the
17 extent provided by federal law [~~this section, "professional~~
18 ~~employee" includes:~~

19 [~~(1) a superintendent, principal, teacher,~~
20 ~~supervisor, social worker, counselor, nurse, and teacher's aide,~~

21 [~~(2) a student in an education preparation program~~
22 ~~participating in a field experience or internship,~~

23 [~~(3) a school bus driver certified in accordance with~~
24 ~~standards and qualifications adopted by the Department of Public~~
25 ~~Safety, and~~

26 [~~(4) any other person whose employment requires~~
27 ~~certification and the exercise of discretion].~~

1 Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th
2 day before the date a person files a suit against a professional
3 employee of a school district, the person must give written notice
4 to the employee of the claim, reasonably describing the incident
5 from which the claim arose.

6 (b) A professional employee of a school district against
7 whom a suit is pending who does not receive written notice, as
8 required by Subsection (a), may file a plea in abatement not later
9 than the 30th day after the date the person files an original answer
10 in the court in which the suit is pending.

11 (c) The court shall abate the suit if the court, after a
12 hearing, finds that the person is entitled to an abatement because
13 notice was not provided as required by this section.

14 (d) An abatement under Subsection (c) continues until the
15 90th day after the date that written notice is given to the
16 professional employee of a school district as provided by
17 Subsection (a).

18 Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file
19 suit against a professional employee of a school district unless
20 the person has exhausted the remedies provided by the school
21 district for resolving the complaint.

22 Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in
23 which a judicial proceeding is being brought against a professional
24 employee of a school district may refer the case to an alternative
25 dispute resolution procedure as described by Chapter 154, Civil
26 Practice and Remedies Code.

27 Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST

1 PROFESSIONAL EMPLOYEE. In an action against a professional
2 employee of a school district involving an act that is incidental to
3 or within the scope of duties of the employee's position of
4 employment and brought against the employee in the employee's
5 individual capacity, the employee is entitled to recover attorney's
6 fees and court costs from the plaintiff if the employee is found
7 immune from liability under this subchapter.

8 SECTION 15.02. Section 22.053(a), Education Code, is
9 amended to read as follows:

10 (a) A volunteer who is serving as a direct service volunteer
11 of a school district is immune from civil liability to the same
12 extent as a professional employee of a school district under
13 Section 22.0511 [~~22.051~~].

14 SECTION 15.03. Section 30.024(c), Education Code, is
15 amended to read as follows:

16 (c) In addition to any other federal and state statutes
17 limiting the liability of employees at the school, Sections 22.0511
18 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional
19 employees and volunteers of the school.

20 SECTION 15.04. Section 30.055(c), Education Code, is
21 amended to read as follows:

22 (c) In addition to any other federal and state statutes
23 limiting the liability of employees at the school, Sections 22.0511
24 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional
25 employees and volunteers of the school.

26 SECTION 15.05. Section 105.301(e), Education Code, is
27 amended to read as follows:

1 (e) The academy is not subject to the provisions of this
2 code, or to the rules of the Texas Education Agency, regulating
3 public schools, except that:

4 (1) professional employees of the academy are entitled
5 to the limited liability of an employee under Section 22.0511
6 [~~22.051~~] or 22.052;

7 (2) a student's attendance at the academy satisfies
8 compulsory school attendance requirements; and

9 (3) for each student enrolled, the academy is entitled
10 to allotments from the foundation school program under Chapter 42
11 as if the academy were a school district, except that the academy
12 has a local share applied that is equivalent to the local fund
13 assignment of the Denton Independent School District.

14 SECTION 15.06. The change in law made by this article
15 applies only to a suit for damages or a school employee disciplinary
16 proceeding involving conduct that occurs on or after the effective
17 date of this Act. A suit for damages or a school employee
18 disciplinary proceeding involving conduct that occurs before the
19 effective date of this Act is governed by the law in effect on the
20 date the conduct occurs, and the former law is continued in effect
21 for that purpose.

