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**AMENDMENT**  
**OFFERED BY MR. BURGESS OF TEXAS**

In section 2531 (relating to medical liability alternatives) amend subsection (a)(4) to read as follows:

1           (4) CONTENTS OF ALTERNATIVE MEDICAL LI-  
2    ABILITY LAW.—The contents of an alternative liabil-  
3    ity law are in accordance with this paragraph if the  
4    litigation alternatives contained in the law consist of  
5    a certificate of merit, an early offer, or both.

Add at the end the following new division:

6    **DIVISION E—MEDICAL JUSTICE**

7    **SEC. 4001. CAP ON NONECONOMIC DAMAGES AGAINST**  
8           **HEALTH CARE PRACTITIONERS.**

9           When an individual is injured or dies as the result  
10 of health care, a person entitled to noneconomic damages  
11 may not recover, from the class of health care practi-  
12 tioners (regardless of the theory of liability), more than  
13 \$250,000 for such damages.

1 **SEC. 4002. CAP ON NONECONOMIC DAMAGES AGAINST**  
2 **HEALTH CARE INSTITUTIONS.**

3 When an individual is injured or dies as the result  
4 of health care, a person entitled to noneconomic damages  
5 may not recover—

6 (1) from any single health care institution (re-  
7 gardless of the theory of liability), more than  
8 \$250,000 for such damages; and

9 (2) from the class of health care institutions  
10 (regardless of the theory of liability), more than  
11 \$500,000 for such damages.

12 **SEC. 4003. CAP, IN WRONGFUL DEATH CASES, ON TOTAL**  
13 **DAMAGES AGAINST ANY SINGLE HEALTH**  
14 **CARE PRACTITIONER.**

15 (a) **IN GENERAL.**—When an individual dies as the  
16 result of health care, a person entitled to damages may  
17 not recover, from any single health care practitioner (re-  
18 gardless of the theory of liability), more than \$1,400,000  
19 in total damages.

20 (b) **TOTAL DAMAGES DEFINED.**—In this section, the  
21 term “total damages” includes compensatory damages,  
22 punitive damages, statutory damages, and any other type  
23 of damages.

24 (c) **ADJUSTMENT FOR INFLATION.**—For each cal-  
25 endar year after the calendar year of the enactment of  
26 this Act, the dollar amount referred to in subsection (a)

1 shall be adjusted to reflect changes in the Consumer Price  
2 Index of the Bureau of Labor Statistics of the Department  
3 of Labor. The adjustment shall be based on the relation-  
4 ship between—

5 (1) the Consumer Price Index data most re-  
6 cently published as of January 1 of the calendar  
7 year of the enactment of this Act; and

8 (2) the Consumer Price Index data most re-  
9 cently published as of January 1 of the calendar  
10 year concerned.

11 (d) **APPLICABILITY OF ADJUSTMENT.**—The dollar  
12 amount that applies to a recovery is the dollar amount  
13 for the calendar year during which the amount of the re-  
14 covery is made final.

15 **SEC. 4004. LIMITATION OF INSURER LIABILITY WHEN IN-**  
16 **SURER REJECTS CERTAIN SETTLEMENT OF-**  
17 **FERS.**

18 In a civil action, to the extent the civil action seeks  
19 damages for the injury or death of an individual as the  
20 result of health care, when the insurer of a health care  
21 practitioner or health care institution rejects a reasonable  
22 settlement offer within policy limits, the insurer is not, by  
23 reason of that rejection, liable for damages in an amount  
24 that exceeds the liability of the insured.

1 **SEC. 4005. MANDATORY JURY INSTRUCTION ON CAP ON**  
2 **DAMAGES.**

3 In a civil action tried to a jury, to the extent the civil  
4 action seeks damages for the injury or death of an indi-  
5 vidual as the result of health care, the court shall instruct  
6 the jury that the jury may not consider whether, or to  
7 what extent, a limitation on damages applies.

