

# HOUSE JOURNAL

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SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

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THIRTY-SIXTH DAY — WEDNESDAY, MARCH 19, 2003

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 50).

Present — Mr. Speaker; Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Absent — Edwards; Solis.

The invocation was offered by Reverend David Meeker Williams, pastor, Park Place Methodist Church, Houston, as follows:

O God, you are the one who, out of nothing, brought everything that is; who, out of the night, made to rise this stunning new day. You are the one who always creates light where there is darkness. You create hope where there is only despair and new life where there is no life.

But Lord, this is a day of deep anxiety for your children throughout this global community—an increasingly small community where all wars are civil wars and every issue is a family issue.

Today we ask that you open us to your presence and direct our powers and our passions, so that in our little part of the world we might be partners with you in creating life where there is death, in putting flesh of action on bare-boned intentions, in lighting fires against a dark night of indifference, and in throwing

bridges of care across canyons of loneliness and despair. So that at the end of this day we might look on creation together with you and behold, and call it very good. Amen.

(Edwards now present)

### **CAPITOL PHYSICIAN**

The speaker recognized Representative Naishtat who presented Dr. M. W. Blackstock of Austin as the "Doctor for the Day."

The house welcomed Dr. Blackstock and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

#### **HR 530 - ADOPTED (by Griggs)**

Representative Griggs moved to suspend all necessary rules to take up and consider at this time **HR 530**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 530**, Welcoming Leadership Northeast Class of 2003 from Tarrant County to the Capitol on March 19, 2003.

**HR 530** was read and was adopted without objection.

On motion of Representative Truitt, the names of all the members of the house were added to **HR 530** as signers thereof.

#### **HR 379 - ADOPTED (by Flynn)**

Representative Flynn moved to suspend all necessary rules to take up and consider at this time **HR 379**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 379**, Recognizing March 19, 2003, as Van Zandt County Day at the State Capitol.

**HR 379** was adopted without objection.

### **INTRODUCTION OF GUESTS**

The speaker recognized Representative Flynn who introduced a delegation from Van Zandt County.

**HR 508 - ADOPTED**  
**(by Hopson)**

Representative Hopson moved to suspend all necessary rules to take up and consider at this time **HR 508**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 508**, Recognizing March 18, 2003, as Pharmacy Day at the State Capitol.

**HR 508** was adopted without objection.

**HR 507 - ADOPTED**  
**(by R. Cook)**

Representative R. Cook moved to suspend all necessary rules to take up and consider at this time **HR 507**.

(Hill in the chair)

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 507**, Recognizing March 19, 2003, as Firefighters Day at the State Capitol.

(Speaker in the chair)

**HR 507** was adopted without objection.

**HR 361 - ADOPTED**  
**(by Allen)**

Representative Allen moved to suspend all necessary rules to take up and consider at this time **HR 361**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 361**, In memory of J. C. Swadley of Grand Prairie.

**HR 361** was unanimously adopted by a rising vote.

(Solis now present)

**HR 529 - ADOPTED**  
**(by Hughes)**

Representative Hughes moved to suspend all necessary rules to take up and consider at this time **HR 529**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 529**, Honoring M. O. "Mo" and Ada Wells of Scroggins on their 80th wedding anniversary.

**HR 529** was adopted without objection.

**HCR 106 - ADOPTED  
(by Homer)**

Representative Homer moved to suspend all necessary rules to take up and consider at this time **HCR 106**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HCR 106**, Recognizing March 19, 2003, as Paris-Lamar County Day at the State Capitol.

**HCR 106** was adopted without objection.

**BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER**

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 14).

**HR 509 - ADOPTED  
(by Stick, Rodriguez, Naishtat, Keel, Baxter, et al.)**

Representative Stick moved to suspend all necessary rules to take up and consider at this time **HR 509**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 509**, Honoring the Austin Fire Department.

**HR 509** was adopted without objection.

**INTRODUCTION OF GUESTS**

The speaker recognized Representative Stick who introduced members of the Austin Fire Department.

**HR 261 - ADOPTED  
(by Kuempel)**

Representative Kuempel moved to suspend all necessary rules to take up and consider at this time **HR 261**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 261**, In memory of Beatrice Ceballos Longoria of Seguin.

(Hunter in the chair)

**HR 261** was unanimously adopted by a rising vote.

**HR 336 - ADOPTED**  
**(by Kuempel)**

Representative Kuempel moved to suspend all necessary rules to take up and consider at this time **HR 336**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 336**, In memory of Brent Kyle Bischoff of Corpus Christi.

(Speaker in the chair)

**HR 336** was unanimously adopted by a rising vote.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Ways and Means, meeting is canceled for today.

**MAJOR STATE CALENDAR**  
**SENATE BILLS**  
**THIRD READING**

The following bills were laid before the house and read third time:

**SB 104 ON THIRD READING**  
**(Allen, Capelo, Pitts, Lewis, and Nixon - House Sponsors)**

**SB 104**, A bill to be entitled An Act relating to the regulation and enforcement of the practice of medicine by the Texas State Board of Medical Examiners.

A record vote was requested.

**SB 104** was passed by (Record 51): 147 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis;

Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent — Bailey.

**MAJOR STATE CALENDAR  
HOUSE BILLS  
SECOND READING**

The following bills were laid before the house and read second time:

**CSHB 4 ON SECOND READING  
(by Nixon, Allen, Capelo, et al.)**

**CSHB 4**, A bill to be entitled An Act relating to reform of certain procedures and remedies in civil actions.

**Amendment No. 1**

Representative Nixon offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 1

Amend **CSHB 4** as follows:

(1) On page 2, line 3, strike "and".

(2) On page 2, line 4, between "jurisdiction" and the period, insert:  
"; and

(D) has rulemaking authority involving the subject matter of the disputed claim".

(3) On page 8, strike lines 19 and 20 and substitute:

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

(4) On page 9, between lines 18 and 19, insert:

(e) 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.

(5) On page 9, line 19, strike "Sections 51.014(a) and (b)" and substitute "Sections 51.014(a), (b), and (c)".

(6) On page 11, line 3, strike "Subsection (a)(3)" and substitute "Subsection (a)(3), (5), or (8)".

(7) On page 11, between lines 4 and 5, insert:

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

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

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

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

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

(8) On page 11, strike lines 5 and 6 and substitute:

SECTION 1.05. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) 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.

SECTION 1.06. This article applies only to a suit commenced on or after the effective date of this article.

(9) On page 18, strike lines 25 and 26 and substitute:

SUBCHAPTER F. CONSOLIDATION OF MULTIDISTRICT LITIGATION  
FOR PRETRIAL PROCEEDINGS

(10) Beginning on page 32, strike from line 22 through page 33, line 13, and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

(11) On page 46, strike line 13 and substitute:

ARTICLE 9. BENEVOLENT GESTURES

SECTION 9.01. Section 18.061(c), Civil Practice and Remedies Code, is repealed.

SECTION 9.02. This article applies only to the admissibility of a communication in a proceeding that begins on or after the effective date of this article. The admissibility of a communication in a proceeding that began before the effective date of the article is governed by the law applicable to the admissibility of the communication immediately before the effective date of this article, and that law is continued in effect for that purpose.

(12) On page 46, line 25, strike "nonprofit".

(13) On page 47, strike lines 12 and 13 and substitute: Section 1396n(c), as amended; [~~or~~]

(xii) a nursing home; or

(xiii) a chiropractor.

(14) On page 47, lines 26 to 27, strike "practice or procedure".

(15) On page 50, strike lines 15 through 20 and substitute:

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

(16) On page 50, line 23, strike "Section 1.04" and substitute "Sections 1.04 and 1.05".

(17) On page 51, strike lines 2 through 6 and substitute:

(b) 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) Notwithstanding Section 22.004, Government Code, and except as otherwise provided by this Act, the supreme court may not amend or adopt rules in conflict with this Act.

(d) The district courts and statutory county courts in a county may not adopt local rules in conflict with this Act.