22 ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

23 SECTION 16.01. Subchapter B, Chapter 32, Human Resources
24 Code, is amended by adding Section 32.060 to read as follows:

25 Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO
26 NURSING INSTITUTIONS. (a) The following are not admissible as
27 evidence in a civil action:

1 (1) any finding by the department that an institution
2 licensed under Chapter 242, Health and Safety Code, has violated a
3 standard for participation in the medical assistance program under
4 this chapter; or

5 (2) the fact of the assessment of a monetary penalty
6 against an institution under Section 32.021 or the payment of the
7 penalty by an institution.

8 (b) This section does not apply in an enforcement action in
9 which the state or an agency or political subdivision of the state
10 is a party.

11 (c) Notwithstanding any other provision of this section,
12 evidence described by Subsection (a) is admissible as evidence in a
13 civil action only if:

14 (1) the evidence relates to a material violation of
15 this chapter or a rule adopted under this chapter or assessment of a
16 monetary penalty with respect to:

17 (A) the particular incident and the particular
18 individual whose personal injury is the basis of the claim being
19 brought in the civil action; or

20 (B) a finding by the department that directly
21 involves substantially similar conduct that occurred at the
22 institution within a period of one year before the particular
23 incident that is the basis of the claim being brought in the civil
24 action; and

25 (2) the evidence of a material violation has been
26 affirmed by the entry of a final adjudicated and unappealable order
27 of the department after formal appeal; and

1 (3) the record is otherwise admissible under the Texas
2 Rules of Evidence.

3 SECTION 16.02. Subchapter A, Chapter 242, Health and Safety
4 Code, is amended by adding Section 242.017 to read as follows:

5 Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL
6 ACTIONS. (a) The following are not admissible as evidence in a
7 civil action:

8 (1) any finding by the department that an institution
9 has violated this chapter or a rule adopted under this chapter; or

10 (2) the fact of the assessment of a penalty against an
11 institution under this chapter or the payment of the penalty by an
12 institution.

13 (b) This section does not apply in an enforcement action in
14 which the state or an agency or political subdivision of the state
15 is a party.

16 (c) Notwithstanding any other provision of this section,
17 evidence described by Subsection (a) is admissible as evidence in a
18 civil action only if:

19 (1) the evidence relates to a material violation of
20 this chapter or a rule adopted under this chapter or assessment of a
21 monetary penalty with respect to:

22 (A) the particular incident and the particular
23 individual whose personal injury is the basis of the claim being
24 brought in the civil action; or

25 (B) a finding by the department that directly
26 involves substantially similar conduct that occurred at the
27 institution within a period of one year before the particular

1 incident that is the basis of the claim being brought in the civil
2 action; and

3 (2) the evidence of a material violation has been
4 affirmed by the entry of a final adjudicated and unappealable order
5 of the department after formal appeal; and

6 (3) the record is otherwise admissible under the Texas
7 Rules of Evidence.

8 SECTION 16.03. The following laws are repealed:

9 (1) Sections 32.021(i) and (k), Human Resources Code;
10 and

11 (2) Section 242.050, Health and Safety Code, as added
12 by Chapter 1284, Acts of the 77th Legislature, Regular Session,
13 2001.

14 ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
15 RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

16 SECTION 17.01. Title 6, Civil Practice and Remedies Code,
17 is amended by adding Chapter 149 to read as follows:

18 CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING
19 TO CERTAIN MERGERS OR CONSOLIDATIONS

20 Sec. 149.001. DEFINITIONS. In this chapter:

21 (1) "Asbestos claim" means any claim, wherever or
22 whenever made, for damages, losses, indemnification, contribution,
23 or other relief arising out of, based on, or in any way related to
24 asbestos, including:

25 (A) property damage caused by the installation,
26 presence, or removal of asbestos;

27 (B) the health effects of exposure to asbestos,

1 including any claim for:

2 (i) personal injury or death;

3 (ii) mental or emotional injury;

4 (iii) risk of disease or other injury; or

5 (iv) the costs of medical monitoring or
6 surveillance; and

7 (C) any claim made by or on behalf of any person
8 exposed to asbestos, or a representative, spouse, parent, child, or
9 other relative of the person.

10 (2) "Corporation" means a corporation for profit,
11 including:

12 (A) a domestic corporation organized under the
13 laws of this state; or

14 (B) a foreign corporation organized under laws
15 other than the laws of this state.

