

BILL ANALYSIS

Senate Research Center

H.B. 4
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State Affairs
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Engrossed

DIGEST AND PURPOSE

H.B. 4 is the comprehensive tort reform bill addressing many issues affecting the court system today. The authors' stated intent is to bring more balance to the Texas civil justice system, reduce litigation costs, and address the role of litigation in society. H.B. 4 contains elements addressing: class action lawsuits, offers of settlement, venue and forum non conveniens, proportionate responsibility, products liability, interest, appeal bonds, seat belts, medical malpractice, charitable immunity and liability, admissibility of evidence regarding nursing homes, liability relating to asbestos claims, and assignment of judges in health care liability claims.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 10A.01 (Article 5.163, Insurance Code) of this bill, and to the Texas Supreme Court in SECTION 12.01 (Section 62.105, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CLASS ACTIONS

SECTION 1.01. Amends Subtitle B, Title 2, Civil Practice and Remedies Code, by adding Chapter 26, as follows:

CHAPTER 26. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY

Sec. 26.001. DEFINITIONS. Defines terms used in this chapter.

Sec. 26.002. APPLICABILITY. Provides that this chapter applies only to certain actions.

Sec. 26.003. HEARING. (a) Requires a court, on motion of a party, to conduct a hearing to determine whether an action should be dismissed or abated under this chapter.

(b) Requires notice of the hearing to be given to the named parties to the action on or before the 21st day before the date of the hearing.

Sec. 26.004. DISMISSAL FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. (a) Requires a court to dismiss an action without prejudice if certain conditions exist.

(b) Requires the court's dismissal order to identify the state agency having exclusive jurisdiction and state the administrative remedy available to the claimant.

(c) Provides that the limitations period applicable to an action dismissed under this section is suspended for members of the class or putative class with respect to the defendants named in the class action commenced in a court of this state for a period beginning on the date the dismissal order is signed and continuing while

the class representatives diligently pursue the administrative remedy identified in the dismissal order.

Sec. 26.005. ABATEMENT OR DISMISSAL. (a) Requires a court, on motion of a party filed on or before the 30th day after the date the court signed the order certifying the action as a class action, to abate or dismiss without prejudice an action if the court makes certain determinations.

(b) Requires the court's abatement or dismissal order to identify the state agency and state the agency statute or rule on which the order is based.

(c) Requires a court that abates an action under this section to take certain actions.

(d) Provides that the limitations period applicable to an action dismissed under this section is suspended for members of the class or putative class with respect to the defendants named in the class action commenced in a court of this state for a period beginning on the date the dismissal order is signed and continuing while the class representatives diligently pursue the administrative remedy identified in the dismissal order.

Sec. 26.006. ABATEMENT PERIOD. (a) Requires the order to provide that the abatement period is at least six months from the date the court signs the abatement order.

(b) Authorizes the court to extend the abatement period if the court determines that the state agency is proceeding diligently to resolve the matters the court referred to the agency.

(c) Provides that the abatement period ends when certain conditions are met.

Sec. 26.007. PROCEEDING AFTER ABATEMENT; DISMISSAL. (a) Requires the court, after the abatement period ends, to decide whether to dismiss the action, proceed with the action as an individual action, or proceed with the action as a class action.

(b) Requires a court to dismiss an action if the court makes certain determinations.

(c) Requires the court, if it does not dismiss the action, to determine whether to proceed with the action as a class action or as an individual action by considering or reconsidering the case in light of class certification criteria. Requires the court, in determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy, to consider the availability of judicial review of the state agency's decision and of declaratory relief under Section 2001.038 (Declaratory Judgment), Government Code, concerning the validity and applicability of agency rules.

(d) Provides that relief awarded to a claimant may be adequate even if the relief does not include exemplary damages, multiple damages, attorney's fees, or costs of court.

(e) Authorizes the court, if a person seeks judicial review of a state agency's decision on an issue referred to the agency by the court, to transfer the action to a county of proper venue for the judicial review if the court makes certain determinations.

(f) Requires the court to transfer the action to Travis County if a person seeks declaratory relief under Section 2001.038, (Declaratory Judgment) Government Code, concerning the validity or applicability of a state agency rule involved in a state agency's decision on a matter referred to the agency by the court.

SECTION 1.02. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140, as follows:

CHAPTER 140. ATTORNEY'S FEES AWARDED IN CLASS ACTIONS

Sec. 140.001. APPLICABILITY. (a) Provides that, except as provided by Subsection (b), this chapter applies to an award of attorney's fees in a class action notwithstanding certain rules or agreements.

(b) Provides that this chapter does not apply to fees payable to the attorney or attorneys by a named plaintiff client out of that client's funds, including the client's share of the common fund recovered for the class, under an agreement between the attorney or attorneys and the client.

Sec. 140.002. NO RIGHT TO FEES CREATED. Provides that this chapter does not create a right to an award of attorney's fees.

Sec. 140.003. AWARD OF FEES. Provides that if a court awards a fee in a class action to the attorney or attorneys for the class, the fee must be awarded out of a common fund or as measured by a common benefit recovered for the class, and the fee must be computed as provided by this chapter.

Sec. 140.004. DETERMINATION OF BASE FEE. (a) Requires the court, in any class action in which an award of attorney's fees is to be made, to first determine the base fee as provided by this section.

(b) Sets forth requirements regarding what the court is required to find in the determination of the base fee.

(c) Requires the rates in Subsection (b)(2) to be based on and not to exceed the rates customarily charged in the locality for similar legal services in nonclass litigation.

(d) Requires the court, to compute the base fee, to multiply the hours found in Subsection (b)(1) by the rates found in Subsection (b)(2).

Sec. 140.005. INCREASE OR DECREASE OF BASE FEE. (a) Authorizes the court, except as provided by Subsection (b), to increase or decrease the base fee determined under Section 140.004 by applying certain factors.

(b) Sets forth a formula to determine a ceiling for the total fees awarded by the court.

Sec. 140.006. ACTUAL EXPENSES AND COSTS. Authorizes the court, in addition to the fee determined under this chapter, to award the attorney or attorneys representing the class all reasonable expenses and costs of litigation actually incurred by the attorney or attorneys on behalf of the class.

SECTION 1.03. Amends Section 22.225, Government Code, by amending Subsections (b) and (d) and adding Subsection (e), as follows:

(b) Provides that, except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review, rather than a writ of error, is not allowed to, rather than from, the supreme court, in certain civil cases.

(d) Provides that a petition for review, rather than a writ of error, is allowed to, rather than from, the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) or (6), rather than 51.014(6), Civil Practice and Remedies Code.

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

SECTION 1.04. Amends Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, as follows:

(a) Authorizes a person to appeal from an interlocutory order of a district court, county court at law, or county court that performs certain actions, including denying all or part of the relief sought by a motion under Section 13.01(b) (regarding defendant bond filing), Article 4590i (Medical Liability and Insurance Improvement Act), V.T.C.S., or granting relief sought by a motion under Section 13.01(l) (regarding the adequacy of an expert report), Article 4590i, V.T.C.S.

(b) Provides that an interlocutory appeal under Subsection (a)(3), (5), or (8) stays all other proceedings in the trial court pending resolution of that appeal. Makes a nonsubstantive change.

(c) Makes a conforming change.

SECTION 1.05. Amends Section 22.001, Government Code, by adding Subsection (e), as follows:

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

ARTICLE 2. SETTLEMENT

SECTION 2.01. Amends Subtitle C, Title 2, Civil Practice and Remedies Code, by adding Chapter 42, as follows:

CHAPTER 42. SETTLEMENT AND RECOVERY OF LITIGATION COSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. DEFINITIONS. Defines terms used in this chapter.

