

## **BILL ANALYSIS**

Senate Research Center  
79R5587 MFC-D

S.B. 1648  
By: Staples  
State Affairs  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The 78th Legislature, Regular Session, 2003, passed H.B. 4, a comprehensive tort reform bill addressing many issues affecting the civil court system. Its intent was to bring more balance to the Texas civil justice system, reduce litigation costs, and address the role of litigation in society. As proposed, S.B. 1648 furthers implementation of the reform begun two years ago. This bill includes technical and clean up provisions directly related to H.B. 4 and other provisions that would further reform the Texas Civil court system.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Supreme Court of Texas is modified in SECTION 5 (Section 26.001, Civil Practice and Remedies Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 26.01(b), Business & Commerce Code, to include that Subsection (a) applies to an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 74.001, Civil Practice and Remedies Code, rather than Section 1.03, Medical Liability and Insurance Improvement Act of Texas.

SECTION 2. Amends Section 22.003(a)(2), Civil Practice and Remedies Code, to redefine "commercial transportation company."

SECTION 3. Amends Section 22.003(d), Civil Practice and Remedies Code, to prohibit a state agency from paying a commercial transportation company or reimbursing a witness for transportation under this section if the company or transportation is a private aircraft owned or leased by the witness, unless the travel and the air service is approved in advance by the state agency.

SECTION 4. Amends Sections 23.002(a) and (b), Civil Practice and Remedies Code, to make nonsubstantive changes.

SECTION 5. Amends Section 26.001(a), Civil Practice and Remedies Code, to require the supreme court to adopt rules to provide for the fair, speedy, and efficient resolution of class actions.

SECTION 6. (a) Amends Section 74.352, Civil Practice and Remedies Code, by amending Subsections (a), (b), (c), (d), and (f) to read as follows:

(a) Requires the plaintiff in every health care liability claim to, within 45 days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel (panel), if the panel promulgates a standard set of those forms.

(b) Makes a conforming change.

(c) Prohibits an objection from being asserted under this section if the panel does not exist or does not promulgate a standard set of forms, and requires a court to consider an objection raised on this ground groundless.

(d) and (f) Make a conforming change s.

(b) Sets forth legislative findings regarding the Health Care Discovery Liability Panel.

SECTION 7. Amends Section 76.001, Civil Practice and Remedies Code, by adding Subdivision (2-a) to define "needy."

SECTION 8. Amends Section 84.007(e), Civil Practice and Remedies Code, to make conforming and nonsubstantive changes.

SECTION 9. Amends Section 85.003(a), Civil Practice and Remedies Code, to include that a claimant proves stalking by a defendant by showing that the defendant's apparent ability to carry out the threat caused the claimant to fear for the safety of the claimant's property.

SECTION 10. Amends Section 88.001(4), Civil Practice and Remedies Code, to redefine "health care provider."

SECTION 11. Amends Section 88.002(k), Civil Practice and Remedies Code, to require an enrollee who files an action under this chapter to comply with the requirements of Section 74.351 (Expert Report), rather than Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), as it relates to expert reports. Deletes text pertaining to cost bonds and deposits,

SECTION 12. Amends Chapter 124, Civil Practice and Remedies Code, by adding Section 124.002, as follows:

Sec. 124.002. LIABILITY. Provides that a person who is privileged to detain another under Section 124.001 (Detention) is not liable for damages arising from the detention of that person.

SECTION 13. Amends Section 81.048(b), Health and Safety Code, to make a conforming change.

SECTION 14. Amends Section 241.153, Health and Safety Code, to make modifications to the list of items pertaining to disclosure of a patient's health care information without the patient's authorization.

SECTION 15. Amends Section 578.003(a), Health and Safety Code, to provide that use of the consent form in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, rather than Sections 6.05 and 6.06, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.), have been met.

SECTION 16. Amends Section 611.004 (a), Health and Safety Code, to make conforming changes.

SECTION 17. Amends Section 159.003(a), Occupations Code, to make conforming changes.

SECTION 18. Amends Section 160.053(a), Occupations Code, to make conforming and nonsubstantive changes.

SECTION 19. Amends Section 164.201, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 20. (a) Makes application of Section 26.01, Business & Commerce Code, as amended by this Act, prospective.

(b) Makes application of Sections 22.003, 23.002, 76.001, 84.007, 85.003, 88.001, and 88.002, Civil Practice and Remedies Code, as amended by this Act, and Section 124.002, Civil Practice and Remedies Code, as added by this Act, prospective.

(c) Provides that the amendment by this Act of Section 74.352, Civil Practice and Remedies Code, is intended to clarify rather than change existing law.

(d) Makes application of Section 81.048, Health and Safety Code, as amended by this Act, prospective.

(e) Makes application of Sections 241.153 and 611.004, Health and Safety Code, and Section 159.003, Occupations Code, prospective.

(f) Makes application of the change in law made by Section 578.003, Health and Safety Code, and Section 160.053, Occupations Code, as amended by this Act, prospective.

SECTION 21. Effective date: upon passage or September 1, 2005.