16 (3) "Successor asbestos-related liabilities" means
17 any liabilities, whether known or unknown, asserted or unasserted,
18 absolute or contingent, accrued or unaccrued, liquidated or
19 unliquidated, or due or to become due, that are related in any way
20 to asbestos claims that were assumed or incurred by a corporation as
21 a result of or in connection with a merger or consolidation, or the
22 plan of merger or consolidation related to the merger or
23 consolidation, with or into another corporation or that are related
24 in any way to asbestos claims based on the exercise of control or
25 the ownership of stock of the corporation before the merger or
26 consolidation. The term includes liabilities that, after the time
27 of the merger or consolidation for which the fair market value of

1 total gross assets is determined under Section 149.004, were or are
2 paid or otherwise discharged, or committed to be paid or otherwise
3 discharged, by or on behalf of the corporation, or by a successor of
4 the corporation, or by or on behalf of a transferor, in connection
5 with settlements, judgments, or other discharges in this state or
6 another jurisdiction.

7 (4) "Successor" means a corporation that assumes or
8 incurs, or has assumed or incurred, successor asbestos-related
9 liabilities.

10 (5) "Transferor" means a corporation from which
11 successor asbestos-related liabilities are or were assumed or
12 incurred.

13 Sec. 149.002. APPLICABILITY. (a) The limitations in
14 Section 149.003 shall apply to a domestic corporation or a foreign
15 corporation that has had a certificate of authority to transact
16 business in this state or has done business in this state and that
17 is a successor which became a successor prior to May 13, 1968, or
18 which is any of that successor corporation's successors, but in the
19 latter case only to the extent of the limitation of liability
20 applied under Section 149.003(b) and subject also to the
21 limitations found in this chapter, including those in Subsection
22 (b).

23 (b) The limitations in Section 149.003 shall not apply to:

24 (1) workers' compensation benefits paid by or on
25 behalf of an employer to an employee under the Texas Workers'
26 Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable
27 workers' compensation law of another jurisdiction;

1 (2) any claim against a corporation that does not
2 constitute a successor asbestos-related liability;

3 (3) an insurance corporation, as that term is used in
4 the Insurance Code;

5 (4) any obligations under the National Labor Relations
6 Act (29 U.S.C. Section 151 et seq.), as amended, or under any
7 collective bargaining agreement;

8 (5) a successor that, after a merger or consolidation,
9 continued in the business of mining asbestos or in the business of
10 selling or distributing asbestos fibers or in the business of
11 manufacturing, distributing, removing, or installing
12 asbestos-containing products which were the same or substantially
13 the same as those products previously manufactured, distributed,
14 removed, or installed by the transferor;

15 (6) a contractual obligation existing as of the
16 effective date of this chapter that was entered into with claimants
17 or potential claimants or their counsel and which resolves asbestos
18 claims or potential asbestos claims;

19 (7) any claim made against the estate of a debtor in a
20 bankruptcy proceeding commenced prior to April 1, 2003, under the
21 United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or
22 against such debtor, or against a bankruptcy trust established
23 under 11 U.S.C. Section 524(g) or similar provisions of the United
24 States Code in such a bankruptcy proceeding commenced prior to such
25 date; or

26 (8) a successor asbestos-related liability arising
27 from a claim brought under Chapter 95, a common law claim for

1 premises liability, or a cause of action for premises liability, as
2 applicable, but only if the successor owned or controlled the
3 premise or premises at issue after the merger or consolidation.

4 Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED
5 LIABILITIES. (a) Except as further limited in Subsection (b), the
6 cumulative successor asbestos-related liabilities of a corporation
7 are limited to the fair market value of the total gross assets of
8 the transferor determined as of the time of the merger or
9 consolidation. The corporation does not have any responsibility
10 for successor asbestos-related liabilities in excess of this
11 limitation.

12 (b) If the transferor had assumed or incurred successor
13 asbestos-related liabilities in connection with a prior merger or
14 consolidation with a prior transferor, then the fair market value
15 of the total assets of the prior transferor, determined as of the
16 time of such earlier merger or consolidation, shall be substituted
17 for the limitation set forth in Subsection (a) for purposes of
18 determining the limitation of liability of a corporation.