Sec. 42.002. APPLICABILITY AND EFFECT. (a) and (b) Set forth actions to which this chapter does not apply.

(c) Provides that this chapter does not limit or affect the ability of any person to make certain offers to settle a claim.

(d) Provides that an offer to settle or compromise that does not comply with Section 42.051 or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.

(e) Sets forth actions to which this chapter does not apply.

Sec. 42.003. MODIFICATION OF TIME LIMITS. Authorizes a court to modify the time limits specified in this chapter by order resulting from a pretrial conference conducted under Rule 166, Texas Rules of Civil Procedure.

Sec. 42.004. SERVICE. Provides that, when this chapter requires a writing to be served on another party, service is adequate if it is performed in a manner described in Rule 21a, Texas Rules of Civil Procedure.

Sec. 42.005. **APPLICABILITY OF CHAPTER IN RELATION TO CERTAIN CRIMINAL BEHAVIOR.** Sets forth actions to which this chapter does not apply.

Sec. 42.006. **ADDITIONAL APPLICABILITY PROVISION; CERTAIN CRIMINAL BEHAVIOR.** Sets forth actions to which this chapter does not apply.

Sec. 42.007. **APPLICABILITY OF CHAPTER: NONMONETARY TERMS.** Provides that, notwithstanding any other provision of this chapter, if a monetary settlement offer is made conditioned on terms other than monetary relief pled by the party to whom the settlement offer was made and recoverable by that party in law or in equity, other than the requirement for a release and indemnity of claim by and through the claimant, then this chapter does not apply unless the defendant succeeds in obtaining those other terms in the judgment.

[Reserves Sections 42.008-42.050 for expansion.]

SUBCHAPTER B. AWARDING LITIGATION COSTS

Sec. 42.051. **SETTLEMENT OFFER.** (a) Authorizes a defendant or a group of defendants to serve on a claimant an offer to settle all claims in the action between that defendant or those defendants and the claimant.

(b) Sets forth requirements for the settlement offer.

(c) Prohibits a defendant or group of defendants from making a settlement offer under this section before the 90th day after the later of two dates.

(d) Prohibits a defendant or group of defendants from making a settlement offer under this section after the 30th day before the date set for trial.

(e) Provides that the parties are not required to file a settlement offer with the court.

Sec. 42.052. **ACCEPTANCE OF SETTLEMENT OFFER.** (a) Authorizes a claimant to accept a settlement offer made under this chapter on or before 5 p.m. on the 30th day after the date the claimant received the settlement offer or before the deadline stated in the settlement offer, whichever is later.

(b) Sets forth requirements for the acceptance of a settlement offer.

Sec. 42.053. **WITHDRAWING SETTLEMENT OFFER.** (a) Authorizes a defendant or group of defendants to withdraw a settlement offer by serving a written withdrawal on the claimant to whom the settlement offer was made before the claimant accepts the settlement offer. Prohibits a claimant from accepting a settlement offer after it is withdrawn.

(b) Provides that if a settlement offer is withdrawn, the defendant or group of defendants that made the settlement offer is not entitled to recover litigation costs under this chapter.

Sec. 42.054. **REJECTION OF SETTLEMENT OFFER.** Sets forth situations in which, for purposes of this chapter, a settlement offer is rejected.

Sec. 42.055. **AWARD OF LITIGATION COSTS.** (a) Requires that any defendant who makes a settlement offer under this chapter to a claimant seeking monetary relief recover litigation costs from the claimant under certain circumstances.

(b) Sets forth circumstances under which any defendant who makes a settlement offer to a claimant seeking nonmonetary relief, other than injunctive relief, may

recover litigation costs from the claimant.

(c) Provides that litigation costs awarded to a defendant under this section include only those litigation costs incurred by the defendant who made a settlement offer after the rejection of the earliest settlement offer that entitles the defendant to an award of litigation costs under this section.

(d) Sets forth requirements regarding litigation costs awarded under this section.

(e) Requires the court to determine the amount of litigation costs awarded based on written or oral evidence presented to the court. Sets forth evidence rules for jury trials.

(f) Requires the trial judge who presided over the trial of the case to act as the finder of fact in regard to the award of litigation costs under this section. Requires the local presiding judge, if the trial judge is unable to do so, to appoint another judge to hear and determine all issues related to the award.

(g) Authorizes an award of litigation costs under this section to be reviewed on appeal from a final judgment for abuse of discretion.

Sec. 42.056. **LIMITATION ON LITIGATION COSTS.** (a) Prohibits the amount of litigation costs awarded under this chapter from exceeding the claimant's total recovery, less any statutory liens, in connection with the transactions or occurrences giving rise to the claim.

(b) Provides that the claimant's total recovery under this section does not include the proceeds of an insurance policy paid to the claimant as a beneficiary of the policy, unless the proceeds are the subject of the litigation.

(c) Provides that the claimant's total recovery under this section includes certain amounts of money.

(d) Prohibits a claimant, if litigation costs are awarded against the claimant under this chapter, from being awarded any attorney's fees, expenses, or costs to which the claimant would otherwise be entitled under any other law that were incurred by the claimant after the claimant's rejection of the earliest settlement offer that entitles the defendant or group of defendants to an award of litigation costs under this section.

Sec. 42.057. **ADMISSIBILITY OF EVIDENCE.** (a) Provides that this chapter does not affect the admissibility or inadmissibility of evidence as provided in the Texas Rules of Evidence.

(b) Prohibits the provisions of this chapter from being made known to the jury through any means, including voir dire, introduction into evidence, instruction, or argument.

ARTICLE 3. VENUE; FORUM NON CONVENIENS

SECTION 3.01. Amends Chapter 15, Civil Practice and Remedies Code, by adding Subchapter F, as follows:

SUBCHAPTER F. CONSOLIDATION OF MULTIDISTRICT LITIGATION FOR PRETRIAL PROCEEDINGS

Sec. 15.151. **PURPOSE.** Sets forth the purpose of this subchapter and provides that to accomplish this purpose, this subchapter shall be construed in harmony with federal judicial interpretation of comparable federal multidistrict litigation statutes to the extent

consistent with this purpose.

Sec. 15.152. DEFINITIONS. Defines "panel" and "related" for this subchapter.

Sec. 15.153. APPLICABILITY. Sets forth actions to which this subchapter does and does not apply.

Sec. 15.154. TRANSFER FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS. Authorizes the panel to transfer any case to which this subchapter applies to any district court for the purpose of allowing coordinated or consolidated pretrial proceedings in related cases.

Sec. 15.155. INITIATION OF TRANSFER PROCEEDINGS. (a) Authorizes proceedings to transfer a case under this subchapter to be initiated by certain persons.

(b) Sets forth requirements regarding a motion filed under Subsection (a)(2).

(c) Requires a copy of the motion to be filed by the movant in each case identified in Subsections (b)(1) and (2).

Sec. 15.156. DETERMINATION OF TRANSFER. (a) Requires the panel, after notice to all parties in all related cases that may be subject to coordinated or consolidated pretrial proceedings, and a hearing, to order the transfer of any or all related cases to one or more district courts for coordinated or consolidated pretrial proceedings if it determines that transfer is for the convenience of parties and witnesses and will promote the just and efficient conduct of the actions.

(b) Authorizes any party to any case that would be affected by the proceedings under this subchapter to appear at the hearing and offer evidence on the propriety of coordinated or consolidated pretrial proceedings in the related cases.

(c) Requires the panel's order directing or denying transfer to be supported by findings of fact and conclusions of law.

Sec. 15.157. FILING OF PANEL ORDERS. (a) Requires any order of the panel to be filed by the panel in the district court in which the transfer hearing is to be or has been held.

