

Proposition 12 would reinforce new law

Medical malpractice limits are already in effect as voters decide amendment

By David Pasztor

AMERICAN-STATESMAN STAFF

Come Saturday, voters will finally decide one of the most contentious and expensive constitutional amendment elections in recent Texas history.

Debate over Proposition 12, the most high-profile of 22 proposed changes to the state constitution on the ballot, has unleashed a multimillion-dollar flood of campaign advertising upon the airwaves and mailboxes of Texas in the past few weeks.

But what voters decide on the amendment may not be the last word.

New limits on the amount of money injured Texans can recover in medi-

cal malpractice lawsuits, the primary focus of interest, are already part of state law.

A cap of up to \$750,000 on noneconomic damages, such as pain and suffering, took effect Sept. 1 as part of a sweeping lawsuit reform bill that passed during the regular legislative session.

If it passes, Proposition 12 would give the new caps a constitutional blessing, preempting an inevitable court battle over their legality.

But if it fails, the caps will remain unless a court strikes them down.

In essence, Proposition 12 is a hedged bet. Supporters say it is quicker and

cleaner to change the constitution to ratify the caps than to spend years fighting over whether they meet constitutional muster.

But opponents say the constitutional change is unnecessary, and will give future legislatures far more power to impose caps in other types of lawsuits. Without the courts looking over their shoulders, they say, law-makers will not be forced to ensure that Texans don't lose their constitutionally guaranteed rights to go to court.

The disagreement has its roots in a 1988 Texas Supreme Court decision that sprang from another effort by

lawmakers to limit damages in malpractice cases.

In 1977, as now, Texas doctors said they were being forced out of business by high malpractice insurance rates, which they blamed on expensive lawsuits.

Legislators passed a \$500,000 cap on all damages a doctor or hospital should have to pay when successfully sued. But 11 years later, the state's highest civil court struck down the cap, finding that it violated what is known as the "open courts" provision of the state constitution.