19 Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS
20 ASSETS. (a) A corporation may establish the fair market value of
21 total gross assets for the purpose of the limitations under Section
22 149.003 through any method reasonable under the circumstances,
23 including:

24 (1) by reference to the going concern value of the
25 assets or to the purchase price attributable to or paid for the
26 assets in an arm's-length transaction; or

27 (2) in the absence of other readily available

1 information from which fair market value can be determined, by
2 reference to the value of the assets recorded on a balance sheet.

3 (b) Total gross assets include intangible assets.

4 (c) Total gross assets include the aggregate coverage under
5 any applicable liability insurance that was issued to the
6 transferor whose assets are being valued for purposes of this
7 section and which insurance has been collected or is collectable to
8 cover successor asbestos-related liabilities (except compensation
9 for liabilities arising from workers' exposure to asbestos solely
10 during the course of their employment by the transferor). A
11 settlement of a dispute concerning such insurance coverage entered
12 into by a transferor or successor with the insurers of the
13 transferor 10 years or more before the enactment of this chapter
14 shall be determinative of the aggregate coverage of such liability
15 insurance to be included in the calculation of the transferor's
16 total gross assets.

17 (d) The fair market value of total gross assets shall
18 reflect no deduction for any liabilities arising from any asbestos
19 claim.

20 Sec. 149.005. ADJUSTMENT. (a) Except as provided in
21 Subsections (b), (c), and (d), the fair market value of total gross
22 assets at the time of a merger or consolidation increases annually
23 at a rate equal to the sum of:

24 (1) the prime rate as listed in the first edition of
25 the Wall Street Journal published for each calendar year since the
26 merger or consolidation; and

27 (2) one percent.

1 (b) The rate in Subsection (a) is not compounded.

2 (c) The adjustment of fair market value of total gross
3 assets continues as provided under Subsection (a) until the date
4 the adjusted value is exceeded by the cumulative amounts of
5 successor asbestos-related liabilities paid or committed to be paid
6 by or on behalf of the corporation or a predecessor, or by or on
7 behalf of a transferor, after the time of the merger or
8 consolidation for which the fair market value of total gross assets
9 is determined.

10 (d) No adjustment of the fair market value of total gross
11 assets shall be applied to any liability insurance otherwise
12 included in the definition of total gross assets by Section
13 149.004(c).

14 Sec. 149.006. SCOPE OF CHAPTER. The courts in this state
15 shall apply, to the fullest extent permissible under the United
16 States Constitution, this state's substantive law, including the
17 limitation under this chapter, to the issue of successor
18 asbestos-related liabilities.

19 SECTION 17.02. Chapter 149, Civil Practice and Remedies
20 Code, as added by this article, applies to all actions:

21 (1) commenced on or after the effective date of this
22 Act; or

23 (2) pending on that effective date and in which the
24 trial, or any new trial or retrial following motion, appeal, or
25 otherwise, begins on or after that effective date.

26 ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

27 SECTION 18.01. Sections 84.004(a) and (c), Civil Practice

1 and Remedies Code, are amended to read as follows:

2 (a) Except as provided by Subsection (d) and Section 84.007,
3 a volunteer [~~who is serving as an officer, director, or trustee~~] of
4 a charitable organization is immune from civil liability for any
5 act or omission resulting in death, damage, or injury if the
6 volunteer was acting in the course and scope of the volunteer's
7 [~~his~~] duties or functions, including as an officer, director, or
8 trustee within the organization.

9 (c) Except as provided by Subsection (d) and Section 84.007,
10 a volunteer health care provider who is serving as a direct service
11 volunteer of a charitable organization is immune from civil
12 liability for any act or omission resulting in death, damage, or
13 injury to a patient if:

14 (1) [~~the volunteer was acting in good faith and in the~~
15 ~~course and scope of the volunteer's duties or functions within the~~
16 ~~organization,~~

17 [~~(2)~~] the volunteer commits the act or omission in the
18 course of providing health care services to the patient;

19 (2) [~~(3)~~] the services provided are within the scope
20 of the license of the volunteer; and

21 (3) [~~(4)~~] before the volunteer provides health care
22 services, the patient or, if the patient is a minor or is otherwise
23 legally incompetent, the person responsible for [~~patient's parent,~~
24 ~~managing conservator, legal guardian, or other person with legal~~
25 ~~responsibility for the care of~~] the patient signs a written
26 statement that acknowledges:

27 (A) that the volunteer is providing care that is

1 not administered for or in expectation of compensation; and

2 (B) the limitations on the recovery of damages
3 from the volunteer in exchange for receiving the health care
4 services.