(b) Requires a copy of an order directing or denying transfer of related cases to be sent by the panel to both the transferee and transferor courts.

(c) Provides that an order directing the transfer of related cases for coordinated or consolidated pretrial proceedings is effective when filed in the district court in which the transfer hearing was held.

Sec. 15.158. REVIEW OF PANEL ORDERS. (a) Provides that review of an order of the panel is by extraordinary writ.

(b) Requires a petition for an extraordinary writ to review an order of the panel in regard to setting a transfer hearing, or to review any other order of the panel made before the order either directing or denying transfer is made, to be filed in the court of appeals having jurisdiction over the district in which the transfer hearing is to be or has been held.

(c) Requires a petition for an extraordinary writ to review an order directing the transfer of one or more related cases, or to review any order made after the transfer order is made, to be filed in the court of appeals having jurisdiction over the transferee district.

(d) Prohibits an order of the panel denying a motion to transfer for coordinated or consolidated pretrial proceedings from being appealed or reviewed.

Sec. 15.159. ASSIGNMENT. (a) Authorizes, on request of the panel, a district judge to be assigned to preside in the transferee district over coordinated or consolidated pretrial proceedings being conducted pursuant to this subchapter.

(b) Authorizes the assignment to be made by the chief justice of the supreme court or by the presiding judge of the administrative judicial region in which the transferee court sits, in accordance with Chapter 74C (Administrative Judicial Regions), Government Code.

Sec. 15.160. CONDUCT OF PROCEEDINGS. (a) Requires the coordinated or consolidated pretrial proceedings to be conducted by the judge or judges to whom the cases are assigned by the panel.

(b) Authorizes the judge or judges to whom the cases are assigned, the members of the panel, and other district judges designated when needed by the panel, when conducting pretrial proceedings in cases coordinated or consolidated for pretrial proceedings, to exercise the powers of a district judge in any district, including deciding motions to transfer venue and motions for summary judgment.

(c) Requires the judge or judges to whom the cases are assigned to give priority to the pretrial proceedings in cases coordinated or consolidated under this subchapter over all other matters pending before them.

Sec. 15.161. REMAND. Requires a court to which a case is transferred under this subchapter to remand the transferred case, at or before the conclusion of pretrial proceedings, to the district court from which it was transferred unless it has been terminated, except that the court is authorized to separate any claim, cross-claim, counterclaim, or third-party claim and remand the separated claim before the remainder of the case is remanded.

SECTION 3.02. Amends Chapter 74, Government Code, by adding Subchapter H, as follows:

SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Sec. 74.161. JUDICIAL PANEL. (a) Provides that the judicial panel on multidistrict litigation consists of seven justices of the courts of appeals designated from time to time by the chief justice of the supreme court. Prohibits two panel members from being from the same court of appeals district.

(b) Requires the concurrence of four members to be necessary to any action by the panel.

Sec. 74.162. OPERATION; RULES. (a) Requires the judicial panel on multidistrict litigation to operate subject to rules of administration for multidistrict litigation practice and procedure adopted by the supreme court under Section 74.024 (Rules).

(b) Authorizes the panel to prescribe additional rules for the conduct of its business not inconsistent with Chapter 15F, Civil Practice and Remedies Code, and the rules of administration for multidistrict litigation practice and procedure, as adopted by the supreme court.

SECTION 3.03. Amends Section 15.003, Civil Practice and Remedies Code, as follows:

Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING PLAINTIFFS. (a) Provides that in a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one

plaintiff, or otherwise, each plaintiff is required, independently of every other plaintiff, to establish proper venue. Requires, if a plaintiff cannot independently establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, to be transferred to a county of proper venue or dismissed, as is appropriate. Makes conforming and nonsubstantive changes.

(b) Provides that an interlocutory appeal may be taken of a trial court's determination under Subsection (a) that a plaintiff did or did not independently establish proper venue or a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4). Deletes text regarding a person's prohibition from joining or intervening in a pending suit as a plaintiff unless the person performs certain actions.

(c) Requires an interlocutory appeal permitted by Subsection (b) to be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. Deletes text regarding a person seeking intervention or joinder. Authorizes the appeal to be taken by a party that is affected by the trial court's determination under Subsection (a). Deletes text regarding the date by which the appeal must be perfected. Makes conforming changes.

(d) Provides that an interlocutory appeal under Subsection (b) has the effect of staying the commencement of trial in the trial court pending resolution of the appeal.

SECTION 3.04. Amends Section 71.051, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (j), as follows:

(a) Deletes reference to a plaintiff who is not a legal resident of the United States. Requires, rather than authorizes, a court of this state, if it finds that in the interest of justice a claim or action to which this section applies would be more properly heard in a forum outside this state, to decline to exercise jurisdiction under the doctrine of forum non conveniens and to stay or dismiss the claim or action on any conditions that may be just. Deletes reference to whole or part of the claim or action being stayed or dismissed in whole or in part.

(j) Provides that this section does not affect the application of the common law doctrine of forum non conveniens to actions other than actions for personal injury or wrongful death.

SECTION 3.05. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of multidistrict litigation, among other things.

SECTION 3.06. Repealers:

(1) Sections 71.051(b) (related to forum non conveniens for a plaintiff who is a legal resident of the United States), (c) (relating to staying or dismissing a claim), (d) (relating to a timely request for stay or dismissal), (e) (relating to the prohibition against a stay or dismissal for a legal resident of the state), (f) (relating to the prohibition against a stay or dismissal when a party opposing the motion provides certain evidence), (g) (relating to the extension of a time limit), and (h) (relating to definitions), Civil Practice and Remedies Code; and

(2) Section 71.052 (Jurisdiction; Election; Stipulations), Civil Practice and Remedies Code.

ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES

SECTION 4.01. Amends Section 33.002(a), Civil Practice and Remedies Code, to remove the exception provided by Subsections (b) and (c) to the application of this chapter. Makes this chapter applicable to any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

SECTION 4.02. Amends Section 33.003, Civil Practice and Remedies Code, as follows:

Sec. 33.003. DETERMINATION OF PERCENTAGE OF RESPONSIBILITY. (a) Requires the trier of fact, as to each cause of action asserted, to determine the percentage of responsibility, stated in whole numbers, for each responsible third party who has been designated, rather than joined, under Section 33.004.

(b) Provides that this section does not require a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

SECTION 4.03. Amends the heading to Section 33.004, Civil Practice and Remedies Code, to read as follows:

Sec. 33.004. DESIGNATION OF RESPONSIBLE THIRD PARTY.

SECTION 4.04. Amends Section 33.004, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsections (f)-(j), as follows:

(a) Deletes text regarding Subsections (d) and (e) and the expiration of limitations on a claimant's claim for damages. Authorizes a defendant to seek to designate a person as, rather than join, a responsible third party by filing a motion for leave to designate that person as a responsible third party, rather than who has not been sued by the claimant. Requires the motion to be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Makes nonsubstantive changes.

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

(g) Requires the court, if an objection to the motion for leave is timely filed, to grant leave to designate the person as a responsible third party unless the objecting party establishes certain facts.

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

(i) Requires the court, for a person whose identity is not known, to grant a motion for leave to designate that person as a responsible third party if the court determines that the motion otherwise should be granted under Subsection (f) or (g) and the defendant has stated in the motion all known identifying characteristics of the person. Provides that in that circumstance, the person will be denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(j) Provides that the filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person does not by itself impose liability on the person and may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

SECTION 4.05. Amends Sections 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, as follows:

- (1) Redefines "claimant."
- (2) Redefines "defendant."
- (5) Redefines "settling person."
- (6) Redefines "responsible third party."

