

Law school review produces ‘Legislative Intent Roadmap’ on Texas’ landmark lawsuit reforms

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LUBBOCK – The Texas Tech Law Review today released a comprehensive overview of lawsuit reform measures passed in 2003. The 357-page article, the culmination of a year of review and written by six leading Texas attorneys, is designed to serve as the “authoritative word” or a “legislative intent roadmap” on the landmark liability reforms passed by lawmakers in 2003 and approved by voters that same year.

“Two years ago, Texas lawmakers passed arguably the most expansive rewrite of the state’s civil justice laws since the adoption of the Texas constitution 140 years ago,” said Walter Huffman, Dean of the Texas Tech University School of Law.

“The article in today’s Texas Tech Law Review is intended as an objective research tool on these landmark reforms – a roadmap to what lawmakers’ intended to enact. This scholarly article may serve as a guide for attorneys, as well as judges at all levels, to understand and properly apply the hundreds of new laws.”

The Tech law review article – “House Bill 4 and Proposition 12: An Analysis with Legislative History” – captures what the Legislature did and did not intend in the wording of the reform legislation. The review includes more than 1,850 footnotes.

The review weaves together legislative testimony and debate, commentary during floor votes and research submitted for the record to capture what legislators were considering and why they made the decisions they did. Jon Opelt, executive director of Texas Alliance for Patient Access, said the article will help hasten the application of the 2003 legislation, improving patient access to care and reducing insurance rates for providers.

He said the number of physicians in Texas has risen dramatically since the legislation’s passage. Two years before the reforms, the number of internists, emergency care physicians, orthopedic surgeons and neurosurgeons had remained flat or declined.

The article is written by six Texas attorneys: Donald Wilcox, general counsel for the Texas Medical Association; Charles Bailey, general counsel for the Texas Hospital Association; and Gavin Gadberry, general counsel for the Texas Health Care Association, a coalition of the state’s long-term care providers. Michael Hull, Brent Cooper, and Michael Wallach, three of the state’s most highly regarded medical liability defense lawyers, also contributed.

All of the authors were intimately involved in the hearings and debates surrounding the passage of House Bill 4, as well as House Joint Resolution 3, enabling legislation that allowed voters to consider a change in the state’s Constitution.

State Sen. Robert Duncan, R-Lubbock, chairman of the Senate State Affairs Committee, and state Rep. Joe Nixon, R-Houston, chairman of the House Civil Practices Committee – both of whom guided House Bill 4 and HJR 3 through the legislative process – also contributed to the project.

Discussion items range from statute of limitations and expert reports to emergency care, charitable immunity, as well as the new non-economic damage cap, widely regarded as the lynchpin of the reform package. The article also analyzes changes in general tort law with respect to such issues as class action reform, settlement offers, forum shopping and proportionate responsibility.

The Texas Tech Law Review article retraces work by three interim committees in 2002, assessing the cause of rising medical liability insurance rates, as well a multitude of hearings during the 2003 legislative session.