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

(18) On page 55, line 7, strike "based" and substitute: based. 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

(19) On page 58, between lines 26 and 27, insert:

(f) 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.

(20) On page 60, line 9, strike "(s) and (t)" and substitute "(s), (t), and (u)".

(21) On page 60, strike line 12 and substitute:

later than the 90th day after the date the claim was ~~is~~ filed,

(22) On page 63, between lines 5 and 6, insert:

(u) 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.

(23) On page 70, line 18, strike "Q,".

(24) Beginning on page 70, strike from line 20 through page 71, line 27.

(25) On page 78, between lines 25 and 26, insert a new SECTION 10.22 to read as follows and renumber subsequent sections appropriately:

SECTION 10.22. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

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

(26) On page 80, between lines 13 and 14, insert a new SECTION 10.24 to read as follows and renumber subsequent SECTIONS appropriately:

SECTION 10.24. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

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

(2) 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.



(27) On page 80, line 16, between the period and "Except", insert "(a)".

(28) On page 81, between lines 3 and 4, insert:

(b) Subsection (a) applies even if:

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

(2) 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.

(29) On page 88, strike lines 18 and 19 and substitute:

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

(30) On page 92, strike lines 9 and 10 and substitute:

SECTION 13.02. Section 41.008(b), Civil Practice and Remedies Code, is amended to read as follows:

(31) Beginning on page 92, strike from lines 19 through page 93, line 17.

### **Amendment No. 2**

Representative Nixon offered the following amendment to Amendment No. 1:

Amend Floor Amendment No. 1, **CSHB 4**, as follows:

Amend item (10), page 2, of Floor Amendment 1, to insert between "appropriately" and the period as follows:

, and beginning on page 35, strike from line 12 through line 23 and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

Amendment No. 2 was adopted without objection.

### **BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER**

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 9).

#### **CSHB 4 - (consideration continued)**

### **Amendment No. 3**

Representative Dunnam offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Nixon to **CSHB 4** beginning on page 2, by striking line 26 through page 3, line 6.

Representative Nixon moved to table Amendment No. 3.

A record vote was requested.

The motion to table prevailed by (Record 52): 81 Yeas, 64 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flores;

Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Nixon; Paxton; Phillips; Pitts; Riddle; Rose; Seaman; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Smith, T.; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Crownover; Haggerty; Mowery.

#### STATEMENTS OF VOTE

When Record No. 52 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

When Record No. 52 was taken, I was in the house but away from my desk. I would have voted yes.

Mowery

#### Amendment No. 4

Representative Eiland offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 1, amendment packet) by striking Item (1) of the amendment.

Amendment No. 4 was withdrawn.

#### Amendment No. 5

Representative Eiland offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 2, amendment packet) by striking Item (11) of the amendment.

Representative Nixon moved to table Amendment No. 5.

The motion to table was withdrawn.

Amendment No. 5 was withdrawn.

**Amendment No. 6**

Representative Eiland offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 3, amendment packet) by striking Item (12) of the amendment.

Representative Nixon moved to table Amendment No. 6.

The motion to table prevailed.

**Amendment No. 7**

Representative Eiland offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 3, amendment packet) by striking Item (14) of the amendment.

Representative Nixon moved to table Amendment No. 7.

A record vote was requested.

The motion to table prevailed by (Record 53): 93 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flores; Flynn; Garza; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; Villarreal; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Gallego; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, D.; Jones, J.; Laney; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Bailey; Goodman; Noriega; Talton.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 53. I intended to vote yes.

Ellis

When Record No. 53 was taken, my vote failed to register. I would have voted no.

Noriega

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

#### CSHB 4 - (consideration continued)

##### Amendment No. 8

Representative Eiland offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 4, amendment packet) by striking Item (18) of the amendment.

Representative Nixon moved to table Amendment No. 8.

A record vote was requested.

The motion to table prevailed by (Record 54): 89 Yeas, 53 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Flores; Flynn; Gattis; Geren; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ellis; Farrar; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Bailey; Farabee; Goodman; Goolsby; Homer; Hopson.

#### STATEMENTS OF VOTE

When Record No. 54 was taken, I was in the house but away from my desk. I would have voted yes.

Goolsby

When Record No. 54 was taken, I was in the house but away from my desk. I would have voted yes.

Homer

When Record No. 54 was taken, I was in the house but away from my desk. I would have voted yes.

Hopson

### **Amendment No. 9**

Representatives Uresti and Solis offered the following amendment to Amendment No. 1:

Amend Amendment 1 by Nixon to **CSHB 4** (page 1, amendment packet) on page 6, following line 9, by inserting the following new item, appropriately numbered:

( ) On page 95, between lines 4 and 5, insert:

(g) The system for assigning judges established by this section shall be funded only through appropriations made to the supreme court.

Representative Nixon moved to table Amendment No. 9.

A record vote was requested.

The motion to table prevailed by (Record 55): 85 Yeas, 60 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Telford; Thompson; Turner; Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Hughes; Noriega; Villarreal.

### STATEMENTS OF VOTE

When Record No. 55 was taken, I was in the house but away from my desk. I would have voted yes.

Hughes

When Record No. 55 was taken, my vote failed to register. I would have voted no.

Noriega

### COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Agriculture and Livestock, meeting is canceled for today.

Urban Affairs, meeting is canceled for today.

Elections, meeting is canceled for today.

Public Education, Subcommittee on Charter Schools, meeting is canceled for today.

### CSHB 4 - (consideration continued)

Amendment No. 1, as amended, was adopted.

#### Amendment No. 10

Representative Nixon offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 7

Amend **CSHB 4** by adding a new article, appropriately numbered, to read as follows and renumbering subsequent articles and sections appropriately:

#### ARTICLE \_\_. LEGISLATIVE OFFICIALS

SECTION \_\_.01. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.059 to read as follows:

Sec. 572.059. IMMUNITY OF STATE AND LOCAL OFFICERS ACTING IN LEGISLATIVE CAPACITY. (a) For purposes of this section, an officer acts in a legislative capacity if the officer:

(1) takes an action permitted by law regarding a legislative measure in the officer's official capacity; or

(2) proposes, endorses, or expresses support for or against a legislative measure or takes any action permitted by law to support or oppose a legislative measure.

(b) In this section, "legislative measure" includes a bill, resolution, proposed constitutional amendment or charter amendment subject to a vote of the electorate, ordinance, including a zoning ordinance, order, rule, or policy of general application. For purposes of this subsection, a measure that is applicable to a class or subset of persons or matters that is defined in general terms without naming the particular persons or matters is a measure of general application.

(c) A state or local officer acting in a legislative capacity may not be held liable for:

(1) the officer's actions taken in a legislative capacity;

(2) the effect on any person of the officer's actions taken in a legislative capacity, including the effect of a legislative measure to which those actions applied; or

(3) a breach of duty to disclose to any person the officer's actions, or the substance or potential effects of a legislative measure to which those actions applied, in connection with the officer's practice of or employment in a licensed or regulated profession or occupation.

(King in the chair)

#### **Amendment No. 10 - Point of Order**

Representative Dutton raised a point of order against further consideration of Amendment No. 10 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The point of order was withdrawn.

Amendment No. 10 was withdrawn.

#### **Amendment No. 11**

Representative Thompson offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 10

Amend **CSHB 4** by striking all below the enacting clause and substituting the following:

"SECTION 1. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 26 to read as follows:

Section 26.001. The Legislature of Texas, representing the people of Texas, believes our state insurance rates shouldn't be the highest in the United States of America.

SECTION 2. This act takes effect September 1, 2003."

#### **Amendment No. 12**

Representatives Thompson and Y. Davis offered the following amendment to Amendment No. 11:

(1) Amend Amendment No. 11 to **CSHB 4** on line 1, page 1, by striking, "by striking all below the enacting clause and substituting the following:" and substitute "by adding a new Section 1 to **CSHB 4** to read as follows and renumber subsequent sections:

"SECTION 1. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 26 to read as follows:

Sec. 26.001. The Legislature of Texas, representing the people of Texas, believes our state insurance rates shouldn't be the highest in the United States of America."