5 SECTION 18.02. Section 84.007(a), Civil Practice and
6 Remedies Code, is amended to read as follows:

7 (a) This chapter does not apply to an act or omission that is
8 intentional, wilfully [~~or wantonly~~] negligent, or done with
9 conscious indifference or reckless disregard for the safety of
10 others.

11 SECTION 18.03. The following provisions of the Civil
12 Practice and Remedies Code are repealed:

13 (1) Section 84.003(4); and

14 (2) Section 84.004(b).

15 ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS
16 AND VOLUNTEER FIRE FIGHTERS

17 SECTION 19.01. (a) The legislature finds that:

18 (1) 80 percent of the area of this state is currently
19 protected by volunteer fire departments;

20 (2) concern regarding personal liability arising out
21 of services rendered by volunteer fire fighters on behalf of
22 volunteer fire departments deters individuals from offering their
23 services as volunteer fire fighters;

24 (3) the diminishing number of volunteer fire fighters
25 leads to increased costs and less service to areas of this state
26 that are served by volunteer fire departments; and

27 (4) it is in the public interest of the citizens of

1 this state to encourage the continued level of service provided by
2 volunteer fire departments.

3 (b) The purpose of this article is to reduce the exposure to
4 liability of:

5 (1) a volunteer fire department while involved in or
6 providing an emergency response; and

7 (2) a volunteer fire fighter while acting as a member
8 of a volunteer fire department.

9 SECTION 19.02. Chapter 78, Civil Practice and Remedies
10 Code, is amended by adding Subchapter C to read as follows:

11 SUBCHAPTER C. FIRE-FIGHTING SERVICES

12 Sec. 78.101. DEFINITIONS. In this subchapter:

13 (1) "Emergency response" means a response involving
14 fire protection or prevention, rescue, emergency medical, or
15 hazardous material response services.

16 (2) "Volunteer fire department" means a nonprofit
17 organization that is:

18 (A) operated by its members;

19 (B) exempt from the state sales tax under Section
20 151.310, Tax Code, or the state franchise tax under Section
21 171.083, Tax Code; and

22 (C) organized to provide an emergency response.

23 (3) "Volunteer fire fighter" means a member of a
24 volunteer fire department.

25 Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY
26 RESPONSE. This subchapter applies only to damages for personal
27 injury, death, or property damage, other than property damage to

1 which Subchapter A applies, arising from an error or omission of:

2 (1) a volunteer fire department while involved in or
3 providing an emergency response; or

4 (2) a volunteer fire fighter while involved in or
5 providing an emergency response as a member of a volunteer fire
6 department.

7 Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A
8 volunteer fire department is:

9 (1) liable for damages described by Section 78.102
10 only to the extent that a county providing the same or similar
11 services would be liable under Chapter 101; and

12 (2) entitled to the exclusions, exceptions, and
13 defenses applicable to a county under Chapter 101 and other
14 statutory or common law.

15 Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A
16 volunteer fire fighter is:

17 (1) liable for damages described by Section 78.102
18 only to the extent that an employee providing the same or similar
19 services for a county would be liable; and

20 (2) entitled to the exclusions, exceptions,
21 immunities, and defenses applicable to an employee of a county
22 under Chapter 101 and other statutory or common law.

23 ARTICLE 20. DESIGN PROFESSIONALS

24 SECTION 20.01. Title 6, Civil Practice and Remedies Code,
25 is amended by adding Chapter 150 to read as follows:

26 CHAPTER 150. DESIGN PROFESSIONALS

27 Sec. 150.001. DEFINITION. In this chapter, "design

1 professional" means a registered architect or licensed
2 professional engineer.

3 Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action for
4 damages alleging professional negligence by a design professional,
5 the plaintiff shall be required to file with the complaint an
6 affidavit of a third-party registered architect or licensed
7 professional engineer competent to testify and practicing in the
8 same area of practice as the defendant, which affidavit shall set
9 forth specifically at least one negligent act, error, or omission
10 claimed to exist and the factual basis for each such claim. The
11 third-party professional engineer or registered architect shall be
12 licensed in this state and actively engaged in the practice of
13 architecture or engineering.

