

BILL ANALYSIS

Senate Research Center
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S.B. 152
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Gross negligence standards grant favored status, special privileges, and immunities to emergency care physicians and health care providers. H.B. 4, 78th Legislature, Regular Session, 1993, increased emergency care liability standards to gross negligence, which means an injured patient has to show that the physician or health care provider intended to harm them with conscious indifference and malice.

As proposed, S.B. 152 restores the standard to an *ordinary negligence* standard with regard to emergency room physicians and healthcare providers. S.B. 152 provides that the standard of proof in Section 74.153(a) (related to 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) does not apply to claims against any individual or entity described or covered by certain sections of the Civil Practice and Remedies Code who is regularly in the business of providing emergency medical care.

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 Section 74.153, Civil Practice and Remedies Code, as follows:

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) Creates this subsection from existing text. Authorizes a claimant bringing a suit, 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 in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, to prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful or wanton negligence, rather than with wilful and wanton negligence, deviated from 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.

(b) Provides that the standard of proof in Subsection (a) does not apply to claims against any individual or entity described or covered by Section 74.151(b) (relating to care administered for or in expectation of remuneration or by a person who was at the scene of the emergency) or (e) (relating to a person whose negligent act or omission was a producing cause of the emergency) who is regularly in the business of providing emergency medical care.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.