SECTION 4.06. Amends Section 33.013, Civil Practice and Remedies Code, by amending Subsections (a) and (b) and adding Subsections (e) and (f), as follows:

- (a) Removes exception as provided in Subsection (c).
- (b) Provides that, notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if certain conditions are met.
- (e) Provides that, notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. Provides that a defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.
- (f) Prohibits the jury from being made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

SECTION 4.07. Amends Section 33.017, Civil Practice and Remedies Code, to remove references to Article 4413(36), V.T.C.S.

SECTION 4.08. Amends Section 417.001(b), Labor Code, to provide that the insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003 (Determination of Percentage of Responsibility), Civil Practice and Remedies Code, attributable to the employer. Provides that if the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest the insurance carrier shall pay certain amounts. Makes a conforming change.

SECTION 4.09. Repealers:

- (1) 33.002(b) (relating to liability for certain crimes under the Penal Code), (d) (relating to the non-applicability of Subsection (b)), (e) (relating to the intent to do harm), (f) (relating to submission of a conduct question to the jury), (g) (relating to what the jury can know), and (h) (relating to applicability of this chapter), Civil Practice and Remedies Code;
- (2) 33.004(c) (relating to a seller as a responsible third party), (d) (relating to a third party claim by a defendant under this section), and (e) (relating to a joinder time limit), Civil Practice and Remedies Code;
- (3) 33.011(7) (defining a toxic tort), Civil Practice and Remedies Code;

(4) 33.012(c) (relating to reduction of damages recoverable), Civil Practice and Remedies Code; and

(5) 33.013(c) (relating to a defendant's percentage of responsibility), Civil Practice and Remedies Code.

SECTION 4.10. Provides that it is not the intent or purpose of this article to affect workers' compensation law.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Amends Section 16.012, Civil Practice and Remedies Code, as follows:

Sec. 16.012. New heading: PRODUCTS LIABILITY. (a) Removes the definition of "manufacturing equipment."

(b) Makes conforming changes.

(c) Makes conforming changes.

(d) Provides that this section does not apply to a products liability action in which the claimant alleges a product caused a disease the symptoms of which did not, before the end of 15 years after the date of the sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffers some injury. Makes a conforming change.

(e) Makes a conforming change.

(f) Makes a conforming change.

SECTION 5.02. Amends Section 82.001(2), Civil Practice and Remedies Code, to redefine "products liability action."

SECTION 5.03. Amends Chapter 82, Civil Practice and Remedies Code, by adding Sections 82.003, 82.007, 82.008, and 82.009, as follows:

Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. Provides that a seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves certain facts.

Sec. 82.007. MEDICINES. (a) Provides that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, in a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, are not liable with respect to the allegations if certain conditions are met.

(b) Provides that this section does not apply if the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

Sec. 82.008. EVIDENCE OF SUBSEQUENT IMPROVEMENTS AND MEASURES. Prohibits a court from admitting, except for purposes of impeachment, in a products liability action, evidence of a subsequent improvement made or measure taken with respect to the defect alleged to have caused harm, or a similar product, that, if made or taken before the product was supplied, would have made the claimant's harm less likely.

Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) Provides that in a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture, and that governed the product risk that allegedly caused harm.

(a-1) Authorizes the claimant to rebut the presumption in Subsection (a) by establishing certain facts.

(b) Provides that in a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. Authorizes the claimant to rebut this presumption by establishing certain facts.

(c) Provides that this section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

ARTICLE 6. INTEREST

SECTION 6.01. Amends Section 304.003(c), Finance Code, to set forth formulas for the postjudgment interest rate.

SECTION 6.02. Amends Chapter 304B, Finance Code, by adding Section 304.1045, as follows:

Sec. 304.1045. FUTURE DAMAGES. Prohibits prejudgment interest from being assessed or recovered on an award of future damages.

ARTICLE 7. APPEAL BONDS

SECTION 7.01. Amends Section 35.006, Civil Practice and Remedies Code, as follows:

Sec. 35.006. STAY. (a) Provides that if the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court is required stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) Requires the court, if the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, to stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement, rather than satisfaction, of the judgment that is required in this state in accordance with Section 52.006.

SECTION 7.02. Amends Chapter 52, Civil Practice and Remedies Code, by adding Section

52.006, as follows:

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a) Requires, when a judgment is for money, the amount of security, subject to Subsection (b), to equal the sum of the amount of compensatory damages awarded in the judgment; interest for the estimated duration of the appeal; and costs awarded in the judgment.

(b) Provides that, notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of 50 percent of the judgment debtor's net worth; or \$25 million.

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

(d) Authorizes an appellate court to review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court is prohibited from modifying the amount of security to exceed the amount allowed under this section.

SECTION 7.03. Repealers:

(1) Section 52.002 (Bond or Deposit for Money Judgment), Civil Practice and Remedies Code;

(2) Section 52.003 (Review for Sufficiency), Civil Practice and Remedies Code; and

(3) Section 52.004 (Review for Excessiveness), Civil Practice and Remedies Code.

ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

SECTION 8.01. Repealer: Section 545.413(g) (relating to the inadmissibility of information about the use or nonuse of a safety belt in a civil trial), Transportation Code.

ARTICLE 9. BENEVOLENT GESTURES

SECTION 9.01. Repealer: Section 18.061(c) (relating to the admissibility of a communication including statements of culpability or liability), Civil Practice and Remedies Code.

SECTION 9.02. Makes application of this article prospective.

ARTICLE 10. HEALTH CARE

SECTION 10.01. Amends Section 1.03(a), Article 4590i, V.T.C.S., by amending Subdivisions (3), (4), and (8) and adding Subdivisions (10)-(22), as follows:

(3)(A) and (B) Redefine "health care provider."

(4) Redefines "health care liability claim."

(8) Redefines "physician."

(10) Defines "affiliate."

(11) Defines "claimant."

- (12) Defines "control."
- (13) Defines "economic damages."
- (14) Defines "emergency medical care."
- (15) Defines "emergency medical services provider."
- (16) Defines "home and community support services agency."
- (17) Defines "intermediate care facility for the mentally retarded."
- (18) Defines "noneconomic damages."
- (19) Defines "nursing home."
- (20) Defines "professional or administrative services."
- (21) Defines "hospice."
- (22) Defines "hospital system."

SECTION 10.02. Amends Subchapter A, Article 4590i, V.T.C.S., by adding Sections 1.04 and 1.05, as follows:

Sec. 1.04. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE.

(a) Provides that in the event of a conflict between this Act and another law, including a rule of procedure or evidence or court rule, this Act controls to the extent of the conflict.

(b) Provides that notwithstanding Subsection (a) of this section, in the event of a conflict between this Act and Section 101.023, 102.003, or 108.002, Civil Practice and Remedies Code, those sections of the Civil Practice and Remedies Code control to the extent of the conflict.

(c) Provides that notwithstanding Section 22.004, (Rules of Civil Procedure) Government Code, and except as otherwise provided by this Act, the supreme court is prohibited from amending or adopting rules in conflict with this Act.

(d) Prohibits the district courts and statutory county courts in a county from adopting local rules in conflict with this Act.

Sec. 1.05. SOVEREIGN IMMUNITY NOT WAIVED. Provides that this Act does not waive sovereign immunity from suit or from liability.

SECTION 10.03. Amends Section 4.01, Article 4590i, V.T.C.S., by adding Subsection (f), as follows:

(f)(1) Prohibits a deposition, notwithstanding the provisions of Rule 202, Texas Rules of Civil Procedure, from being taken of a physician or health care provider for the purpose of investigating a health care liability claim before the filing of a lawsuit unless certain circumstances exist regarding notice and records.

(2) Entitles the patient, the patient's family, or the patient's representative, notwithstanding Section 13.01(u) of this Act, if the physician or health care provider fails to provide the records as required under this section, to one deposition under Rule 202, Texas Rules of Civil Procedure, in addition to the deposition allowed under Section 13.01(u) of this Act, sufficient to provide the information needed for them to appropriately evaluate any potential health care liability claim and make decisions about inclusion or not of potential defendants.

SECTION 10.04. Amends the heading to Subchapter G, Article 4590i, V.T.C.S., to read as follows:

SUBCHAPTER G. EVIDENTIARY MATTERS

SECTION 10.05. Amends Subchapter G, Article 4590i, V.T.C.S., by adding Sections 7.03 and 7.04, as follows:

Sec. 7.03. **FEDERAL OR STATE INCOME TAXES.** (a) Provides that, notwithstanding any other law, in a health care liability claim, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net after-tax loss that either was or should have been paid by the injured party or decedent through which the alleged loss has occurred.

(b) Requires the court, in a health care liability claim, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, to instruct the jury whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

Sec. 7.04. **JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE.** (a) Requires the court, in a health care liability claim that involves a claim of negligence arising from the provision of emergency medical care, to instruct the jury to consider, together with all other relevant matters certain facts and circumstances.

(b) Provides that the provisions of Subsection (a) of this section do not apply to medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, or that is unrelated to the original medical emergency.

SECTION 10.06. Amends the heading to Subchapter I, Article 4590i, V.T.C.S., to read as follows:

SUBCHAPTER I. PAYMENT OF MEDICAL OR HEALTH CARE EXPENSES

SECTION 10.07. Amends Subchapter I, Article 4590i, V.T.C.S., by adding Section 9.01, as follows:

Sec. 9.01. **RECOVERY OF PAST MEDICAL OR HEALTH CARE EXPENSES.** Requires recovery of past medical or health care expenses in a health care liability claim to be limited to the amount actually paid or incurred by or on behalf of the claimant.

SECTION 10.08. Amends Section 10.01, Article 4590i, V.T.C.S., as follows:

Sec. 10.01. **LIMITATION ON HEALTH CARE LIABILITY CLAIMS.** (a) Makes changes conforming to Subsection (b) of this section.

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

SECTION 10.09. Amends Section 11.02, Article 4590i, V.T.C.S., by adding Subsections (e) and (f), as follows:

(e) Provides that the limitation on health care liability claims contained in Subsection (a) of this section includes punitive damages.

(f) Requires the limitation on health care liability claims contained in Subsection (a) of this section to be applied on a per-claimant basis.

SECTION 10.10. Amends Section 11.03, Article 4590i, V.T.C.S., as follows:

Sec. 11.03. New heading: **LIMITATION ON NONECONOMIC DAMAGES.** Provides that in an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for noneconomic damages of the physician or health care provider shall be limited to an amount not to exceed \$250,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based. Provides that this section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, (Advance Directives)Health and Safety Code. Deletes text relating to a \$150,000 limit on nonpecuniary damages in the event that Section 11.02(a) of this subchapter is stricken or invalidated.

SECTION 10.11. Amends Subchapter K, Article 4590i, V.T.C.S., by adding Section 11.031, as follows:

Sec. 11.031. **ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES.** (a) Provides that in the event that Section 11.03 of this subchapter is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all damages and losses, other than economic damages, shall be limited to an amount not to exceed \$250,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

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

- (1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;
- (2) at least \$200,000 for each health care liability claim and at least \$600,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and
- (3) at least \$500,000 for each health care liability claim and at least \$1.5 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

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

this subchapter applies:

- (1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;
- (2) at least \$300,000 for each health care liability claim and at least \$900,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and
- (3) at least \$750,000 for each health care liability claim and at least \$2.25 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

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

- (1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;
- (2) at least \$500,000 for each health care liability claim and at least \$1 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and
- (3) at least \$1 million for each health care liability claim and at least \$3 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(e) Authorizes evidence of financial responsibility to be established at the time of judgment by providing proof of the purchase of a certain contract or plan of insurance or coverage.

(f) Provides that this section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code.

SECTION 10.12. Amends Section 11.04, Article 4590i, V.T.C.S., as follows:

Sec. 11.04. New heading: ADJUSTMENT OF LIABILITY LIMIT. Makes conforming changes.

SECTION 10.13. Amends Subchapter L, Article 4590i, V.T.C.S., by adding Section 12.02, as follows:

Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. Authorizes a person bringing a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care to prove that the treatment or lack of

treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows by clear and convincing evidence that the physician or health care provider did not use the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

SECTION 10.14. Amends the heading to Section 13.01, Article 4590i, V.T.C.S., as follows:

Sec. 13.01. New heading: EXPERT REPORT.

SECTION 10.15. Amends Section 13.01, Article 4590i, V.T.C.S., by amending Subsections (a), (b), (i), (j), (k), and (l) and adding Subsections (s), (t), and (u), as follows:

(a) Requires a claimant in a health care liability claim, not later than the 90th day after the date the claim was filed, to serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. Deletes text regarding filing a cost bond, placing cash in an escrow account, or filing an expert.

(b) Requires the court, if, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a) of this section, on the motion of the affected physician or health care provider, to enter an order that:

(1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider, rather than requires the filing of a \$7,500 cost bond with respect to the physician or health care provider not later than the 21st day after the date of the order; and

(2) dismisses the claim, rather than provides that if the claimant fails to comply with the order, the action shall be dismissed for want of prosecution, with respect to the physician or health care provider, with prejudice to the refiling of the claim, rather than subject to reinstatement in accordance with the applicable rules of civil procedure and Subsection (c) of this section.

Makes conforming changes.

(i) Makes conforming changes.

(j) Makes a conforming change.

(k) Makes conforming changes.

(l) Requires a court to grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort, rather than a good faith effort, to comply with the definition of an expert report in Subsection (r)(6) of this section.

(s) Provides that, until a claimant has served the expert report and curriculum vitae, as required by Subsection (a) of this section, all discovery in a health care liability claim is stayed except for the acquisition of the patient's medical records, medical or psychological studies, or tissue samples through:

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

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

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

(t) Provides that if an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a) of this section, the restrictions imposed by Subsection (k) of this section on use of the expert report by any party are waived.

(u) Provides that, notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than one deposition before the expert report is served as required by Subsection (a) of this section.

SECTION 10.16. Amends Section 13.01(r)(5), Article 4590i, V.T.C.S., to redefine "expert."

SECTION 10.17. Amends Sections 14.01(e) and (g), Article 4590i, V.T.C.S., as follows:

(e) Makes a nonsubstantive change.

(g) Redefines "physician."

SECTION 10.18. Amends Subchapter N, Article 4590i, V.T.C.S., by adding Sections 14.02 and 14.03, as follows:

Sec. 14.02. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST HEALTH CARE PROVIDER. (a) Defines "practicing health care."

(b) Provides that in a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person has certain qualifications.

(c) Requires the court, in determining whether a witness is qualified on the basis of training or experience, to consider whether, at the time the claim arose or at the time the testimony is given, the witness has certain qualifications.

(d) Requires the court to apply the criteria specified in Subsections (a), (b), and (c) of this section in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but authorizes the court to depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. Requires the court to state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) Provides that this section does not prevent a health care provider who is a defendant, or an employee of the defendant health care provider, from qualifying as an expert.

(f) Requires a pretrial objection to the qualifications of a witness under this section to be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. Provides that if circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. Requires the court to conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. Requires the hearing, if the objecting party is unable to object in time for it to be conducted before the trial, to be conducted outside the presence of the jury. Provides that this subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

Sec. 14.03. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION IN HEALTH CARE LIABILITY CLAIM. (a) Authorizes a person, except as provided by Subsections (b) and (c) of this section, in a suit involving a health care liability claim against a physician or health care provider, to qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

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

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

(d) Makes conforming changes.

SECTION 10.19. Amends Section 16.01, Article 4590i, V.T.C.S., as follows:

Sec. 16.01. Makes nonsubstantive changes.

SECTION 10.20. Amends Sections 16.02(b) and (c), Article 4590i, V.T.C.S., as follows:

(b) Provides that, subject to Subchapter K of this Act, rather than in a health care liability claim that is not settled within the period specified by Subsection (a) of this section, the judgment must include prejudgment interest on past damages awarded in the judgment, rather than found by the trier of fact, but shall not include prejudgment interest on future damages awarded in the judgment, rather than found by the trier of fact.

(c) Makes nonsubstantive changes.

SECTION 10.21. Amends Article 4590i, V.T.C.S., by adding Subchapters R, S, and T, as follows:

SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

Sec. 18.01. DEFINITIONS. Defines "future damages," "future loss of earnings," and "periodic payments."

Sec. 18.02. SCOPE OF SUBCHAPTER. Provides that this subchapter applies only to an action on a health care liability claim against a physician or health care provider in which the present value of the award of future damages, as determined by the court, equals or exceeds \$100,000.

Sec. 18.03. COURT ORDER FOR PERIODIC PAYMENTS. (a) Requires the court, at the request of a defendant physician or health care provider or claimant, to order that future damages awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

(b) Requires the court to make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages.

(c) Requires the court to specify in its judgment ordering the payment of future damages by periodic payments the recipient of the payments; dollar amount of the payments; interval between payments; and number of payments or the period of time over which payments must be made.

Sec. 18.04. **RELEASE.** Provides that the entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the claimant.

Sec. 18.05. **FINANCIAL RESPONSIBILITY.** (a) Requires the court, as a condition to authorizing periodic payments of future damages, to require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

(b) Requires the judgment to provide for payments to be funded by certain methods.

(c) Requires the court, on termination of periodic payments of future damages, to order the return of the security, or as much as remains, to the defendant.

Sec. 18.06. **DEATH OF RECIPIENT.** (a) Provides that on the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction.

(b) Provides that periodic payments, other than future loss of earnings, terminate on the death of the recipient.

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

(d) Provides that following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant physician or health care provider to make further payments ends and any security given reverts to the defendant.

Sec. 18.07. **AWARD OF ATTORNEY'S FEES.** Requires the court, for purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, to place a total value on the payments based on the claimant's projected life expectancy, and reduce the amount in Subdivision (1) to present value.

SUBCHAPTER S. ATTORNEY'S FEES

Sec. 19.01. **DEFINITION.** Defines "recovered."

Sec. 19.02. **APPLICABILITY.** Provides that the limitations in this subchapter apply without regard to whether the recovery is by settlement, arbitration, or judgment, or the person for whom the recovery is sought is an adult, a minor, or an incapacitated person.

Sec. 19.03. **PERIODIC PAYMENTS.** Requires the court, if periodic payments are recovered by the claimant, to place a total value on these payments based on the claimant's projected life expectancy and then reduce this amount to present value for purposes of computing the award of attorney's fees.

SUBCHAPTER T. DECLARATORY JUDGMENTS; INJUNCTIONS; APPEALS

Sec. 20.01. **APPLICABILITY.** Provides that this subchapter applies only to an

amendment to this Act that is effective on or after January 1, 2003.

Sec. 20.02. DECLARATORY JUDGMENT. Provides that the constitutionality and other validity under the state or federal constitution of all or any part of an amendment to this Act may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the amendment or a part of the amendment affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.

Sec. 20.03. ACCELERATED APPEAL. (a) Provides that an appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining, under Section 20.02 of this subchapter, that all or any part of an amendment to this Act is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(b) Provides that if the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

Sec. 20.04. INJUNCTIONS. Authorizes a district court in Travis County to grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of an amendment to this Act.

Sec. 20.05. DIRECT APPEAL. (a) Provides that there is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of any amendment to this Act.

(b) Provides that the direct appeal is an accelerated appeal.

(c) Provides that this section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

Sec. 20.06. STANDING OF AN ASSOCIATION OR ALLIANCE TO SUE. (a) Provides that an association or alliance has standing to sue for and obtain the relief described by Subsection (b) of this section if it is alleged that the association or alliance has more than one member who has standing to sue in the member's own right; the interests the association or alliance seeks to protect are germane to a purpose of the association or alliance; and the claim asserted and declaratory relief requested by the association or alliance relate to all or a specified part of the amendment involved in the action being found constitutional or unconstitutional on its face, or otherwise found valid or invalid on its face, under the state or federal constitution.

(b) Provides that the association or alliance has standing to sue for, obtain, and appeal for certain orders and judgments.

Sec. 20.07. RULES FOR APPEALS. Provides that an appeal under this subchapter, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 10.22. Amends Section 84.003, Civil Practice and Remedies Code, by adding Subdivision (6), to define "hospital system."

SECTION 10.23. Amends Section 84.003, Civil Practice and Remedies Code, by adding Subdivision (7) to define "person responsible for the patient." guardian of the patient; or

SECTION 10.24. Amends Section 84.004, Civil Practice and Remedies Code, by adding Subsection (f) to provide that Subsection (c) applies even if the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection, or the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.25. Amends Chapter 84, Civil Practice and Remedies Code, by adding Section 84.0065, as follows:

Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a) Provides that, except as provided by Section 84.007, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of \$500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient, signs a written statement that acknowledges certain facts.

(b) Provides that Subsection (a) applies even if the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection, or the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.26. Amends Article 5.15-1, Insurance Code, by adding Section 11, as follows:

Sec. 11. VENDOR'S ENDORSEMENT. Prohibits an insurer from excluding or otherwise limiting coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer, as that term is defined by Section 82.001, Civil Practice and Remedies Code. Provides that a physician or health care provider shall be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

SECTION 10.27. Repealers:

- (1) Section 11.02(c) (relating to the Stower's Doctrine), Article 4590i, V.T.C.S.;
- (2) Sections 13.01(c) (relating to reinstatement of a dismissed claim), (d) (relating to provision of information on expert reports), (e) (relating to failure to comply with information provision requirements), (f) (relating to time extensions), (g) (relating to failure to comply with deadlines), (h) (relating to agreement to time extensions), (m) (relating to release of cost bond or cash deposit), (n) (relating to nonsuit and refiling a claim), (o) (relating to a claimant without an attorney), and (r)(3) (defining a claimant), Article 4590i, V.T.C.S.;
- (3) Section 16.02(a) (relating to prejudgment interest), Article 4590i, V.T.C.S.; and
- (4) Section 242.0372 (Liability Insurance Coverage), Health and Safety Code.

SECTION 10.28. (a) Sets forth legislative findings regarding health care liability claims.

(b) Sets forth legislative intent regarding health care liability claims.

SECTION 10.29. (a) Makes application of Subchapter S, Article 4590i, V.T.C.S., as added by this article, prospective to January 1, 2004.

(b) Provides that this article does not make any change in law with respect to the

adjustment under Section 11.04, Article 4590i, V.T.C.S., of the liability limit prescribed in Section 11.02(a) of that Act, and that law is continued in effect only for that liability limit.

ARTICLE 10A. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR
PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION 10A.01. Amends Chapter 5, Insurance Code, by adding Subchapter R, as follows:

SUBCHAPTER R. RATES FOR PROFESSIONAL LIABILITY INSURANCE
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. Sets forth legislative findings.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) Sets forth insurers to which this subchapter applies.

(b) Sets forth legislative intent.

(c) Provides that this subchapter applies only to professional liability insurance for physicians and health care providers.

Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Requires the commissioner of insurance (commissioner), not later than September 1 of each year, to hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Requires the commissioner, not later than October 1 of each year, to issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) Requires the commissioner to set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and authorizes the commissioner to set different rate reductions for different types of policies. Requires the commissioner's order establishing the rate reductions to be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Requires rates resulting from the rate reductions imposed by this article to comply with Section 3(d), Article 5.15-1, of this code.

(d) Provides that the rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. Requires an insurer, as defined by Article 5.162 of this code, to apply the rate reduction to the rates used by the insurer.

(e) Provides that any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. Requires an insurer, during the pendency of the appeal or challenge, to use rates that reflect the rate reduction provided in the order being appealed or challenged. Provides that the rate reduction is lawful

and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Provides that, except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Requires the commissioner, notwithstanding Articles 5.13-2 and 5.15-1 of this code, after notice and opportunity for hearing, to disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) Authorizes the commissioner to approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on a preponderance of the evidence presented by an insurer that certain facts are true.

Sec. 3. DURATION OF REDUCTION. Provides that unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. Authorizes the commissioner, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, to modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Requires that, notwithstanding Chapter 40 of this code, a rulemaking hearing under this article to be held before the commissioner or the commissioner's designee. Provides that the rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. Provides that a rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. Requires the commissioner to assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. (a) Prohibits an insurer, if a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional from charging more

for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured, provided that the rate was adequate and not artificially inflated prior to the determination of constitutionality. Authorizes an insurer to petition the commissioner for an exception to the rate reduction. Provides that a proceeding under this article is a contested case under Chapter 2001, Government Code. Prohibits the commissioner from granting the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. Authorizes the commissioner, if the insurer meets this evidentiary burden, to grant the exception only to the extent that the reduction is confiscatory. Provides that the contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.

(b) Prohibits an insurer, if the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, from charging an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.

(c) Prohibits an insurer, if the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, from charging an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.

Art. 5.165. FILING OF RATE INFORMATION WITH DEPARTMENT; REPORT TO LEGISLATURE

Sec. 1. PURPOSE. Sets forth the purpose of this article.

Sec. 2. DEFINITIONS. Defines "insurer," "supplementary rating information," and "security" or "securities."

Sec. 3. RATE INFORMATION. (a) Requires insurers to file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner in accordance with the requirements determined by the commissioner under this article.

(b) Requires filings made by each insurer to be sufficient to respond to the commissioner's request for information under this article and to provide both current rates and estimated rates for the year following the required filing date of this article based on information reasonably known to the insurer at the time of filing.

(c) Requires the insurer to file, in a format specified by the commissioner, including an electronic format, certain information on rates, actuarial support, fees, losses, costs, computer models, and underwriting guidelines.

- (d) Requires the commissioner to determine the date on which the filing is due.
- (e) Authorizes the commissioner to require additional information as provided by Section 4 of this article.
- (f) Requires the commissioner to issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.
- (g) Provides that the commissioner is not required to hold a hearing before issuing the order required under Subsection (f) of this section.
- (h) Requires the commissioner to notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.

Sec. 4. **ADDITIONAL INFORMATION.** Authorizes the commissioner, after the initial rate submission under Section 3 of this article, to require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.

Sec. 5. **USE OF FILED RATE INFORMATION.** (a) Provides that information filed by an insurer with the Texas Department of Insurance (TDI) under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code, except that the information may be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes. Requires information disclosed pursuant to Section 552.008, Government Code, to be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. Prohibits the release of the information to the public except in summary form in the report required under Section 6 of this article.

- (b) Provides that Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Provides that confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. Provides that if an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.

Sec. 6. **REPORT.** (a) Requires the commissioner, on a date determined by the commissioner, to submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. Authorizes the report to be created based on a sample of the information provided under Section 3 of this article.

- (b) Requires the report required under this section to provide a summary review of the rates currently charged and estimated to be charged over the year following the date of the report, presented in a manner that protects the identity of individual insurers to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory, and to assist the legislature in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in this state.

Sec. 7. NOTIFICATION; NONCOMPLIANCE. Requires the commissioner to notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers that the commissioner requested to make the rate filings under this article and the names of the insurers that did not respond in whole or in part to the commissioner's request. Requires this notification to be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(f) of this article.

Sec. 8. APPLICATION OF CERTAIN LAW. Provides that Chapter 40 of this code does not apply to an action of the commissioner under Section 3(f) of this article.

Sec. 9. FAILURE TO COMPLY. Provides that an insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 and 84 of this code.

SECTION 10A.02. Requires the commissioner to commence a hearing under Section 1, Article 5.163, Insurance Code, as added by this article, on September 1, 2003, and to issue rules mandating any appropriate rate reductions under Section 1, Article 5.163, Insurance Code, not later than October 1, 2003.

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

SECTION 11.01. Amends Sections 108.002(a) and (b), Civil Practice and Remedies Code, as follows:

- (a) Removes text regarding a health care provider being personally liable for certain damages.
- (b) Makes a conforming change.

SECTION 11.02. Amends Chapter 261, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. DEFINITION. Defines "municipal hospital management contractor."

Sec. 261.052. LIABILITY OF MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. Provides that a municipal hospital management contractor and any employee of the contractor are, while performing services under the contract for the benefit of the hospital, employees of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 11.03. Amends Section 285.071, Health and Safety Code, to redefine hospital district management contractor."

SECTION 11.04. Repealer: Section 108.002(c) (defining a provider of health care), Civil Practice and Remedies Code.

ARTICLE 12. JUROR QUALIFICATION

SECTION 12.01. Amends Section 62.105, Government Code, as follows:

- Sec. 62.105. (a) Makes a nonsubstantive change.

(b)(1) Provides that in an action seeking damages for personal injury or death, a person's answer in voir dire that the person could not award a certain sum of money damages based on a hypothetical set of circumstances does not, in and of itself, establish a bias or prejudice in favor of or against a party in the action that warrants disqualification under Subsection (a)(4).

(2) Defines "side." Requires a trial court in a civil action to follow certain procedures regarding voir dire. Provides that the time allocated in this subsection shall not include time consumed in making preemptory challenges or challenges for cause to jurors or in making or responding to objections. Authorizes the Texas Supreme Court (supreme court) to adopt rules consistent with the provisions of this section. Provides that to the extent that any rule conflicts with the provisions of this section, this section controls.

ARTICLE 13. EXEMPLARY DAMAGES

SECTION 13.01. Amends Section 41.001(1), Civil Practice and Remedies Code, to redefine "claimant."

SECTION 13.02. Amends Section 41.008(b), Civil Practice and Remedies Code, to make clarifying changes.

ARTICLE 14. ASSIGNMENT OF JUDGES

SECTION 14.01. Amends Chapter 74B, Government Code, by adding Section 74.0241, as follows:

Sec. 74.0241. ASSIGNMENT OF JUDGES FOR HEALTH CARE LIABILITY CLAIMS. (a) Defines "health care liability claim."

(b) Requires the supreme court, notwithstanding any other law or rule, and on motion of a party to a health care liability claim, to assign a judge for the health care liability claim and any action or suit that includes the claim. Requires a motion to assign a judge to be made under certain guidelines.

(c) Requires the supreme court to provide each party to the health care liability claim and any action or suit that includes the claim a list of the judges from whom the assigned judge will be selected.

(d) Authorizes certain groups, within a period specified by the supreme court, to file with the supreme court a written objection to one of the judges on the list provided under Subsection (c) who is not a regular judge in the county in which the suit is pending.

(e) Provides that after the period specified for filing an objection under Subsection (d) has expired, no further objection may be made. Requires the supreme court to assign one judge on the list who has not been timely objected to under Subsection (d) to serve as the assigned judge for the health care liability claim and any action or suit that includes the claim.

(f) Provides that, notwithstanding any other law or rule, the supreme court has authority to issue any rule necessary or appropriate to implement this section.

ARTICLE 15. CLAIMS AGAINST SCHOOL DISTRICT TRUSTEES AND EMPLOYEES OF ELEMENTARY AND SECONDARY SCHOOLS

SECTION 15.01. Amends Chapter 11C, Education Code, by adding Section 11.064, as follows:

Sec. 11.064. CIVIL IMMUNITY. Provides that a member of the board of trustees of a school district is considered to be a professional employee of the district for purposes of Chapter 22B.

SECTION 15.02. Amends Chapter 22B, Education Code, by amending Section 22.051 and adding Sections 22.0511-22.0516, as follows:

Sec. 22.051. DEFINITION. Defines "professional employee of a school district."

Sec. 22.0511. New heading: IMMUNITY FROM LIABILITY. Redesignated from existing Section 22.051. Deletes definition of "professional employee."

Sec. 22.0512. PROTECTION UNDER FEDERAL LAW. (a) Defines "school" and "teacher."

(b) Entitles a teacher, in addition to the immunity provided by Section 22.0511 and other state law, to any immunity and other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.) and its subsequent amendments.

(c) Provides that this section may not be construed as limiting or abridging any immunity or protection afforded a teacher under state law.

Sec. 22.0513. NOTICE OF CLAIM. (a) Requires a person filing an action against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment, not later than the 90th day before the date the claim is filed, to give written notice to the employee of the claim, reasonably describing the act from which the claim arises.

(b) Authorizes a professional employee of a school district against whom an action is pending who did not receive written notice as required by Subsection (a) to file a plea in abatement not later than the 30th day after the date the employee files an original answer in the court in which the action is pending.

(c) Requires the court to abate the action if the court, after a hearing, finds that the employee is entitled to an abatement because notice was not provided as required by this section.

(d) Provides that an abatement under Subsection (c) continues until the 90th day after the date written notice is given to the employee as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. Prohibits a person from filing an action against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment unless the person has exhausted any remedies provided by the school district for resolving the complaint.

Sec. 22.0515. ALTERNATIVE DISPUTE RESOLUTION. Authorizes a court in which an action is brought against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment to refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0516. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. Entitles a professional employee of a school district, in an action against the employee involving an act that is incident to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, to recover attorney's fees and court costs from the plaintiff if the employee is immune from liability under this subchapter.

SECTION 15.03. Amends Section 22.053(a), Education Code, to make a conforming change.

SECTION 15.04. Amends Section 30.024(c), Education Code, to make conforming changes.

SECTION 15.05. Amends Section 30.055(c), Education Code, to make conforming changes.

SECTION 15.06. Amends Section 105.301(e), Education Code, to make conforming changes.

SECTION 15.07. Makes application of this article prospective to September 1, 2003.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

SECTION 16.01. Amends Chapter 32B, Human Resources Code, by adding Section 32.060, as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) Sets forth findings that are not admissible as evidence in a civil action.

(b) Provides that this section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Provides that, notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if the evidence meets certain criteria.

SECTION 16.02. Amends Chapter 242A, Health and Safety Code, by adding Section 242.017, as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) Sets forth findings that are not admissible as evidence in a civil action.

(b) Provides that this section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Provides that, notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if the evidence meets certain criteria.

SECTION 16.03. Repealers:

(1) Sections 32.021(i) (relating to the admissibility of certain institutional records) and (k) (relating to testimony of a surveyor or investigator), Human Resources Code; and

(2) Section 242.050 (Drug Testing of Employees), Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 16.04. Makes application of this article prospective to the effective date of this article.

ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 17.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 149, as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO

CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. Defines “asbestos claim,” “corporation,” “successor asbestos-related liabilities,” and “transferor.”

Sec. 149.002. APPLICABILITY. (a) Provides that the limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) Sets forth claims to which the limitation in Section 149.003 does not apply.

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES.

(a) Provides that except as provided by Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation and any policies of insurance. Provides that the corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) Provides that if the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) Authorizes a corporation to establish the fair market value of total gross assets for the purpose of the limitation under Section 149.003 through any method reasonable under the circumstances, including certain methods.

(b) Provides that total gross assets include intangible assets.

Sec. 149.005. ADJUSTMENT. (a) Sets forth a rate formula for the annual increase of the fair market value of total gross assets at the time of a merger or consolidation.

(b) Provides that the rate in Subsection (a) is not compounded.

(c) Provides that the adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

Sec. 149.006. SCOPE OF CHAPTER. Requires the courts in this state to apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 17.02. Provides that Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.

ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

SECTION 18.01. Amends Sections 84.004(a) and (c), Civil Practice and Remedies Code, as follows:

(a) Removes the specification that a volunteer who is immune from civil liability under

this section be an officer, director, or trustee of an organization.

(c) Removes the specification that a volunteer health care provider who is immune from civil liability under this section be serving as a direct service volunteer of a charitable organization. Removes the caveat that the volunteer be acting in good faith and in the course of scope of the volunteer's duties or functions within the organization. Makes nonsubstantive changes.

SECTION 18.02. Amends Section 84.007(a), Civil Practice and Remedies Code, to remove the word "wantonly."

SECTION 18.03. Repealers:

(1) Section 84.003(4) (defining "good faith"), Civil Practice and Remedies Code; and

(2) Section 84.004(b) (relating to a direct service volunteer at a charitable organization), Civil Practice and Remedies Code.

SECTION 18.04. Makes application of this article prospective to the effective date of this article.

ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS

SECTION 19.01. FINDINGS AND PURPOSE. Sets forth legislative findings and purpose.

SECTION 19.02. AMENDMENT. Amends Chapter 78, Civil Practice and Remedies Code, by adding Subchapter C, as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. Defines "emergency response," volunteer fire department," and "volunteer fire fighter."

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. Provides that this subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of a volunteer fire department while involved in or providing an emergency response, or a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. Provides that a volunteer fire department is liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101, and is entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. Provides that a volunteer fire fighter is liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable, and entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

SECTION 19.03. TRANSITION. Makes application of Chapter 78C, Civil Practice and Remedies Code, as added by this article, prospective to the effective date of this article.

ARTICLE 20. CERTAIN PROVISIONS IN CONTRACTS

SECTION 20.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 145, as follows:

CHAPTER 145. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 145.001. DEFINITION. Defines "construction contract."

Sec. 145.002. AGREEMENT VOID AND UNENFORCEABLE. (a) Provides that, except as provided by Subsection (b), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that is caused by, results from, or arises from certain people or circumstances.

(b) Authorizes a covenant, promise, or agreement, contained in a construction contract, or in an agreement collateral to or affecting a construction contract, to provide for a person to indemnify, hold harmless, or defend another person against loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of certain persons.

Sec. 145.003. CERTAIN LAWS AND CONTRACTS UNAFFECTED. (a) Provides that this chapter does not affect the validity and enforceability of an insurance contract; benefits and protections under the workers' compensation laws of this state; or any statutory right of contribution.

(b) Provides that this chapter does not affect a contract covered by Section 2252.902, Government Code.

Sec. 145.004. WAIVER PROHIBITED. Prohibits this chapter from being waived by contract or otherwise.

SECTION 20.02. Makes application of this article prospective to the effective date of this article.

ARTICLE 21. EFFECTIVE DATE

SECTION 21.01. (a) Effective date: for all articles of this Act, other than Article 10, September 1, 2003.

(b) Effective date of Article 10 of this Act: upon passage or September 1, 2003.

(c) Makes application of this Act, except as otherwise provided in Articles 10, 15, 18, 19, and 20, prospective.