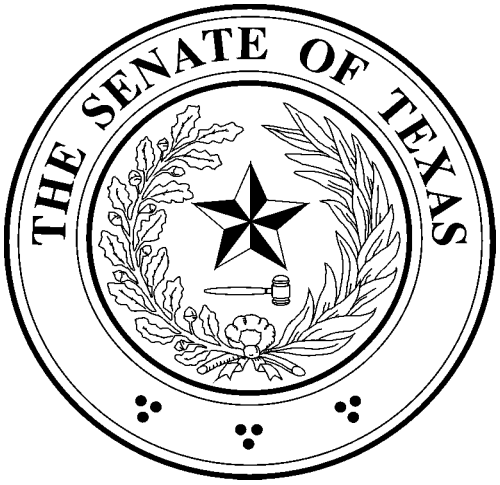
Senate Committee on State Affairs

Interim Report
to the
81st Legislature



December 2008

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December 1, 2008

The Honorable David Dewhurst
Lieutenant Governor of Texas
Members of the Texas Senate
Texas State Capitol
Austin, Texas 78701

Dear Lieutenant Governor Dewhurst and Fellow Members:

The Committee on State Affairs of the Eighteenth Legislature hereby submits its interim report including findings and recommendations for consideration by the Eighty-First Legislature.

Respectfully submitted,

Senator Robert Duncan, Chair

Senator Tommy Williams, Vice-Chair

Senator John Carona

Senator Rodney Ellis

Senator Troy Fraser

Senator Chris Harris

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Senator Eddie Lucio, Jr.

Senator Leticia Van de Putte

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TOMMY WILLIAMS
TEXAS STATE SENATOR
DISTRICT 4

COMMITTEES:
FINANCE
EDUCATION
SUBCOMMITTEE ON HIGHER EDUCATION
TRANSPORTATION AND HOMELAND SECURITY
STATE AFFAIRS, VICE CHAIR

February 9, 2009

The Honorable Robert Duncan
Chairman, Senate State Affairs Committee
P.O. Box 12068
Austin, Texas 78711

Dear Chairman Duncan,

Thank you for you and your staff's meticulous work during the interim addressing the myriad charges assigned to the Senate State Affairs Committee by Lt. Governor Dewhurst.

While I concur with the majority of the conclusions in the committee report, I take exception to the findings associated with Interim Charge #5. Specifically, I have concerns requiring insurance coverage for clinical trials. This coverage amounts to an additional mandate, and most mandates drive up the cost of individual and small group health insurance. In fact, previous interim studies have shown higher premiums result in more uninsured people.

Again, thank you for your conscientious and diligent work.

Sincerely,

Tommy Williams

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Interim Charges

The Senate State Affairs Committee is charged with conducting a thorough and detailed study of the following issues, including state and federal requirements, and preparing recommendations to address problems or issues that are identified.

1. Study the factors that impact the transparency and efficiency of the health insurance market. Make recommendation to result in the use of best practices, lower health care costs, and better health outcomes, including the following:
   - Study factors contributing to the increasing cost of health care;
   - Study insurer and health maintenance organization (HMO) use of tiers, ratings, or classifications to differentiate among credentialed physicians already admitted to the insurer or HMO panel of preferred providers or network;
   - Examine methods to remediate incorrect tiering, ratings, or classifications;
   - Examine how physicians are notified of the standards against which they will be compared and whether they are notified of the standards prior to the evaluation period;
   - Improve transparency with respect to the marketing of prescription drugs; and
   - Study the use of certain nonprofit health corporations - approved under Chapter 162, Occupations Code, in Texas. Examine whether such entities operate on a statewide scale or on a limited scale, whether such entities adhere to the formalities required of corporations, whether the operation of such entities are influenced by owners or members who are not licensed to practice medicine, and whether such entities have ever been decertified or investigated for failure to maintain compliance with Texas law or regulations.
2. Study and make recommendations for reducing the number of uninsured Texans, focusing on the following:
   - Options to increase access to private health insurance, including 3 Share programs, employer sponsored plans and portable, individual insurance;
   - Incentives for encouraging counties and local governments to participate in private health insurance cost sharing for their respective residents;
   - Options to reduce health care premiums, including creation of special plans with increased deductibles and catastrophic coverage;
   - Implementation and possible expansion of health services districts;
   - Other state programs for increasing market-based coverage of the uninsured, including costs and effectiveness;
   - Options that will increase consumer choice and personal responsibility; and
   - Analysis of state and federal regulations that contribute to higher premium costs.
3. Study and make recommendations relating to the Texas Health Insurance Risk Pool, including the current eligibility for coverage requirements, the economic profiles of participants and former participants, the affordability of the insurance products' premiums and deductibles, and the public's awareness of the Pool.