(2) Amend Title 2, Subtitle A, Chapter 38, Insurance Code, by adding a new Section 38.164 to read as follows:

"Sec. 38.164. CAPS ON PROFESSIONAL LIABILITY INSURANCE PREMIUMS. No insurer selling professional liability insurance policies in the State may increase premiums before January 1, 2008."

Amendment No. 12 was adopted without objection.

### COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Natural Resources, meeting is canceled for today.

### CSHB 4 - (consideration continued)

#### Amendment No. 13

Representatives Thompson and Y. Davis offered the following amendment to Amendment No. 11:

Amend Amendment 11 by Thompson to **CSHB 4** (as amended) in added Section 38.164, Civil Practice and Remedies Code, following the period at the end of the section, by inserting "Notwithstanding any other law, this section applies to each insurer authorized to issue insurance in this state, including a trust established under Article 21.49-4, Insurance Code."

Amendment No. 13 was adopted without objection.

Representative Nixon moved to table Amendment No. 11.

A record vote was requested.

The motion to table prevailed by (Record 56): 92 Yeas, 55 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King(C); Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise.

Present, not voting — Mr. Speaker.

Absent — Wolens.



**Amendment No. 14**

Representative Puente offered the following amendment to **CSHB 4**:  
 Floor Packet Page No. 11

Substitute the following for **CSHB 4**.

A BILL TO BE ENTITLED  
 AN ACT

relating to health care liability claims.

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

SECTION 1. Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (3), (4), and (8) and adding Subdivisions (10)-(22) to read as follows:

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

- (i) ~~as~~ a registered nurse;
- (ii) a ~~h~~ hospital;
- (iii) a nonprofit hospital system;
- (iv) a ~~h~~ dentist;
- (v) a hospice;
- (vi) a ~~h~~ podiatrist;
- (vii) a ~~h~~ pharmacist;
- (viii) an emergency medical services provider;
- (ix) an assisted living facility;
- (x) a home and community support services agency;
- (xi) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), as amended; ~~h~~ or
- (xii) a nursing home.

(B) The term includes:

- (i) ~~h~~ an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and
- (ii) an employee, independent contractor, or agent of a health care provider or physician ~~thereof~~ acting in the course and scope of the ~~his~~ employment or contractual relationship.

(4) "Health care liability claim" means a cause of action against a health care provider or physician arising out of or related to ~~for~~ treatment, lack of treatment, or other claimed departure from accepted standards of medical care, ~~or~~ health care, or safety or professional or administrative services practice or procedure which proximately results in injury to or death of a claimant ~~the patient~~, whether the claimant's ~~patient's~~ claim or cause of action sounds in tort or contract.

(8) "Physician" means:

(A) an individual [~~a person~~] licensed to practice medicine in this state;

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

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

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

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

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

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

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

(13) "Economic damages" means compensatory damages for any pecuniary loss or damage. The term does not include noneconomic damages.

(14) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

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

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

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

(18) "Noneconomic damages" means any loss or damage, however characterized, for past, present, and future physical pain and suffering, mental anguish and suffering, loss of consortium, loss of companionship and society, disfigurement, physical impairment, and any other nonpecuniary loss or damage or element of loss or damage.

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

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

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

(22) "Hospital system" means a system of local nonprofit hospitals and nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles from the corporate parent.

SECTION 2. Subchapter A, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 1.04 to read as follows:

Sec. 1.04. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE. (a) 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) Notwithstanding Section 22.004, Government Code, and except as otherwise provided by this Act, the supreme court may not amend or adopt rules in conflict with this Act.

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

SECTION 3. Section 4.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding the provisions of Rule 202, Texas Rules of Civil Procedure, a deposition may not be taken of a physician or health care provider for the purpose of investigating a health care liability claim before the filing of a lawsuit.

SECTION 4. The heading to Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER G. EVIDENTIARY MATTERS [~~RES IPSA LOQUITUR~~]

SECTION 5. Subchapter G, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Sections 7.03 and 7.04 to read as follows:

Sec. 7.03. FEDERAL OR STATE INCOME TAXES. (a) 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) 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, the court shall 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) In a health care liability claim that involves a claim of negligence arising from the provision of emergency medical care, the court shall instruct the jury to consider, together with all other relevant matters:

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

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

(3) the circumstances constituting the emergency; and

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

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

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

(2) that is unrelated to the original medical emergency.

SECTION 6. The heading to Subchapter I, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

SUBCHAPTER I. PAYMENT OF MEDICAL OR HEALTH CARE EXPENSES [ADVANCE PAYMENTS]

SECTION 7. Subchapter I, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 9.01 to read as follows:

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

SECTION 8. Section 10.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.01. LIMITATION ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to Subsection (b) of this section, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

(b) A claimant must 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. 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 9. Section 11.02, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsections (e) and (f) to read as follows:

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

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

SECTION 10. Section 11.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.03. LIMITATION ON NONECONOMIC DAMAGES [~~ALTERNATIVE PARTIAL LIMIT ON CIVIL LIABILITY~~]. [~~In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following 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 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 [of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000].~~

SECTION 11. Subchapter K, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 11.031 to read as follows:

Sec. 11.031. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES. (a) 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) 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) 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) 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) Evidence of financial responsibility may be established at the time of judgment by providing proof of:

(1) the purchase of a contract of insurance or other plan of insurance authorized by this state;

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

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

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

SECTION 12. Section 11.04, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.04. ADJUSTMENT OF LIABILITY LIMIT [~~LIMITS~~]. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter, [~~each of~~] the liability limit [~~limits~~] prescribed in Section 11.02(a) [~~or in Section 11.03~~] of this subchapter[~~, as applicable,~~] shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limit [~~limits~~] are awarded by final judgment or settlement.

SECTION 13. Subchapter L, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 12.02 to read as follows:

Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In 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, the person bringing the suit may 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 14. The heading to Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.01. [~~COST BOND, DEPOSIT, AND~~] EXPERT REPORT.

SECTION 15. Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), (i), (j), (k), and (l) and adding Subsections (s) and (t) to read as follows:

(a) In a health care liability claim, a claimant shall, not later than the 180th ~~[90th]~~ day after the date the claim is filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the[-

~~(1) file a separate cost bond in the amount of \$5,000 for each physician or health care provider named by the claimant in the action;~~

~~(2) place cash in an escrow account in the amount of \$5,000 for each physician or health care provider named in the action; or~~

~~(3) file an expert] report for each physician or health care provider against whom a liability claim is asserted [with respect to whom a cost bond has not been filed and cash in lieu of the bond has not been deposited under Subdivision (1) or (2) of this subsection].~~

(b) If, as to a defendant physician or health care provider, an expert report[-; cost bond, or cash in lieu of bond] has not been served ~~[filed or deposited]~~ within the period specified by Subsection (a) ~~[or (b)]~~ of this section, the court, on the motion of the affected physician or health care provider, shall 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 ~~[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 ~~[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~~ ~~[subject to reinstatement in accordance with the applicable rules of civil procedure and Subsection (e) of this section].~~

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for servicing ~~[filing]~~ an expert report by servicing ~~[filing]~~ reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

(j) Nothing in this section shall be construed to require the servicing ~~[filing]~~ of an expert report regarding any issue other than an issue relating to liability or causation.

(k) An ~~[Notwithstanding any other law, an]~~ expert report served ~~[filed]~~ under this section:

(1) is not admissible in evidence by any party ~~[a defendant];~~

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



(3) shall not be referred to by any party [~~a defendant~~] during the course of the action for any purpose.

(l) A court shall 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 [~~a~~] good faith effort to comply with the definition of an expert report in Subsection (r)(6) of this section.

(s) 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) 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.

SECTION 16. Section 13.01(r)(5), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Expert" means:

(A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of Section 14.01(a) of this Act; [~~or~~]

(B) with respect to a person giving opinion testimony regarding whether [~~about~~] a [~~nonphysician~~] health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of Section 14.02 of this Act;

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

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

(E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a podiatrist who is otherwise qualified to render opinions on that causal relationship under the Texas

Rules of Evidence [who has knowledge of accepted standards of care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim].