8 **SEC. 4006. DETERMINATION OF NEGLIGENCE; MANDATORY**  
9 **JURY INSTRUCTION.**

10 (a) **IN GENERAL.**—When an individual is injured or  
11 dies as the result of health care, liability for negligence  
12 may not be based solely on a bad result.

13 (b) **MANDATORY JURY INSTRUCTION.**—In a civil ac-  
14 tion tried to a jury, to the extent the civil action seeks  
15 damages for the injury or death of an individual as the  
16 result of health care and alleges liability for negligence,  
17 the court shall instruct the jury as provided in subsection  
18 (a).

19 **SEC. 4007. EXPERT REPORTS REQUIRED TO BE SERVED IN**  
20 **CIVIL ACTIONS.**

21 (a) **SERVICE REQUIRED.**—To the extent a pleading  
22 filed in a civil action seeks damages against a health care  
23 practitioner for the injury or death of an individual as the  
24 result of health care, the party filing the pleading shall,  
25 not later than 120 days after the date on which the plead-

1 ing was filed, serve on each party against whom such dam-  
2 ages are sought a qualified expert report.

3 (b) QUALIFIED EXPERT REPORT.—For purposes of  
4 this section, the term “qualified expert report” means a  
5 written report of a qualified health care expert that—

6 (1) includes a curriculum vitae for that expert;  
7 and

8 (2) sets forth a summary of the expert opinion  
9 of that expert as to—

10 (A) the standard of care applicable to that  
11 practitioner;

12 (B) how that practitioner failed to meet  
13 that standard of care; and

14 (C) the causal relationship between that  
15 failure and the injury or death of the individual.

16 (c) MOTION TO ENFORCE.—A party not served as re-  
17 quired by subsection (a) may move the court to enforce  
18 that subsection. On such a motion, the court—

19 (1) shall dismiss, with prejudice, the pleading  
20 as it relates to that party; and

21 (2) shall award to that party the attorney fees  
22 reasonably incurred by that party to respond to that  
23 pleading.

24 (d) USE OF EXPERT REPORT.—

1 (1) IN GENERAL.—Except as otherwise pro-  
2 vided in this section, a qualified expert report served  
3 under subsection (a) may not, in that civil action—

4 (A) be offered by any party as evidence;

5 (B) be used by any party in discovery or  
6 any other pretrial proceeding; or

7 (C) be referred to by any party at trial.

8 (2) VIOLATIONS.—

9 (A) BY OTHER PARTY.—If a party, other  
10 than a party who served the report, violates  
11 paragraph (1), the court shall take such meas-  
12 ures as the court considers appropriate, which  
13 may include the imposition of sanctions.

14 (B) BY SERVING PARTY.—If the party who  
15 served the report violates paragraph (1), such  
16 paragraph shall no longer apply to any party.

17 **SEC. 4008. EXPERT OPINIONS RELATING TO PHYSICIANS**  
18 **MAY BE PROVIDED ONLY BY ACTIVELY PRAC-**  
19 **TICING PHYSICIANS.**

20 (a) IN GENERAL.—A physician-related opinion may  
21 be provided only by an actively practicing physician, who  
22 is determined by the court to be qualified on the basis  
23 of training and experience to render that opinion.

24 (b) CONSIDERATIONS REQUIRED.—In determining  
25 whether an actively practicing physician is qualified under

1 subsection (a), the court shall, except on good cause  
2 shown, consider whether that physician is board-certified,  
3 or has other substantial training, in an area of medical  
4 practice relevant to the health care to which the opinion  
5 relates.

6 (c) DEFINITIONS.—In this section:

7 (1) ACTIVELY PRACTICING PHYSICIAN.—The  
8 term “actively practicing physician” means an indi-  
9 vidual who—

10 (A) is licensed to practice medicine in the  
11 United States, or if the individual is a defend-  
12 ant providing a physician-related opinion with  
13 respect to the health care provided by that de-  
14 fendant, is a graduate of a medical school ac-  
15 credited by the Liaison Committee on Medical  
16 Education or the American Osteopathic Asso-  
17 ciation;

18 (B) is practicing medicine when the opin-  
19 ion is rendered, or was practicing medicine  
20 when the health care was provided; and

21 (C) has knowledge of the accepted stand-  
22 ards of care for the health care to which the  
23 opinion relates.

1           (2) PHYSICIAN-RELATED OPINION.—The term  
2       “physician-related opinion” means an expert opinion  
3       relating to one or more of the following:

4           (A) The standard of care applicable to a  
5       physician.

6           (B) Whether a physician failed to meet  
7       such a standard of care.

8           (C) Whether there was a causal relation-  
9       ship between such a failure by a physician and  
10      the injury or death of an individual.

11          (3) PRACTICING MEDICINE.—The term “prac-  
12      ticing medicine” includes training residents or stu-  
13      dents at an accredited school of medicine or osteop-  
14      athy, and serving as a consulting physician to other  
15      physicians who provide direct patient care.

16      **SEC. 4009. PAYMENT OF FUTURE DAMAGES ON PERIODIC**  
17                              **OR ACCRUAL BASIS.**

18          (a) IN GENERAL.—When future damages are award-  
19      ed against a health care practitioner to a person for the  
20      injury or death of an individual as a result of health care,  
21      and the present value of those future damages is \$100,000  
22      or more, such health care practitioner may move that the  
23      court order payment on a periodic or accrual basis of those  
24      damages. On such a motion, the court—

1           (1) shall order that payment be made on an ac-  
2           crual basis of future damages described in sub-  
3           section (b)(1); and

4           (2) may order that payment be made on a peri-  
5           odic or accrual basis of any other future damages  
6           that the court considers appropriate.

7           (b) FUTURE DAMAGES DEFINED.—For purposes of  
8           this section, the term “future damages” means—

9           (1) the future costs of medical, health care, or  
10          custodial services;

11          (2) noneconomic damages, such as pain and  
12          suffering or loss of consortium;

13          (3) loss of future earnings; and

14          (4) any other damages incurred after the award  
15          is made.

16   **SEC. 4010. UNANIMOUS JURY REQUIRED FOR PUNITIVE OR**  
17                           **EXEMPLARY DAMAGES.**

18          When an individual is injured or dies as the result  
19          of health care, a jury may not award punitive or exemplary  
20          damages against a health care practitioner or health care  
21          institution unless the jury is unanimous with regard to  
22          both the liability of that party for such damages and the  
23          amount of the award of such damages.

1 **SEC. 4011. PROPORTIONATE LIABILITY.**

2 When an individual is injured or dies as the result  
3 of health care and a person is entitled to damages for that  
4 injury or death, each person responsible is liable only for  
5 a proportionate share of the total damages that directly  
6 corresponds to the proportionate share for such person.

7 **SEC. 4012. DEFENSE-INITIATED SETTLEMENT PROCESS.**

8 (a) **IN GENERAL.**—In a civil action, to the extent the  
9 civil action seeks damages for the injury or death of an  
10 individual as the result of health care, a health care practi-  
11 tioner or health care institution against which such dam-  
12 ages are sought may serve one or more qualified settle-  
13 ment offers under this section to a person seeking such  
14 damages. If the person seeking such damages does not ac-  
15 cept such an offer, that person may thereafter serve one  
16 or more qualified settlement offers under this section to  
17 the party whose offer was not accepted.

18 (b) **EFFECT OF OFFER.**—If the offeree of a qualified  
19 settlement offer does not accept that offer, and thereafter  
20 receives a judgment at trial that, as between the offeror  
21 and the offeree, is significantly less favorable than the  
22 terms of settlement in that offer, that offeree is respon-  
23 sible for those litigation costs reasonably incurred, after  
24 the deadline stated in the offer, by the offeror to respond  
25 to the claims of the offeree.

1 (c) SIGNIFICANTLY LESS FAVORABLE.—For pur-  
2 poses of subsection (b), a judgement is significantly less  
3 favorable than the terms of settlement if—

4 (1) in the case of an offeree seeking damages,  
5 the offeree's award at trial is less than 80 percent  
6 of the value of the terms of settlement; and

7 (2) in the case of an offeree against whom dam-  
8 ages are sought, the offeror's award at trial is more  
9 than 120 percent of the value of the terms of settle-  
10 ment.