4. Study the issue of security and accuracy in Texas elections. The study should include the benefits and risks of electronic voting technology, including the necessity of maintaining a paper record of each electronic vote. The study should also include an analysis of fraud in Texas elections, including prosecution rates for voter fraud, the processes for purging ineligible voters from voter lists, and the integrity of the mail-in and provisional ballot systems. Study the effectiveness of electronic voting technology and voter ID laws in other states. Monitor the implementation of the federal Help America Vote Act of 2002, including the implementation of the Texas Election Administration Management system. Recommend statutory and regulatory changes designed to ensure that only eligible voters are allowed to vote in Texas elections and that each vote is accurately counted.
5. Review and make recommendations for requiring insurance coverage of routine medical care for patients with a life-threatening disease or condition who have elected to participate in a clinical trial.
6. Study the economic impact of recent civil justice reform legislation in Texas.
7. Study whether Texas should adopt the Restatement 2nd of Torts Sec. 674 (Wrongful use of Civil Proceedings) and whether a person should be allowed to recover court and attorneys fees when he has been forced to defend a lawsuit filed without probable cause or for intimidation purposes.
8. Monitor the Texas workers' compensation system, and the continued implementation of the reforms of HB 7, 79th Legislature, Regular Session, by the Texas Department of Insurance and other state agencies. Specifically evaluate the recent decision by the Texas Supreme Court in *Entergy v. Summers* in terms of its impact and the impact of previous legislation on the workers' compensation system.
9. Study and make recommendations to reduce illegal gambling in Texas, including, but not limited to, the illegal use of Eight-Liners.
10. Analyze the advantages and disadvantages of phasing in a defined-contribution pension for future employees versus the existing defined-benefit pension plan. Study options for transition or implementation issues and how the phase-in could be structured. Evaluate the possibility of requiring the state employee contribution rate to meet the annually required contribution for the statewide retirement funds each biennium in order to prevent unfunded liabilities.
11. Study the relationship between the public mental health system and the criminal justice and civil courts systems, including the identification and sharing of information regarding mentally ill offenders, including minors, among criminal justice and mental health agencies, the courts, state hospitals, and the Veterans Administration. Study how current confidentiality laws impact the exchange of information among groups described above. Study the sentencing of mentally ill offenders compared to non-mentally ill offenders, including minors, and the affect that has on statewide prison capacity and on the quality of health care provided to mentally ill offenders. (Joint charge with Senate Criminal Justice Committee)

12. Review and evaluate appropriate state regulation of a private operator of the state lottery should the state receive bids for a lease of the lottery that merit strong consideration. Provide recommendations for ensuring the security and integrity of the lottery and for adequate consumer protections. (Joint charge with Senate Finance Committee)

13. Study the feasibility and the advisability of establishing an investment policy that is consistent across all state trust funds, including the trust funds of the Employees Retirement System, the Teachers Retirement System, the Permanent University Fund, and the Permanent School Fund. Identify best investment policies for state trust funds. Examine recent portfolio diversification strategies and the effect they have on long-term fund performance. The recommendations should consider what is an acceptable rate of return, an acceptable degree of risk, the appropriateness of certain investments. (Joint charge with Senate Finance Committee)

14. Monitor the implementation of legislation addressed by the State Affairs Committee, 80th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. In particular, monitor and report on the effect of HB 2365, which allows public entities to report "other post employment benefits" (OPEBs) on a statutory modified accrual basis, including any effect on auditor opinions, bond ratings, or other fiscal issues. Monitor the implementation of Senate Bill 1731, relating to transparency of health information, and Senate Bill 1846, relating to TRS.