14 (b) The contemporaneous filing requirement of Subsection
15 (a) shall not apply to any case in which the period of limitation
16 will expire within 10 days of the date of filing and, because of
17 such time constraints, the plaintiff has alleged that an affidavit
18 of a third-party registered architect or professional engineer
19 could not be prepared. In such cases, the plaintiff shall have 30
20 days after the filing of the complaint to supplement the pleadings
21 with the affidavit. The trial court may, on motion, after hearing
22 and for good cause, extend such time as it shall determine justice
23 requires.

24 (c) The defendant shall not be required to file an answer to
25 the complaint and affidavit until 30 days after the filing of such
26 affidavit.

27 (d) The plaintiff's failure to file the affidavit in

1 accordance with Subsection (a) or (b) may result in dismissal with
2 prejudice of the complaint against the defendant.

3 (e) This statute shall not be construed to extend any
4 applicable period of limitation or repose.

5 ARTICLE 21. LIMITATIONS OF LIABILITY

6 SECTION 21.01. Section 75.002, Civil Practice and Remedies
7 Code, is amended by adding Subsection (h) to read as follows:

8 (h) An owner, lessee, or occupant of real property in this
9 state is liable for trespass as a result of migration or transport
10 of any air contaminant, as defined in Section 382.003(2), Health
11 and Safety Code, other than odor, only upon a showing of actual and
12 substantial damages by a plaintiff in a civil action.

13 ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

14 SECTION 22.01. Section 311.041, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 311.041. POLICY STATEMENT. It is the purpose of this
17 subchapter to clarify and set forth the duties, ~~and~~
18 responsibilities, and benefits that apply to ~~[of nonprofit]~~
19 hospitals for providing community benefits that include charity
20 care.

21 SECTION 22.02. Subchapter D, Chapter 311, Health and Safety
22 Code, is amended by adding Section 311.0456 to read as follows:

23 Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED
24 LIABILITY. (a) In this section, "department" means the Texas
25 Department of Health.

26 (b) This section applies only to a nonprofit hospital or
27 hospital system that is certified by the department under

1 Subsection (d).

2 (c) To be eligible for certification under Subsection (d), a
3 nonprofit hospital or hospital system must provide:

4 (1) charity care in an amount equal to at least eight
5 percent of the net patient revenue of the hospital or hospital
6 system during the preceding fiscal year of the hospital or system;
7 and

8 (2) at least 40 percent of the charity care provided in
9 the county in which the hospital is located.

10 (d) To be certified under this subsection, a nonprofit
11 hospital or hospital system must submit a report based on its most
12 recent completed and audited prior fiscal year to the department
13 not later than April 30 of each year stating that the hospital or
14 system is eligible for certification. The department must verify
15 the information in the report not later than May 31 of the year in
16 which the department receives the report by checking the
17 information against the report filed by the hospital or system
18 under Section 311.046. After the department has verified the
19 information in the report, the department shall certify that the
20 hospital or hospital system has met the requirements for
21 certification. The certification issued under this subsection to a
22 nonprofit hospital or hospital system takes effect on May 31 of that
23 year and expires on the anniversary of that date.

24 (e) For the purposes of Subsection (b), a corporation
25 certified by the Texas State Board of Medical Examiners as a
26 nonprofit organization under Section 162.001, Occupations Code,
27 whose sole member is a qualifying hospital or hospital system is

1 considered a nonprofit hospital or hospital system.

2 (f) Notwithstanding any other law, the liability of a
3 nonprofit hospital or hospital system for noneconomic damages as
4 defined by Section 41.001, Civil Practice and Remedies Code, for a
5 cause of action that accrues during the period that the hospital or
6 system is certified under this section is subject to the
7 limitations specified by Section 101.023(b), Civil Practice and
8 Remedies Code, and Subsection (c) of that section does not apply.
9 This subsection establishes the total combined limit of liability
10 of the nonprofit hospital or hospital system and any employee,
11 officer, or director of the hospital or system for noneconomic
12 damages for each person and each single occurrence, as described by
13 Section 101.023(b), Civil Practice and Remedies Code.