11 (d) DEFINITIONS.—For purposes of this section:

12 (1) LITIGATION COSTS.—The term "litigation  
13 costs" includes court costs, filing fees, expert witness  
14 fees, attorney fees, and any other costs directly re-  
15 lated to carrying out the litigation.

16 (2) QUALIFIED SETTLEMENT OFFER.—The  
17 term "qualified settlement offer" means an offer, in  
18 writing, to settle the matter as between the offeror  
19 and the offeree, which—

20 (A) specifies that it is made under this sec-  
21 tion;

22 (B) states the terms of settlement; and

23 (C) states the deadline within which the  
24 offer must be accepted.

1 **SEC. 4013. STATUTE OF LIMITATIONS; STATUTE OF REPOSE.**

2 (a) **STATUTE OF LIMITATIONS.**—When an individual  
3 is injured or dies as the result of health care, the statute  
4 of limitations shall be as follows:

5 (1) **INDIVIDUALS OF AGE 12 AND OVER.**—If the  
6 individual has attained the age of 12 years, the  
7 claim must be brought either—

8 (A) within 2 years after the negligence oc-  
9 curred; or

10 (B) within 2 years after the health care on  
11 which the claim is based is completed.

12 (2) **INDIVIDUALS UNDER AGE 12.**—If the indi-  
13 vidual has not attained the age of 12 years, the  
14 claim must be brought before the individual attains  
15 the age of 14 years.

16 (b) **STATUTE OF REPOSE.**—When an individual is in-  
17 jured or dies as the result of health care, the claim must  
18 be brought not later than 10 years after the act or omis-  
19 sion on which the claim is based is completed.

20 (c) **TOLLING.**—

21 (1) **STATUTE OF LIMITATIONS.**—The statute of  
22 limitations required by subsection (a) may be tolled  
23 if applicable law so provides, except that it may not  
24 be tolled on the basis of minority.

1           (2) STATUTE OF REPOSE.—The statute of  
2       repose required by subsection (b) may not be tolled  
3       for any reason.

4 **SEC. 4014. LIMITATION ON LIABILITY FOR GOOD SAMARI-**  
5                   **TANS PROVIDING EMERGENCY HEALTH**  
6                   **CARE.**

7       (a) WILLFUL OR WANTON NEGLIGENCE RE-  
8       QUIRED.—A health care practitioner or health care insti-  
9       tution that provides emergency health care on a good Sa-  
10      maritan basis is not liable for damages caused by that care  
11      except for willful or wanton negligence or more culpable  
12      misconduct.

13      (b) GOOD SAMARITAN BASIS.—For purposes of this  
14      section, care is provided on a good Samaritan basis if it  
15      is not provided for or in expectation of remuneration.  
16      Being entitled to remuneration is relevant to, but is not  
17      determinative of, whether it is provided for or in expecta-  
18      tion of remuneration.

19 **SEC. 4015. DEFINITIONS.**

20      In this division:

21           (1) HEALTH CARE INSTITUTION.—The term  
22      “health care institution” includes institutions such  
23      as—

24                   (A) an ambulatory surgical center;

25                   (B) an assisted living facility;

- 1 (C) an emergency medical services pro-  
2 vider;
- 3 (D) a home health agency;
- 4 (E) a hospice;
- 5 (F) a hospital;
- 6 (G) a hospital system;
- 7 (H) an intermediate care facility for the  
8 mentally retarded;
- 9 (I) a nursing home; and
- 10 (J) an end stage renal disease facility.

11 (2) HEALTH CARE PRACTITIONER.—The term  
12 “health care practitioner” includes a physician and  
13 a physician entity.

14 (3) PHYSICIAN ENTITY.—The term “physician  
15 entity” includes—

- 16 (A) a partnership or limited liability part-  
17 nership created by a group of physicians;
- 18 (B) a company created by physicians; and
- 19 (C) a nonprofit health corporation whose  
20 board is composed of physicians.