Senate Committee on State Affairs Interim Hearings

March 25, 2008, *Room E1.202*
The Committee and the Finance Committee took invited and public testimony on Joint Charge No. 13.

March 26, 2008, *Room E1.012*
The Committee took invited and public testimony on Charge Nos. 2 and 3.

April 28, 2008, *Senate Chamber*
The Committee took invited and public testimony on Charge Nos. 6, 7 and 8.

May 21, 2008, *Senate Chamber*
The Committee took invited and public testimony on Charge Nos. 1 and 5.

August 27, 2008, *Room E1.036*
The Committee and the Finance Committee took invited and public testimony on Joint Charge No. 12.

October 15, 2008, *Senate Chamber*
The Committee took invited and public testimony on Charge Nos. 4 and 9.

November 5, 2008, *Senate Chamber*
The Committee took invited and public testimony on Charge Nos. 1 and 14.

November 20, 2008, *Senate Chamber*
The Committee took invited and public testimony on Charge Nos. 10 and 14.

Audio/Video recordings, minutes and witness lists for the above referenced hearings may be found online at: http://www.senate.state.tx.us/75r/senate/commit/c570/c570.htm

Executive Summary

Interim Charge No. 1

Study the factors that impact the transparency and efficiency of the health insurance market. Make recommendation to result in the use of best practices, lower health care costs, and better health outcomes, including the following:

- *Study factors contributing to the increasing cost of health care;*
- *Study insurer and health maintenance organization (HMO) use of tiers, ratings, or classifications to differentiate among credentialed physicians already admitted to the insurer or HMO panel of preferred providers or network;*
- *Examine methods to remediate incorrect tiering, ratings, or classifications;*
- *Examine how physicians are notified of the standards against which they will be compared and whether they are notified of the standards prior to the evaluation period;*
- *Improve transparency with respect to the marketing of prescription drugs; and*
- *Study the use of certain nonprofit health corporations - approved under Chapter 162, Occupations Code, in Texas. Examine whether such entities operate on a statewide scale or on a limited scale, whether such entities adhere to the formalities required of corporations, whether the operation of such entities are influenced by owners or members who are not licensed to practice medicine, and whether such entities have ever been decertified or investigated for failure to maintain compliance with Texas law or regulations.*

Recommendations

After reviewing the testimony received, the Committee makes the following recommendations:

- The 81st Legislature should consider legislation to establish due process for physicians improperly classified by health plans tiering, ratings or classification systems.
- The 81st Legislature should consider changes to current statutes prohibiting the employment of physicians.

If the Texas Legislature is to move forward with amendments to the Corporate Practice of Medicine doctrine, it is essential that provisions are included that expressly prohibit an employing corporation from ever compromising or influencing the medical judgment of a physician. Protecting the integrity of a physician's diagnosis, treatment or medical decisions is of the utmost importance. Considerations should also be given to the scope and extent of such a change. It may be appropriate to limit changes to facilities in counties under a certain populations, medically underserved areas, or to certain specialties that practice solely in a facility setting.

Interim Charge No. 2

Study and make recommendations for reducing the number of uninsured Texans, focusing on the following:

- *Options to increase access to private health insurance, including 3 Share programs, employer sponsored plans and portable, individual insurance;*

- *Incentives for encouraging counties and local governments to participate in private health insurance cost sharing for their respective residents;*
- *Options to reduce health care premiums, including creation of special plans with increased deductibles and catastrophic coverage;*
- *Implementation and possible expansion of health services districts;*
- *Other state programs for increasing market-based coverage of the uninsured, including costs and effectiveness;*
- *Options that will increase consumer choice and personal responsibility; and*
- *Analysis of state and federal regulations that contribute to higher premium costs.*

Recommendations

The Texas Legislature should continue its incremental process in addressing Texas' uninsured problem. While there may not be an easy, comprehensive solution, each incremental change or new local program is progress in the right direction.

A significant number of uninsured Texans work in the small-employer market. Referencing successes in other states, the Texas Department of Insurance (TDI) has created a comprehensive, market-based proposal to assist insurance carriers in providing affordable coverage for the small business market. *Healthy Texas* is a concept that utilizes a range of tools, including a reinsurance program for Texas small businesses that have been unable to offer health insurance for the previous 12 months. An extensive explanation of this proposal can be found at: http://www.tdi.state.tx.us/reports/life/documents/hlthytxph1rpt08.pdf

A state-funded reinsurance program in the small business market could establish reinsurance coverage for carriers and provide protection against unexpectedly high claims costs or high volume of claims. Reinsurance would establish a means of spreading risk in the small business market and help to provide predictability of claims for these enrollees. These changes would reduce premium amounts for the covered population and decrease the number of uninsured, employed Texans.

Considering funding availability, the 81st Legislature should implement a public/private, market-based reinsurance program for the uninsured in the small business market.

Interim Charge No. 3

Study and make recommendations relating to the Texas Health Insurance Risk Pool, including the current eligibility for coverage requirements, the economic profiles of participants and former participants, the affordability of the insurance products' premiums and deductibles, and the public's awareness of the Pool.

Recommendations

As the state continues to struggle with the escalating costs of health care for the uninsured, action should be taken to ensure that individuals on the brink of leaving the Texas Health Insurance Risk Pool based on high premium rates can remain in the program. Their departure from the ranks of the insured would add to the burden of the uninsured. Based on the foregoing, the Committee makes the following recommendations.

- Subject to available General Revenue Funds, the Legislature should consider the implementation of a premium assistance program for certain, low-income Pool enrollees.

Funding for such a program could be achieved with a direct General Revenue appropriation or through an additional assessment on the insurance industry.

Discussion surrounding this significant program change for low-income Pool enrollees should include consideration of a financial/tax credit to the insurance industry for this portion of the Pool costs.

- Consider a legislatively created program to provide assistance and incentives for chronic disease advocacy groups to fund a premium assistance program in the form of a public/private venture.

Interim Charge No. 4

Study the issue of security and accuracy in Texas elections. The study should include the benefits and risks of electronic voting technology, including the necessity of maintaining a paper record of each electronic vote. The study should also include an analysis of fraud in Texas elections, including prosecution rates for voter fraud, the processes for purging ineligible voters from voter lists, and the integrity of the mail-in and provisional ballot systems. Study the effectiveness of electronic voting technology and voter ID laws in other states. Monitor the implementation of the federal Help America Vote Act of 2002, including the implementation of the Texas Election Administration Management system. Recommend statutory and regulatory changes designed to ensure that only eligible voters are allowed to vote in Texas elections and that each vote is accurately counted.

Recommendations

The integrity of elections must balance prevention and detection of fraud. Thus, regardless of the voting platform, electronic system or paper ballots, all procedures in place need to provide a high level of assurance that they prevent ballot tampering and if tampering occurs, that it can be detected.

The Legislature should consider requiring that the Secretary of State issue a post-election assessment of electronic voting systems' performance following each uniform election date. Such a report would serve to catalog any electronic voting system malfunction.

Interim Charge No. 5

Review and make recommendations for requiring insurance coverage of routine medical care for patients with a life-threatening disease or condition who have elected to participate in a clinical trial.

Recommendations

The Committee concludes that it should be the public policy of the State to require coverage for the routine medical costs of those patients suffering a life-threatening disease or condition and elect to participate in a clinical trial. The Legislature should look to other states, Medicare rules, regulations of the federal Food and Drug Administration, and language recommended by AAHIP to ascertain what qualifies as a life-threatening disease or condition and what costs would be considered routine. Such a statute may also reference industry guidelines outlining the standard care for the appropriate disease or condition.

Although there are concerns that such a mandate could serve as a subsidy for drug companies, these concerns are mitigated by the fact that coverage of only routine costs, those

typical of the treatment to be provided, would be required. The trial sponsor would continue to be responsible for the costs of any pre-trial testing, experimental drug or therapy, and all administrative costs associated with the trial.

Interim Charge No. 6

Study the economic impact of recent civil justice reform legislation in Texas.

The Texas Legislature began enacting civil justice reforms more than 20 years ago. These changes addressed many areas of the law, most notably the filing of frivolous lawsuits, forum shopping, products liability actions, damages, lawsuits relating to asbestos exposure, health care liability claims, and economic damage caps. The true economic impact of these changes would be fairly impossible to measure; however, anecdotal evidence combined with data modeling provides some insight into the positive effect of the policy changes over time.

Interim Charge No. 7

Study whether Texas should adopt the Restatement 2nd of Torts Sec. 674 (Wrongful use of Civil Proceedings) and whether a person should be allowed to recover court and attorneys fees when he has been forced to defend a lawsuit filed without probable cause or for intimidation purposes.

Recommendations

The Committee makes no recommendation on whether the Legislature should adopt the Restatement (Second) of Torts, Section 674.

Interim Charge No. 8

Monitor the Texas workers' compensation system, and the continued implementation of the reforms of HB 7, 79th Legislature, Regular Session, by the Texas Department of Insurance and other state agencies. Specifically evaluate the recent decision by the Texas Supreme Court in Entergy v. Summers in terms of its impact and the impact of previous legislation on the workers' compensation system.

Recommendation

In the eyes of many, the *Entergy* opinion represents a major shift in the well-developed balance of the workers' compensation system. The Committee is not aware of evidence that the statutory changes relied upon by the Court in reaching its decision were the subject of any deliberation reflecting legislative intent to grant statutory immunity to a premises owner. In fact, tort reform interest groups have persistently and unsuccessfully supported such legislation in recent years. Any expansion of this immunity under the statutory exclusive remedy doctrine is best left to the clear, not implied, intent of the Legislature.

If the Court's decision after rehearing is consistent with its originally published holding on whether a premises owner may operate as a general contractor and obtain immunity as a statutory employer, the Legislature should take the opportunity to reevaluate the public policy involved in recognizing third-party immunity in the workers' compensation system.

Interim Charge No. 9

Study and make recommendations to reduce illegal gambling in Texas, including, but not limited to, the illegal use of Eight-Liners.

Recommendations

The Committee has reviewed the testimony provided and makes the following recommendations:

- The Legislature should consider new statutory language that clarifies whether a gift certificate or card, a prepaid credit card or a stored-value debit card qualifies as a "noncash merchandise prize" for the purposes of Penal Code § 47.01(4)(B).
- The Legislature should consider new statutory language requiring the registration of owners and/or operators of machines similar to the language proposed by Senate Bill 1996, 80th L.S., or by the City of Houston.
- The Legislature should consider amending the Code of Criminal Procedure to allow law enforcement agencies seizing eight-liners to seize one representative machine and the mother boards for all other machines.

Interim Charge No. 10

Analyze the advantages and disadvantages of phasing in a defined-contribution pension for future employees versus the existing defined-benefit pension plan. Study options for transition or implementation issues and how the phase-in could be structured. Evaluate the possibility of requiring the state employee contribution rate to meet the annually required contribution for the statewide retirement funds each biennium in order to prevent unfunded liabilities.

Recommendations:

No compelling information or testimony was provided to the Committee to support a shift away from defined benefit programs. Therefore, it is recommended that the state continue to operate its retirement programs under the current structure.

Interim Charge No. 11

Study the relationship between the public mental health system and the criminal justice and civil courts systems, including the identification and sharing of information regarding mentally ill offenders, including minors, among criminal justice and mental health agencies, the courts, state hospitals, and the Veterans Administration. Study how current confidentiality laws impact the exchange of information among groups described above. Study the sentencing of mentally ill offenders compared to non-mentally ill offenders, including minors, and the affect that has on statewide prison capacity and on the quality of health care provided to mentally ill offenders. (Joint charge with Senate Criminal Justice Committee)

The Senate Committee on State Affairs refers to the Criminal Justice Committee's report for discussion related to this charge. The Senate Committee on Criminal Justice interim report can be found at: http://www.senate.state.tx.us/75r/senate/commit/c590/c590.InterimReport80.pdf

Interim Charge No. 12

Review and evaluate appropriate state regulation of a private operator of the state lottery should the state receive bids for a lease of the lottery that merit strong consideration. Provide recommendations for ensuring the security and integrity of the lottery and for adequate consumer protections. (Joint charge with Senate Finance Committee)

Conclusion

Following the Committee's hearing on this matter, the Office of Legal Counsel of the U.S. Department of Justice issued an opinion interpreting federal limitations on a state's ability to lease its lottery. This opinion, on its face, appears to prohibit such a lease. Thus, the Committee concludes further consideration of lottery privatization should be deferred until it can be reviewed by appropriate legal counsel and the advisability of investing the state's time and resources in reviewing the question of privatization can be weighed.

Interim Charge No. 13

Study the feasibility and the advisability of establishing an investment policy that is consistent across all state trust funds, including the trust funds of the Employees Retirement System, the Teachers Retirement System, the Permanent University Fund, and the Permanent School Fund. Identify best investment policies for state trust funds. Examine recent portfolio diversification strategies and the effect they have on long-term fund performance. The recommendations should consider what is an acceptable rate of return, an acceptable degree of risk, the appropriateness of certain investments. (Joint charge with Senate Finance Committee)

Recommendations

The Senate Committee on State Affairs reports the following to the 81st Legislature to consider taking appropriate action relating to state investment policies.

- Add Value at Risk to the reporting requirements in the Legislative Budget Board's "Report on major Investment Funds" (Government Code Chapter 322, Section 322.014(b)).
- Increase the oversight authority of the Pension Review Board and the Office of the Attorney General to require that ethics and investment policies be submitted to each for review and comment prior to adoption or amendment.

Interim Charge No. 14

Monitor the implementation of legislation addressed by the State Affairs Committee, 80th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. In particular, monitor and report on the effect of HB 2365, which allows public entities to report "other post employment benefits" (OPEBs) on a statutory modified accrual basis, including any effect on auditor opinions, bond ratings, or other fiscal issues. Monitor the implementation of Senate Bill 1731, relating to transparency of health information, and Senate Bill 1846, relating to TRS.

Recommendations Relating to SB 1731

- Continue discussions to support increased transparency for all factions of health care. It is imperative that the transparency is fair and equally applied to all parties. Transparency should not be used as a tool to further the historical tensions between the affected parties.
- Pending the results and findings from the Network Adequacy Advisory Committee report, the Legislature should continue discussions regarding health plan networks, non-network payment rates and the contracting practices of hospitals and hospital-based

physicians. The state should encourage concepts that could lessen the impact of balance billing to the citizens of Texas.

- Allow the Texas Department of State Health Services to collect data that includes patient identification information, while maintaining the highest level of privacy standards, to better match in- and out-patient data sets for improved analysis.
- Investigate means for appropriate regulatory agencies to collect data from Texas physicians and facilities to better understand the findings from similar health plan data currently collected by the Texas Department of Insurance.

House Bill 2365 and Senate Bill 1846

The Committee makes no recommendations relating to either House Bill 2365 or Senate Bill 1846.

