

- SUBJECT:** Requirements for expert reports for health care liability claims
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson
- 0 nays
- WITNESSES:** For — Mike Hull, Texans for Lawsuit Reform; Andrew Cates, Texas Nurses Association; (*Registered, but did not testify:* John Hubbard and Ian Randolph, Coalition for Nurses in Advanced Practice (CNAP); Carol Sims, Texas Civil Justice League; Gavin Gadberry, Texas Health Care Association; Dan Finch, Texas Medical Association)
- Against: — Jay Harvey, Texas Trial Lawyers Association
- BACKGROUND:** Civil Practice and Remedies Code, sec. 74.001 defines “health care liability claim” to mean a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, health care, safety, professional, or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.
- In the case *Texas West Oaks Hospital, LP v. Williams*, 371 S.W.3d 171 (Tex. 2012), the Texas Supreme Court ruled that a claim by an employee of a private mental health hospital who was injured in an altercation with a patient with a history of violent outbursts was a health care liability claim under the Texas Medical Liability Act (TMLA). The court dismissed the claimant’s suit on the grounds that he did not serve the defendant with an expert report, as required for health care liability claims under Civil Practice and Remedies Code, ch. 74.
- Under Labor Code, sec. 406.033, employees who are not covered by workers’ compensation insurance may file claims against employers to

recover damages for personal injury or death that are sustained in the course and scope of employment. Sec. 408.001 allows employees' surviving spouses or heirs to seek exemplary damages for those claims if the employee's death was caused by an intentional act or omission or gross negligence of the employer.

DIGEST:

CSHB 1403 would exclude actions filed under the Texas Workers' Compensation Act (TWCA) by employees who were not covered by workers' compensation insurance for damages and exemplary damages for personal injury or death that occurred in the course and scope of employment from the definition of a "health care liability claim" under the Texas Medical Liability Act, Civil Practice and Remedies Code, ch. 74.

Under the bill, the expert reports served on each defendant in a health care liability claim would be required to address at least one theory of direct liability asserted against each physician or health care provider against whom a theory of direct liability was asserted.

This bill would take effect September 1, 2015, and would apply only to causes of action that accrued on or after that date.