14 SECTION 22.03. The heading to Subchapter D, Chapter 311,
15 Health and Safety Code, is amended to read as follows:

16 SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE [~~DUTIES OF~~
17 ~~NONPROFIT HOSPITALS~~]

18 ARTICLE 23. ACCELERATED APPEAL;
19 EFFECTIVE DATE; SEVERABILITY

20 SECTION 23.01. (a) The constitutionality and other
21 validity under the state or federal constitution of all or any part
22 of Article 10 of this Act may be determined in an action for
23 declaratory judgment in a district court in Travis County under
24 Chapter 37, Civil Practice and Remedies Code, if it is alleged that
25 all or any part of Article 10 of this Act affects the rights,
26 status, or legal relation of a party in a civil action with respect
27 to any other party in the civil action.

1 (b) An appeal of a declaratory judgment or order, however
2 characterized, of a district court, including an appeal of the
3 judgment of an appellate court, holding or otherwise determining
4 that all or any part of Article 10 of this Act is constitutional or
5 unconstitutional, or otherwise valid or invalid, under the state or
6 federal constitution is an accelerated appeal.

7 (c) If the judgment or order is interlocutory, an
8 interlocutory appeal may be taken from the judgment or order and is
9 an accelerated appeal.

10 (d) A district court in Travis County may grant or deny a
11 temporary or otherwise interlocutory injunction or a permanent
12 injunction on the grounds of the constitutionality or
13 unconstitutionality, or other validity or invalidity, under the
14 state or federal constitution of all or any part of Article 10 of
15 this Act.

16 (e) There is a direct appeal to the supreme court from an
17 order, however characterized, of a trial court granting or denying
18 a temporary or otherwise interlocutory injunction or a permanent
19 injunction on the grounds of the constitutionality or
20 unconstitutionality, or other validity or invalidity, under the
21 state or federal constitution of all or any part of Article 10 this
22 Act. The direct appeal is an accelerated appeal.

23 (f) This section exercises the authority granted by Section
24 3-b, Article V, Texas Constitution.

25 (g) An appeal under this section, including an
26 interlocutory, accelerated, or direct appeal, is governed, as
27 applicable, by the Texas Rules of Appellate Procedure, including

1 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
2 38.6(a) and (b), 40.1(b), and 49.4.

3 SECTION 23.02. (a) All articles of this Act, other than
4 Article 17, take effect September 1, 2003.

5 (b) Article 17 of this Act takes effect immediately if this
6 Act receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, Article 17 of this Act takes effect September 1, 2003.

10 (c) Articles 4, 5, and 8 of this Act apply to an action filed
11 on or after July 1, 2003. An action filed before July 1, 2003, is
12 governed by the law in effect immediately before the change in law
13 made by Articles 4, 5, and 8, and that law is continued in effect for
14 that purpose.

15 (d) Except as otherwise provided in this section or by a
16 specific provision in an article, this Act applies only to an action
17 filed on or after the effective date of this Act. An action filed
18 before the effective date of this Act, including an action filed
19 before that date in which a party is joined or designated after that
20 date, is governed by the law in effect immediately before the change
21 in law made by this Act, and that law is continued in effect for that
22 purpose.

23 SECTION 23.03. If any provision of this Act or its
24 application to any person or circumstance is held invalid, the
25 invalidity does not affect other provisions or applications of this
26 Act that can be given effect without the invalid provision or
27 application, and to this end the provisions of this Act are declared

1 to be severable.

President of the Senate

Speaker of the House

I certify that H.B. No. 4 was passed by the House on March 28, 2003, by the following vote: Yeas 94, Nays 46, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 4 on May 21, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 4 on June 1, 2003, by the following vote: Yeas 110, Nays 34, 2 present, not voting; and that the House adopted H.C.R. No. 299 authorizing certain corrections in H.B. No. 4 on June 2, 2003, by a non-record vote.

Chief Clerk of the House

H.B. No. 4

I certify that H.B. No. 4 was passed by the Senate, with amendments, on May 16, 2003, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 4 on June 1, 2003, by the following vote: Yeas 27, Nays 4; and that the Senate adopted H.C.R. No. 299 authorizing certain corrections in H.B. No. 4 on June 2, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor