

## **BILL ANALYSIS**

Senate Research Center

H.J.R. 3  
By: Nixon (Nelson)  
State Affairs  
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Engrossed

### **DIGEST AND PURPOSE**

In 1977 the 65th Texas Legislature passed the Medical Liability and Insurance Improvement Act of Texas to cover health care liability claims. The Act contained a \$500,000-cap on all damages except medical expenses for health care liability claims. In 1988, in *Lucas v. United States*, 757 S.W.2d 687 (Tex. 1988), the Texas Supreme Court held that the limitation on damages was unconstitutional as applied to common law causes of action but constitutional as applied to statutory causes of action. The *Lucas* court held that the statutory limitation on medical malpractice damages was unconstitutional as applied to common law causes of action because it violated the "open courts provision." H.J.R. 3 requires the submission to the voters of a constitutional amendment authorizing the legislature to determine limits for non-economic damages in medical or health care liability claims and other actions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article III, Texas Constitution, by adding Section 66, as follows:

Sec. 66. (a) Defines "economic damages."

(b) Authorizes the legislature by statute, notwithstanding any other provision of this constitution, to determine the limit of liability for all damages and losses, however characterized, other than economic damages, of a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care or safety, however characterized, that is or is claimed to be a cause of, or that contributes or is claimed to contribute to, disease, injury, or death of a person. Provides that this subsection applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability. Provides that the claim or cause of action includes a medical or health care liability claim as defined by the legislature.

(c) Authorizes the legislature by statute to determine the limit of liability for all damages and losses, however characterized, other than economic damages, in a claim or cause of action not covered by Subsection (b) of this section, after January 1, 2005, notwithstanding any other provision of this constitution. Provides that this subsection applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability.

(d) Provides that this section applies to a law enacted by the 78th Legislature, Regular Session, 2003, and to all subsequent regular or special sessions of the legislature, except as provided by Subsection (c) of this section.

(e) Requires a legislative exercise of authority under Subsection (c) of this section to require a three-fifths vote of all the members elected to each house and include language citing this section.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held September 13, 2003. Requires the ballot to be printed to permit voting for or against the proposition: "The constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages."

SECTION 3. Prohibits a court from considering any aspect of the vote for any purpose, in any manner, or to any extent, if a majority of the voters vote against this proposed constitutional amendment.