Interim Charge Discussion and Recommendations

Charge No. 1

Study the factors that impact the transparency and efficiency of the health insurance market. Make recommendation to result in the use of best practices, lower health care costs, and better health outcomes, including the following:

- *Study factors contributing to the increasing cost of health care;*
- *Study insurer and health maintenance organization (HMO) use of tiers, ratings, or classifications to differentiate among credentialed physicians already admitted to the insurer or HMO panel of preferred providers or network;*
- *Examine methods to remediate incorrect tiering, ratings, or classifications;*
- *Examine how physicians are notified of the standards against which they will be compared and whether they are notified of the standards prior to the evaluation period;*
- *Improve transparency with respect to the marketing of prescription drugs; and*
- *Study the use of certain nonprofit health corporations - approved under Chapter 162, Occupations Code, in Texas. Examine whether such entities operate on a statewide scale or on a limited scale, whether such entities adhere to the formalities required of corporations, whether the operation of such entities are influenced by owners or members who are not licensed to practice medicine, and whether such entities have ever been decertified or investigated for failure to maintain compliance with Texas law or regulations.*

Factors Contributing to the Increasing Cost of Health Care

Health care spending, both in Texas and across the nation, has steadily increased during the past 40 years. According to testimony from the Texas Department of Insurance (TDI), the percentage of health expenses as a part of the Gross Domestic Product has grown from 7.2 percent in 1970 to 16 percent in 2006. In response, all levels of government have tried various programs and funding structures to help mitigate the impact of dramatically rising health care costs. Likewise, businesses have been forced to reallocate their financial resources to cover the cost of premiums or drop employee coverage entirely.

The Texas Department of Insurance has provided a list of the primary health care cost drivers: technology, an aging population and a less healthy population. Technology is consistently cited as a leading driver of health care costs. As in most industries, there are constant technological advances in the medical field. New services, better treatment protocols, the latest pharmaceuticals and more accurate diagnostic tools are regularly available to providers, and thus contribute to the growth of health care costs. These advances are important achievements, but they contribute to the increased cost of providing routine care. These advances may also extend lives, which in turn yield more opportunity for additional health care utilization and the associated costs.

The Texas population, as a whole, is living longer. The health care industry is therefore caring for a population with greater health care needs and utilization. As an example, Medicare

spending on end-of-life care accounts for 28 percent of all Medicare spending. Per capita spending in the last year of life is four to six times higher than that of the average Medicare enrollee.[1]

Finally, increasing amounts of health care dollars are being spent on a sicker population and on individuals with chronic diseases. TDI provided testimony indicating 97 percent of the total health care spending is utilized by only 50 percent of the population. Chronic diseases such as diabetes and heart disease consume an enormous portion of health care spending. Recent estimates attribute close to 75 percent of all health care spending to the treatment of chronic disease.[2]

The Texas Department of Insurance provided examples of recent efforts to contain health care costs. Many health plans have implemented utilization review and disease management strategies. Nationally, 80 percent of workers are enrolled in health plans with case management, 75 percent must obtain approval for inpatient care and 55 percent must obtain approval for outpatient surgery. These management techniques serve as a check-point to ensure enrollees are receiving the appropriate services for their diagnosis and provide that enrollees with chronic, but manageable diseases are receiving the correct preventative care to maintain their highest level of healthiness.

Businesses and individuals have attempted to participate in their own cost containment by selecting high deductible or consumer-directed plans that often have lower premiums. According to 2006 statistics from the Internal Revenue Service (IRS), two percent of insureds had high deductible, qualified Health Savings Account (HSA) plans, but fewer than 60 percent actually opened an HSA. This cost containment option, however, is one that is more often utilized by high income individuals. The average annual income for an HSA enrollee is $57,000.[3]

There are also issues within the fundamental health care reimbursement system that compromise the effectiveness of cost containment efforts. Examples of such instances were provided by TDI. First, the health care system rewards quantity, not quality. Health care providers are reimbursed on the amount of health care provided, not the quality or necessity of the care. Moreover, health care policy often focuses on cost rather than cost-effectiveness and outcomes. Providers are reimbursed regardless of the need or quality outcome of the care provided. Finally, the use of higher deductible insurance plans may discourage enrollees from obtaining or delaying needed health care. Delaying care for a health care issue can lead to higher costs in the end.