SECTION 17. Sections 14.01(e) and (g), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), are amended to read as follows:

(e) A pretrial objection to the qualifications of a witness under this section must 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. 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. The court shall 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. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

(g) In this subchapter [section], "physician" means a person who is:

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

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

SECTION 18. Subchapter N, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Sections 14.02 and 14.03 to read as follows:

Sec. 14.02. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section, "practicing health care" includes:

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

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

(b) 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:

(1) is practicing health care in the same field of practice as the defendant health care provider at the time the testimony is given or was practicing that type of health care at the time the claim arose;

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

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

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

(1) is certified by a Texas licensing agency or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and

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

(d) The court shall 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 may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) 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) A pretrial objection to the qualifications of a witness under this section must 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. 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. The court shall 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. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. 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) 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, a person may 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) In a suit involving a health care liability claim against a dentist, a person may 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) In a suit involving a health care liability claim against a podiatrist, a person may 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) A pretrial objection to the qualifications of a witness under this section must 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. 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. The court shall 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. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

SECTION 19. Section 16.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16.01. APPLICATION OF OTHER LAW. Notwithstanding Chapter 304, Finance Code [Articles 1E.101, 1E.102, and 1E.104 1E.108, Title 79, Revised Statutes], prejudgment interest in a judgment on a health care liability claim shall be awarded in accordance with this subchapter.

SECTION 20. Sections 16.02(b) and (c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Subject to Subchapter K of this Act [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 [found by the trier of fact], but shall not include prejudgment interest on future damages awarded in the judgment [found by the trier of fact].

(c) Prejudgment interest allowed under this subchapter shall be computed in accordance with Section 304.003(c)(1), Finance Code [Article 1E.103, Title 79, Revised Statutes], for a period beginning on the date of injury and ending on the date before the date the judgment is signed.

SECTION 21. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is amended by adding Subchapters Q, R, S, and T to read as follows:

SUBCHAPTER Q. COLLATERAL SOURCE BENEFITS

Sec. 17.01. DEFINITION. In this subchapter, "collateral source benefit" means a benefit paid or payable to or on behalf of a claimant under:

(1) the Social Security Act (42 U.S.C. Section 301 et seq.), and its subsequent amendments;

(2) a state or federal income replacement, disability, workers' compensation, or other law that provides partial or full income replacement; or

(3) any insurance policy, other than a life insurance policy, including:

(A) an accident, health, or sickness insurance policy; and

(B) a disability insurance policy.

Sec. 17.02. ADMISSIBILITY OF EVIDENCE OF COLLATERAL SOURCE BENEFITS. A defendant physician or health care provider may introduce evidence in a health care liability claim of any amount payable to the claimant as a collateral benefit. If a defendant physician or health care provider introduces evidence of a collateral source benefit, the claimant may introduce evidence of any amount the claimant has paid to secure the right to the benefit.

Sec. 17.03. MAINTENANCE OF COVERAGE DURING CLAIM. (a) During the pendency of a health care liability claim, if the claimant has a policy of insurance that provides health benefits or income disability coverage and the claimant is unwilling or unable to pay the costs of renewing or continuing that policy of insurance in force, the defendant physician or health care provider may tender to the claimant the cost of maintaining the insurance coverage.

(b) On receipt of the tender, the claimant shall continue the policy in force.

Sec. 17.04. SUBROGATION. The payer of collateral benefits introduced under this subchapter may not recover any amount against the claimant and is not subrogated to any rights or claims of the claimant, unless authorized by a federal law.

SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

Sec. 18.01. DEFINITIONS. In this subchapter:

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

(A) medical, health care, or custodial care services;

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

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

(D) loss of earnings.

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

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

(B) loss of inheritance.

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

Sec. 18.02. SCOPE OF SUBCHAPTER. This subchapter applies only to an action on a health care liability claim against a physician or healthcare 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) At the request of a defendant physician or health care provider or claimant, the court shall 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) The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages.

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

(1) recipient of the payments;

(2) dollar amount of the payments;

(3) interval between payments; and

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

Sec. 18.04. RELEASE. 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) As a condition to authorizing periodic payments of future damages, the court shall 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) The judgment must provide for payments to be funded by:

(1) an annuity contract issued by a company licensed to do business as an insurance company;

(2) an obligation of the United States;

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

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

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

Sec. 18.06. DEATH OF RECIPIENT. (a) 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) Periodic payments, other than future loss of earnings, terminate on the death of the recipient.

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

(d) 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. For purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, the court shall:

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

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

#### SUBCHAPTER S. ATTORNEY'S FEES

Sec. 19.01. DEFINITION. In this subchapter, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical or health care services incurred by the claimant and the attorney's office overhead costs or charges are not deductible disbursements or costs.

Sec. 19.02. APPLICABILITY. The limitations in this subchapter apply without regard to whether:

(1) the recovery is by settlement, arbitration, or judgment; or

(2) the person for whom the recovery is sought is an adult, a minor, or an incapacitated person.

Sec. 19.03. PERIODIC PAYMENTS. If periodic payments are recovered by the claimant, the court shall 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.

Sec. 19.04. LIMITATION ON ATTORNEY CONTINGENCY FEE AGREEMENTS. (a) An attorney may not contract for or collect a contingency fee for representing any person seeking damages in connection with a health care liability claim in excess of 33-1/3 percent of the amount recovered.

(b) This section has no effect if Section 11.03 of this Act is stricken from this Act or is otherwise to any extent invalidated by a method other than through legislative means.

Sec. 19.05. ALTERNATIVE LIMIT ON ATTORNEY CONTINGENCY FEES. (a) If Section 11.03 of this Act is stricken from this Act or is otherwise to any extent invalidated by a method other than through legislative means, this section is effective.

(b) An attorney may not contract for or collect a contingency fee for representing any person seeking damages in connection with a health care liability claim that exceeds the following limits:

(1) 40 percent of the first \$50,000 recovered;

(2) 33.3 percent of the next \$50,000 recovered;

(3) 25 percent of the next \$500,000 recovered; and

(4) 15 percent of any additional amount recovered.

SUBCHAPTER T. DECLARATORY JUDGMENTS; INJUNCTIONS; APPEALS

Sec. 20.01. APPLICABILITY. This subchapter applies only to an amendment to this Act that is effective on or after January 1, 2003.

Sec. 20.02. DECLARATORY JUDGMENT. 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) 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) 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. A district court in Travis County may 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) 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) The direct appeal is an accelerated appeal.

(c) 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) 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:

(1) the association or alliance has more than one member who has standing to sue in the member's own right;

(2) the interests the association or alliance seeks to protect are germane to a purpose of the association or alliance; and

(3) 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) The association or alliance has standing:

(1) to sue for and obtain a declaratory judgment under Section 20.02 of this subchapter in an action filed and maintained by the association or alliance;



(2) to appeal or otherwise be a party to an appeal under Section 20.03 of this subchapter;

(3) to sue for and obtain an order under Section 20.04 of this subchapter granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction in an action filed and maintained by the association or alliance; and

(4) to appeal or otherwise be a party to an appeal under Section 20.05 of this subchapter.

Sec. 20.07. RULES FOR APPEALS. 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 22. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

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

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

(B) the patient's grandparent;

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

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

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

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

SECTION 23. Section 84.004(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider ~~[who is serving as a direct service volunteer of a charitable organization]~~ is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) ~~[the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;~~

~~[(2)]~~ the volunteer commits the act or omission in the course of providing health care services to the patient;

~~[(2)]~~ ~~[(3)]~~ the services provided are within the scope of the license of the volunteer; and

~~[(3)]~~ ~~[(4)]~~ before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient ~~[patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of]~~ signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

SECTION 24. Chapter 84, Civil Practice and Remedies Code, is amended by adding Section 84.0065 to read as follows:

Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. 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:

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

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

SECTION 25. Section 88.002, Civil Practice and Remedies Code, is amended by adding Subsection (l) to read as follows:

(l) This chapter does not create liability on the part of physicians or health care providers for medical care or health care services performed or furnished or that should have been performed or furnished for, to, or on behalf of a patient.

SECTION 26. Article 5.15-1, Insurance Code, is amended by adding Section 11 to read as follows:

Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude or otherwise limit 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. 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 27. The following provisions are repealed:

(1) Section 11.02(c), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(2) Sections 13.01(c), (d), (e), (f), (g), (h), (m), (n), (o), and (r)(3), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(3) Section 16.02(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes); and

(4) Section 242.0372, Health and Safety Code.

SECTION 28. The changes made by this article to the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) apply to a cause of action that accrues on or after January 1, 2004. A cause of action that accrues before January 1, 2004, is governed by the laws in effect immediately before January 1, 2004, and that law is continued in effect for that purpose.

(Speaker in the chair)

Representative Nixon moved to table Amendment No. 14.

A record vote was requested.

The motion to table prevailed by (Record 57): 88 Yeas, 59 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Kuempel.

#### **CSHB 4 - POINT OF ORDER**

Representative Hodge raised a point of order against further consideration of **CSHB 4** under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report does not contain a statement of rulemaking authority.

The speaker overruled the point of order.

#### **Amendment No. 15**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 61

Amend **CSHB 4** as follows:

On page 1, line 12, before "administered", insert "exclusively".

Representative Woolley moved to table Amendment No. 15.

A record vote was requested.

The motion to table prevailed by (Record 58): 84 Yeas, 59 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Gutierrez; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C); Smithee.

Absent — Bailey; Chisum; Eissler; Swinford.

#### STATEMENT OF VOTE

When Record No. 58 was taken, my vote failed to register. I would have voted yes.

Eissler

#### Amendment No. 16

Representative Dutton offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 63

Amend **CSHB 4** as follows:

On page 2, line 24 strike the words "one or more" and insert in lieu thereof "all"

Representative Woolley moved to table Amendment No. 16.

A record vote was requested.

The motion to table prevailed by (Record 59): 85 Yeas, 61 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Gutierrez; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer;

Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C); Hughes; Smithee.

### **Amendment No. 17**

Representative Deshotel offered the following amendment to **CSHB 4**:

Floor Packet Page No. 64

Amend **CSHB 4** as follows:

On page 3, lines 10-11, strike "date the court signed the order certifying the action as a class action" and substitute "filing of the defendant's original answer"

Representative Nixon moved to table Amendment No. 17.

A record vote was requested.

The motion to table prevailed by (Record 60): 86 Yeas, 57 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Flores; Gallego; Garza; Goodman; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C); Hughes; Smithee.

Absent — Farrar; Giddings; Ritter.

**Amendment No. 18**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 66

Amend **CSHB 4** as follows:

On page 3, line 12, strike "shall" and substitute "may"

Representative Nixon moved to table Amendment No. 18.

(Krusee in the chair)

A record vote was requested.

The motion to table prevailed by (Record 61): 93 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

**Amendment No. 19**

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 67

Amend **CSHB 4** as follows:

On page 3, strike 26.005(a)(3), lines 20-22, and substitute "(3) the state agency informs the court in writing that it consents to the proposed abatement or dismissal; or."

Representative Nixon moved to table Amendment No. 19.

A record vote was requested.

The motion to table prevailed by (Record 62): 84 Yeas, 61 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Ellis; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hopson; Jones, J.; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Bailey; Jones, E.

### **Amendment No. 20**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 68

Amend **CSHB 4** as follows:

On page 3, line 24 strike the words "or part"

Representative Nixon moved to table Amendment No. 20.

A record vote was requested.

The motion to table prevailed by (Record 63): 88 Yeas, 56 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Homer; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Giddings; Guillen; Hartnett; Hilderbran; Hochberg; Hodge; Hopson; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Rodriguez; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Bailey; Davis, J.; Hughes.

### **Amendment No. 21**

Representative Deshotel offered the following amendment to **CSHB 4**:

Floor Packet Page No. 69

Amend **CSHB 4** as follows:

On page 4, line 5, strike "periodically" and substitute "every 90 days".

Representative Nixon moved to table Amendment No. 21.

A record vote was requested.

The motion to table prevailed by (Record 64): 93 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

### **Amendment No. 22**

Representative Eiland offered the following amendment to **CSHB 4**:



Floor Packet Page No. 70

Amend **CSHB 4** as follows:

On Page 4, Line 15, strike the words "at least" and insert in lieu thereof "no more than"

Representative Nixon moved to table Amendment No. 22.

A record vote was requested.

The motion to table prevailed by (Record 65): 79 Yeas, 68 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Farabee; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Homer; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Hopson; Hughes; Jones, J.; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Smithee; Solis; Talton; Telford; Thompson; Truitt; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

### **Amendment No. 23**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 71

Amend **CSHB 4** as follows:

On Page 4, Line 21, strike the words "its final action on" and insert in lieu thereof "such final action as the agency is authorized regarding"

Amendment No. 23 was adopted without objection.

### **Amendment No. 24**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 72

Amend **CSHB 4** as follows:

On page 5, line 3, strike "shall" and substitute "may"

Representative Nixon moved to table Amendment No. 24.

A record vote was requested.

The motion to table prevailed by (Record 66): 92 Yeas, 53 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Chisum; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Guillen; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Giddings; McCall.

### **Amendment No. 25**

Representative Deshotel offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 73

Amend **CSHB 4** as follows:

On page 5, line 5, strike "or a substantial part"

On page 5, lines 7-8, strike "an adequate substitute for"

Representative Nixon moved to table Amendment No. 25.

A record vote was requested.

The motion to table prevailed by (Record 67): 94 Yeas, 53 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King;

Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

#### **Amendment No. 26**

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 74

Amend **CSHB 4** as follows:

On page 5, line 6, between "claimant" and ";", insert "and the entire class".

On page 5, line 9, between "claimant" and ";", insert "and the entire class".

#### **Amendment No. 27**

Representative Eiland offered the following amendment to Amendment No. 26:

Amend Amendment No. 26 by Eiland to **CSHB 4** (beginning on page 74, amendment packet) on page 1 of the amendment as follows:

(1) On the first line of instructions, strike "entire".

(2) On the second line of instructions, strike "entire".

Amendment No. 27 was adopted without objection.

Amendment No. 26, as amended, was adopted without objection.

#### **Amendment No. 28**

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 75

Amend **CSHB 4** as follows:

On page 5, line 20, strike "multiple damages".

Amendment No. 28 was withdrawn.

### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Environmental Regulation, upon recess today, Desk 3, for a formal meeting, to consider pending legislation.

**CSHB 4 - (consideration continued)****Amendment No. 29**

Representative Deshotel offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 76

Amend **CSHB 4** as follows:

On page 5, line 21, between "court" and ".", insert ", if the court makes the determination that such relief could not be obtained through further litigation""

Representative Nixon moved to table Amendment No. 29.

A record vote was requested.

The motion to table prevailed by (Record 68): 90 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Goodman; Guillen; Gutierrez; Hochberg; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Crownover; Giddings; Hodge.

**STATEMENT OF VOTE**

When Record No. 68 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

**Amendment No. 30**

Representative Dutton offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 77

Amend **CSHB 4** as follows:

On page 7, line 3, strike "must" and substitute "may"

On page 7, line 3-4, strike ", and the fee must be computed as provided by this chapter" and substitute "or paid directly to such attorneys by defendant"

Representative Nixon moved to table Amendment No. 30.

A record vote was requested.

The motion to table prevailed by (Record 69): 88 Yeas, 57 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Geren; Guillen; Hartnett; Hochberg; Hodge; Hopson; Hughes; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Giddings; Goodman.

### **Amendment No. 31**

Representative Eiland offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 78

Amend **CSHB 4** as follows:

On page 7, line 3, between "fund" and "recovered", insert "or as measured by a common benefit"

Representative Nixon moved to table Amendment No. 31.

A record vote was requested.

The motion to table prevailed by (Record 70): 84 Yeas, 62 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar;

Hilderbran; Hill; Homer; Hope; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Noriega; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Geren; Giddings; Guillen; Hartnett; Hochberg; Hodge; Hopson; Howard; Hughes; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Smithee; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Corte.

#### STATEMENTS OF VOTE

When Record No. 70 was taken, I was in the house but away from my desk. I would have voted yes.

Corte

I was shown voting yes on Record No. 70. I intended to vote no.

Noriega

#### Amendment No. 32

Representative Thompson offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 79

Amend **CSHB 4** on page 8, following line 13 by adding a new Subsection (c) to read as follows:

"(c) The total fees awarded may not be less than the total fees and expenses charged by the attorney or attorneys representing the defendant."

Representative Nixon moved to table Amendment No. 32.

A record vote was requested.

The motion to table prevailed by (Record 71): 84 Yeas, 62 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Flynn; Gattis; Goodman; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Miller;

Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Farabee; Farrar; Flores; Gallego; Garza; Geren; Giddings; Guillen; Gutierrez; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, J.; Kolkhorst; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Krusee(C).

Absent — Ellis.

### **Amendment No. 33**

Representative Deshotel offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 80

Amend **CSHB 4** as follows:

On page 8, line 17, between "costs" and "actually", insert "of litigation".

Amendment No. 33 was adopted without objection.

### **Amendment No. 34**

Representative Deshotel offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 81

Amend **CSHB 4** as follows:

On page 9, strike lines 15-18.

(Speaker in the chair)

Representative Nixon moved to table Amendment No. 34.

A record vote was requested.

The motion to table prevailed by (Record 72): 96 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips;

Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Farrar; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — McReynolds.

### **Amendment No. 35**

On behalf of Representative Eiland, Representative Uresti offered the following amendment to **CSHB 4**:

Floor Packet Page No. 82

Amend **CSHB 4** as follows:

On page 10, strike lines 19-25.

Representative Nixon moved to table Amendment No. 35.

A record vote was requested.

The motion to table prevailed by (Record 73): 81 Yeas, 66 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Chisum; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Smithee; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Talton.



**Amendment No. 36**

Representative Dutton offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 83

Amend **CSHB 4** as follows:

On page 11, line 6, strike "or pending"

Amendment No. 36 was adopted without objection.

**Amendment No. 37**

Representative Smithee offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 84

Amend **CSHB 4** on page 11, line 6, by striking "or pending".

Amendment No. 37 was adopted without objection.

**Amendment No. 38**

Representative Gallego offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 85

Amend **CSHB 4** by striking page 11, line 10, through page 18, line 21, and substituting the following:

CHAPTER 42. SETTLEMENT OFFERS

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages or to obtain other relief. The term does not include a request for an injunction.

(2) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, third-party plaintiff, or intervenor, seeking recovery of damages or other relief. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, the term includes both that other person and the party seeking recovery of damages.

(3) "Defendant" means a person from whom a claimant seeks recovery of damages or other relief on a claim, including a counterdefendant, cross-defendant, or third-party defendant.

(4) "Settlement offer" means an offer made by:

(A) a defendant to a claimant to settle a claim according to the terms of the defendant's offer before trial; or

(B) a party found by a trier of fact to be liable to another party for damages to settle for an amount or in the manner specified in the liable party's offer.

Sec. 42.002. SETTLEMENT OFFER; ACCEPTANCE; REJECTION. (a) On or before the 10th day before the date set for the commencement of a trial, a defendant may serve on the claimant a settlement offer that allows judgment to be taken against the defendant for the money or property or to the effect specified in the offer, including costs accrued to date.

(b) If, on or before the 10th day after the date the claimant received an offer under Subsection (a), the claimant serves on the defendant who made the offer written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service, and the court shall enter judgment.

(c) An offer not accepted on or before the 10th day after the date the claimant received the offer is considered withdrawn, and evidence of the offer is not admissible except in a proceeding to determine costs.

(d) If the judgment obtained by the claimant is not more favorable than the settlement offer, the claimant shall pay the costs incurred by the defendant after the date the defendant made the offer.

(e) The fact that a settlement offer is made but not accepted does not preclude a subsequent offer.

(f) After the liability of one party to another has been determined by verdict, order, or judgment, but before the amount or extent of the liability has been determined, the party determined to be liable may make a settlement offer on or before the 10th day before the date set for the start of proceedings to determine the amount or extent of liability. A settlement offer under this subsection that is accepted has the same effect as an offer made before trial under Subsection (a).

SECTION 2.02. This article applies only to a civil action commenced on or after the effective date of this article. An action commenced before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.

(J. Keffer in the chair)

Representative Nixon moved to table Amendment No. 38.

A record vote was requested.

The motion to table prevailed by (Record 74): 83 Yeas, 63 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Gallego; Garza; Giddings; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt;

Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Smith, T.; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent — Smithee.

**Amendment No. 39**

Representative Mabry offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 87

Amend **CSHB 4** as follows:

On page 12, after line 11, insert a new subsection (2) to read as follows and renumber accordingly:

(2) involving a dispute between a landlord and a tenant: in their capacities as landlord and tenant:

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Public Education, Subcommittee on Mandate Reform, meeting tomorrow, March 20, is canceled.

**CSHB 4 - (consideration continued)**

(Speaker in the chair)

**Amendment No. 40**

Representative Nixon offered the following amendment to Amendment No. 39:

Amend Amendment No. 39 by Mabry to **CSHB 4** (beginning page 87, amendment packet) on line 3 of the amendment between "between a" and "landlord", by inserting "residential".

**HOUSE AT EASE**

At 9:12 p.m., the speaker announced that the house would stand at ease.

The speaker called the house to order at 9:46 p.m.

**CSHB 4 - (consideration continued)**

Amendment No. 40 was adopted without objection.

Amendment No. 39 was withdrawn.

**Amendment No. 41**

Representative Gallego offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 88

Amend **CSHB 4** as follows:

On page 12, after line 11, insert a new subsection (2) to read as follows and renumber accordingly:

(2) brought by a homeowners association to enforce deed restrictions or to collect delinquent association fees, dues or assessments:

Amendment No. 41 was adopted without objection.

**Amendment No. 42**

Representative Telford offered the following amendment to **CSHB 4**:  
Floor Packet Page No. 89

Amend **CSHB 4** as follows:

On page 12, after line 11, insert a new subsection (2) to read as follows and renumber accordingly:

(2) brought under the Probate Code:

**Amendment No. 43**

Representative Eiland offered the following amendment to Amendment No. 42:

Amend Amendment No. 42 by Telford to **CSHB 4** (beginning on page 89, amendment packet) on page 1 of the amendment by striking lines 1-3 and substituting:

(1) On page 12, line 14, strike "or".

(2) On page 12, strike line 16 and substitute:

Subtitle A, Title 5, Labor Code;

(5) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 et seq), as amended; or

(6) the Jones Act (46 U.S.C. Section 688), as amended.

Amendment No. 43 was adopted without objection.

Amendment No. 42, as amended, was adopted without objection.

**Amendment No. 44**

Representatives Hope, Gattis, and Ritter offered the following amendment to **CSHB 4**:

Floor Packet Page No. 90

Amend **CSHB 4** as follows:

(1) On page 12, strike lines 6 through 16 and substitute the following:

Sec. 42.002. APPLICABILITY AND EFFECT. (a) This chapter does not apply to:

(1) an action in which a class has been certified; and

(2) an action by or against a governmental unit.

(b) Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action:

(1) brought under the Family Code;

(2) brought under Chapter 27, Property Code;

(3) brought under the Tax Code;

(4) brought on behalf of a minor or person of unsound mind; or

(5) to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code.

(2) Strike page 12, line 27, through page 13, line 11.

(3) On page 13, line 12, strike "Sec. 42.004." and substitute "Sec. 42.003."

(4) On page 13, line 16, strike "Sec. 42.005." and substitute "Sec. 42.004."

(5) Strike page 15, line 17, through page 16, line 16, and substitute:

Sec. 42.055. AWARD OF LITIGATION COSTS. (a) Any defendant who makes a settlement offer under this chapter to a claimant seeking monetary relief shall recover litigation costs from the claimant if:

(1) the settlement offer is rejected;

(2) the amount of monetary relief to be awarded in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer; and

(3) the difference between the amount of monetary relief to be awarded to the claimant in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, and the amount of the settlement offer is equal to or greater than 10 percent of the amount of the settlement offer.

(b) Any defendant who makes a settlement offer to a claimant seeking nonmonetary relief, other than injunctive relief, may recover litigation costs from the claimant if:

(1) the settlement offer is rejected; and

(2) the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer.

(6) On page 16, line 17, strike "(d)" and substitute "(c)".

(7) On page 16, line 22, strike "(e)" and substitute "(d)".

(8) On page 16, line 26, strike "(f)" and substitute "(e)".

(9) On page 17, line 6, strike "(g)" and substitute "(f)".

(10) On page 17, line 11, strike "(h)" and substitute "(g)".

#### **Amendment No. 45**

Representative Van Arsdale offered the following amendment to Amendment No. 44:

Amend Amendment No. 44 by Hope to **CSHB 4** (beginning on page 90, amendment packet) on page 1 of the amendment, line 6, by striking "and" and substituting "or".

Amendment No. 45 was adopted without objection.

#### **Amendment No. 46**

Representative Hochberg offered the following amendment to Amendment No. 44:

Amend Amendment No. 44 by Hope to **CSHB 4** (beginning on page 90, amendment packet) on page 1 of the amendment as follows:

(1) On line 15, strike "or".

(2) Strike line 17 and substitute:

Subtitle A, Title 5, Labor Code; or

(6) brought in small claims court or justice court.

Amendment No. 46 was adopted without objection.

#### **Amendment No. 47**

Representative Gattis offered the following amendment to Amendment No. 44:

Amend Amendment No. 44 by Hope to **CSHB 4** (beginning on page 90, amendment packet) by striking everything after line 1 and substituting the following:

(1) On page 12, strike lines 6 through 16 and substitute the following:

Sec. 42.002. APPLICABILITY AND EFFECT. (a) This chapter does not apply to:

(1) an action in which a class has been certified; or

(2) an action by or against a governmental unit.

(b) Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action:

(1) brought under the Family Code;

(2) brought under Chapter 27, Property Code;

(3) brought under the Tax Code;

(4) brought on behalf of a minor or person of unsound mind;

(5) to collect workers' compensation benefits under Subtitle A, Title 5,

Labor Code;

(6) brought under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 et seq), as amended;

(7) brought under the Jones Act (46 U.S.C. Section 688), as amended;

(8) brought in small claims court or justice court; or

(9) brought by a homeowners association to enforce deed restrictions or to collect delinquent fees, dues, or assessments.

(2) Strike page 12, line 27, through page 13, line 11.

(3) On page 13, line 12, strike "Sec. 42.004." and substitute "Sec. 42.003."

(4) On page 13, line 16, strike "Sec. 42.005." and substitute "Sec. 42.004."

(5) Strike page 15, line 17, through page 16, line 16, and substitute:

Sec. 42.055. AWARD OF LITIGATION COSTS. (a) Any defendant who makes a settlement offer under this chapter to a claimant seeking monetary relief shall recover litigation costs from the claimant if:

(1) the settlement offer is rejected;

(2) the amount of monetary relief to be awarded in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer; and

(3) the difference between the amount of monetary relief to be awarded to the claimant in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, and the amount of the settlement offer is equal to or greater than 10 percent of the amount of the settlement offer.

(b) Any defendant who makes a settlement offer to a claimant seeking nonmonetary relief, other than injunctive relief, may recover litigation costs from the claimant if:

(1) the settlement offer is rejected; and

(2) the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer.

(6) On page 16, line 17, strike "(d)" and substitute "(c)".

(7) On page 16, line 22, strike "(e)" and substitute "(d)".

(8) On page 16, line 26, strike "(f)" and substitute "(e)".

(9) On page 17, line 6, strike "(g)" and substitute "(f)".

(10) On page 17, line 11, strike "(h)" and substitute "(g)".

Amendment No. 47 was adopted without objection.

Amendment No. 44, as amended, was adopted without objection.

#### **Amendment No. 48**

Representative Burnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 92

Amend **CSHB 4** as follows:

On Page 12, after Line 12 insert a new subdivision (3) to read as follows and renumber the remaining subdivisions appropriately:

(4) involving condemnation of property by a governmental entity, including an action governed by Chapter 21, Property Code, or any other law;

Amendment No. 48 was withdrawn.

#### **Amendment No. 49**

Representative Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 95

Amend **CSHB 4** as follows:

On page 11, line 7, strike entire Article 2 of the bill, and renumber accordingly.

(West in the chair)

Representative Nixon moved to table Amendment No. 49.

A record vote was requested.

The motion to table prevailed by (Record 75): 78 Yeas, 68 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Rose; Seaman; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Geren; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Raymond; Reyna; Ritter; Rodriguez; Smith, T.; Smithee; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; West(C).

Absent — Quintanilla.

#### **Amendment No. 50**

Representative Telford offered the following amendment to **CSHB 4**:

Floor Packet Page No. 94

Amend **CSHB 4** as follows:

On page 11, line 26, after the word "reasonable", insert "and necessary".

On page 12, line 1, after the word "reasonable", insert "and necessary".

Amendment No. 50 was adopted without objection.

#### **Amendment No. 51**

Representative Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 93

Amend **CSHB 4** as follows:

On page 11, line 26 at the end of the line add "and"

On page 11, strike line 27, and substitute (b) taxable costs.

On page 12, strike lines 1-3.

Representative Nixon moved to table Amendment No. 51.

(Speaker in the chair)

A record vote was requested.

The motion to table prevailed by (Record 76): 95 Yeas, 50 Nays, 1 Present, not voting.



Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker(C).

Absent — Flores; Moreno, P.; Oliveira.

#### **Amendment No. 52**

Representative Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 102

Amend **CSHB 4** as follows:

In Sec. 2.01 of the bill:

On page 12, Line 6 after "EFFECT." insert a new Subsection (a) to read as follows and renumber accordingly:

(a) It is the policy of this state to enact incentives and procedures to encourage the settlement of civil cases on terms that are fair and just to all parties, whether claimant or defendant. The procedures in this chapter are intended to be balanced toward all claimants and all defendants. It is the intent of the Legislature that, to the greatest extent possible, these procedures shall be implemented such that claims are resolved efficiently and fairly and without overreaching by any party or abuse of the system of civil justice.

On page 13, line 22 strike "defendant"

On page 13, line 23 strike "defendants" and substitute "parties" and strike "claimant" and substitute "party"

On page 13, lines 24-25 strike "that defendant or those defendants and the claimant" and substitute "the parties"

On page 14, line 8 strike "defendant or group of defendants" and substitute "party"

On page 14, line 11 strike "offering"

On page 14, line 13 strike "offering"

On page 14, line 15 strike "defendant or group of defendants" and substitute "party"

On page 14, line 21 strike "claimant" and substitute "party"

On page 14, line 22 strike "claimant" and substitute "party"

On page 14, line 27 strike "defendant or defendants" and substitute "party"

On page 15, line 4 strike "claimant" and substitute "party"

On page 15, line 5 strike "claimant" and substitute "party"

On page 15, line 6 strike "claimant" and substitute "party"

On page 15, lines 7-8 strike "defendant or group of defendants" and substitute "party"

On page 15, line 12 strike "claimant" and substitute "party"

On page 15, line 14 strike "defendant" and substitute "party"

On page 16, line 10, strike "defendant" and substitute "party"

On page 16, line 10, strike "a claimant" and substitute "another party"

On page 16, line 12, strike "claimant" and substitute "party"

On page 16, lines 14-15, strike "defendant or group of defendants" and substitute "party"

On page 16, line 17, strike "defendant" and substitute "party"

On page 16, line 19, strike "defendant" and substitute "party"

On page 16, line 20, strike "defendant" and substitute "party"

On Page 16, Line 23 strike the "and"

On page 16, line 25 strike the period and substitute "; or"

On page 16, between lines 25 and 26, insert a new subdivision (3) to read as follows:

(3) be added to the claimant's recovery against any nonsettling defendant.

On page 18, lines 2 through 5, replace the word "claimant" with the word "party" in each place in which it appears

On page 18, line 6 replace the word "claimant's" with the word "party's"

On page 18, line 7 replace the words "defendants or group of defendants" with "other party"

Representative Nixon moved to table Amendment No. 52.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 52 and the vote was announced yeas 71, nays 77.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 77): 69 Yeas, 74 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Christian; Cook, B.; Corte; Crownover; Dawson; Delisi; Denny; Driver; Eissler; Flynn; Gattis; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Hunter; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; Mercer;

Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Reyna; Riddle; Seaman; Smith, W.; Solomons; Stick; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Chisum; Coleman; Cook, R.; Davis, J.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Geren; Giddings; Goodman; Guillen; Gutierrez; Haggerty; Hartnett; Hochberg; Hodge; Homer; Hopson; Howard; Jones, D.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solis; Swinford; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wise; Wolens.

Absent — Crabb; Hughes; Isett; Jones, J.; Moreno, P.; Wilson.

The speaker stated that the motion to table Amendment No. 52 was lost by the above vote.

### LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important business:

J. Jones on motion of Deshotel.

P. Moreno on motion of D. Jones.

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Crabb on motion of Hupp.

Isett on motion of Hupp.

### CSHB 4 - (consideration continued)

#### Amendment No. 53

Representative Mabry offered the following amendment to Amendment No. 52:

Amend Amendment No. 52 by Mabry to **CSHB 4** (beginning on page 102, amendment packet) by striking lines 1-42 and substituting:

(1) On page 12, between lines 5 and 6, insert:

Sec. 42.0015. POLICY; INTENT. It is the policy of this state to enact incentives and procedures to encourage the settlement of civil cases on terms that are fair and just to all parties, whether claimant or defendant. The procedures in this chapter are intended to be balanced toward all claimants and all defendants. It is the intent of the Legislature that, to the greatest extent possible, these procedures shall be implemented such that claims are resolved efficiently and fairly and without overreaching by any party or abuse of the system of civil justice.

(2) Strike page 13, line 22 through page 16, line 25, and substitute:

Sec. 42.051. SETTLEMENT OFFER. (a) A party or a group of parties may serve on a party a settlement offer to settle all claims in the action between the parties.

(b) The settlement offer must:

- (1) be in writing;
- (2) state that it is a settlement offer under this chapter;
- (3) state the terms by which the claims may be settled;
- (4) state a deadline by which the settlement offer must be accepted; and
- (5) be served on the claimant to whom the settlement offer is made.

(c) A party may not make a settlement offer under this section before the 90th day after the later of:

- (1) the date any of the defendants filed a responsive pleading; or
- (2) the date any of the defendants otherwise appeared in the action.

(d) A party may not make a settlement offer under this section after the 30th day before the date set for trial.

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

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

(b) Acceptance of a settlement offer must be:

- (1) in writing; and
- (2) served on the party who made the settlement offer.

Sec. 42.053. WITHDRAWING SETTLEMENT OFFER. (a) A party may withdraw a settlement offer by serving a written withdrawal on the party to whom the settlement offer was made before the party accepts the settlement offer. A party may not accept a settlement offer after it is withdrawn.

(b) If a settlement offer is withdrawn, the party that made the settlement offer is not entitled to recover litigation costs under this chapter.

Sec. 42.054. REJECTION OF SETTLEMENT OFFER. For purposes of this chapter, a settlement offer is rejected if:

(1) the party to whom the settlement offer was made rejects the settlement offer by serving a written rejection on any party making the settlement offer; or

(2) the settlement offer is not withdrawn and is not accepted before the deadline for accepting the offer.

Sec. 42.055. AWARD OF LITIGATION COSTS. (a) Any party who makes a settlement offer under this chapter to another party seeking monetary relief shall recover litigation costs from the party if:

(1) the settlement offer is rejected;  
(2) the amount of monetary relief to be awarded in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the party after rejection of the offer, is more favorable to the party who made the settlement offer than the settlement offer; and

(3) the difference between the amount of monetary relief to be awarded to the party in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the party after rejection of the offer, and the amount of the settlement offer is equal to or greater than 10 percent of the amount of the settlement offer.

(b) Any party who makes a settlement offer to a party seeking nonmonetary relief, other than injunctive relief, may recover litigation costs from the party if:

(1) the settlement offer is rejected; and

(2) the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the party after rejection of the offer, is more favorable to the party who made the settlement offer than the settlement offer.

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

(d) Litigation costs awarded under this section shall:

(1) be awarded in the judgment;

(2) offset the claimant's recovery against the offering defendant; or

(3) be added to the claimant's recovery against any nonsettling defendant.

(3) On page 18, strike lines 2-8, and substitute:

(d) If litigation costs are awarded against a party under this chapter, the party shall not be awarded any attorney's fees, expenses, or costs to which the party would otherwise be entitled under any other law that were incurred by the party after the party's rejection of the earliest settlement offer that entitles the other party to an award of litigation costs under this section.

Amendment No. 53 was adopted without objection.

A record vote was requested.

Amendment No. 52 failed of adoption by (Record 78): 66 Yeas, 79 Nays, 0 Present, not voting.

Yeas — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Geren; Giddings; Goodman; Guillen; Gutierrez; Haggerty; Hartnett; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, D.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, T.; Smithee; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wise; Wolens.

Nays — Mr. Speaker(C); Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Goolsby; Griggs; Grusendorf; Hamilton; Hamric;

Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wilson; Wohlgemuth; Wong; Woolley; Zedler.

Absent, Excused — Crabb; Isett; Jones, J.; Moreno, P.

### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Appropriations, will not meet on March 20.

Juvenile Justice and Family Issues, will not meet on March 20.

Environmental Regulation, upon adjournment today, March 20, Desk 3, for a formal meeting, to consider pending legislation.

### **FIVE DAY POSTING RULE SUSPENDED**

Representative Hill moved to suspend the five day posting rule to allow the Committee on Local Government Ways and Means to consider **HB 1782** and **HJR 69**.

The motion prevailed without objection.

### **RECESS**

Representative Allen moved that the house recess until 9 a.m. today in memory of J. C. Swadley.

The motion prevailed without objection.

The house accordingly, at 1:21 a.m. Thursday, March 20, recessed until 9 a.m. today.

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### **ADDENDUM**

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### **SIGNED BY THE SPEAKER**

The following bills and resolutions were today signed in the presence of the house by the speaker:

#### **House List No. 14**

**HCR 29, HCR 30, HCR 105**

#### **Senate List No. 9**

**SB 15**

### **MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

**Message No. 1**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, March 19, 2003

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 35** Zaffirini  
Relating to the financing of assessments performed by the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

**SB 57** Zaffirini  
Relating to the creation of a statewide alert system for abducted children.

**SB 547** Zaffirini  
Relating to the superintendents of the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 2**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, March 19, 2003 - 2

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HCR 106** Homer SPONSOR: Ratliff  
Recognizing March 19, 2003, as Paris-Lamar County Day at the State Capitol.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

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**APPENDIX**

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**STANDING COMMITTEE REPORTS**

Favorable reports have been filed by committees as follows:

**March 18**

Energy Resources - **HB 1193, HB 1195**

Government Reform - **HB 898**

Pensions and Investments - **HB 1822**

**ENGROSSED**

**March 18 - HB 12, HB 43, HB 44, HB 151, HB 212, HB 233, HB 234, HB 338, HB 479, HB 555, HB 850**

**ENROLLED**

**March 18 - HCR 105**

**SIGNED BY THE GOVERNOR**

**March 18 - HCR 12, HCR 60, HCR 61, HCR 67, HCR 76, HCR 77, HCR 78, HCR 98**