Questions often arise as to how enrollee premium dollars are spent on the various components of health care. The Texas Association of Health plans provided testimony that 93 percent of all health care spending covers health care services. According to the federal government's National Health Expenditure report, health care spending is broken down as follows:

[1] Senate Committee on State Affairs Hearing, May 21, 2008 (testimony of Jared Wolfe, Texas Association of Health Plans and Dianne Longley, Texas Department of Insurance).
[2] *Id.*
[3] *Id.*

Hospital Care	31%
Physician and Clinical Services	21%
Other spending[4]	25%
Prescription Drugs	10%
Program and Administration and Net Cost	7%
Nursing Home Care	6%

Health care providers have concerns with health plans' allocation of premium dollars and advocate for increased disclosure of certain spending amounts. Specifically, the Texas Medical Association testified in favor of the release of health plans' Medical Cost Ratio (MCR).[5] The MCR methodology reflects the portion of premium dollars collected that were spent on health care services as the total amount of costs spent on health care costs divided by the total amount of premiums collected. Using this calculation, proponents of MCR disclosure assert that any premium dollars collected for premiums, but not spent on health care costs, is profit, and that insurer profit is driving health care costs.

The insurance industry asserts that the MCR does not effectively capture their actual expenditures for health care services. The Texas Association of Health Plans claim the MCR is an accounting tool that does not accurately reflect all the health care services they provide. For example, they assert the MCR does not capture expenditures related to disease management, claims administration, provider relations and support, customer service, wellness and prevention efforts, provider contracting, underwriting, information technology, utilization review and general administration. They also assert that in this age of managed care, these types of administrative services directly impact the health and well-being of a plan's enrollees.[6]

The rising cost of health care is a complex and contentious issue. Each stakeholder has suggested faults and recommendations for improvement. As with many complex, multi-industry issues, finding solutions that are balanced and do not unfairly punish one sector over the other is a constant challenge. Solutions must come from an incremental and shared contribution from each industry stakeholder as a sincere dedication for the greater success of transparency and cost containment, not as a means to politically declare victory over the "other side."

Notification and Remediation Options for HMO Tiering, Rating, and Classifications of Physicians

Many health plans utilize cost savings methods that tier, rate or classify providers. The more favorably rated network providers are specially designated, and enrollees who utilize these providers earn certain benefits such as lower cost sharing levels. Health plans advertise that these designations and steerage reduce health care costs and premiums for the plan enrollees.

[4] Other spending accounts for spending on dental, other professional services, home health, durable medical equipment, public health, and research.
[5] Senate Committee on State Affairs Hearing, May 21, 2008 (testimony of Charlotte H. Smith, MD, Texas Medical Association).
[6] Senate Committee on State Affairs Hearing, May 21, 2008 (testimony of Jared Wolfe, Texas Association of Health Plans).

However, providers assert these systems are created based on economic models that do not effectively consider quality. The use of this cost saving method is controversial. The scope of the Committee's charge on this issue is focused on the procedural issues associated with this industry practice.

During the 80th Legislative Session, the Senate passed Senate Bill 1143, by Senator Robert Deuell which related to this issue. However, the bill did not get a hearing in the House Insurance Committee.

Anecdotal evidence was provided to the Committee during the 80th Legislative Session and Interim regarding the existence of inaccurate data or inappropriate measurements for certain specialists used by health plans' classification systems. Further, physicians do not believe they are provided "due process" that allows for the correction of inaccurate data published by the health plans.

Health plans assert that these classification systems help reduce the cost of health care and improve preventative care. According to their testimony, these systems are accurate and are based on both economic and quality data. However, other states have regulated efforts to guarantee consistency and a better understanding of the classification systems.

As a national effort, a stakeholder coalition created the *Patient Charter for Physician Performance Measurement, Reporting and Tiering Programs* (Patient Charter). The Patient Charter was established to ensure transparency, fairness and independent review for physician performance programs. The Patient Charter has been endorsed by leading consumer and employer organizations. Health plans are encouraged to adopt and abide by the established *Criteria for Physician Performance Measurement, Reporting and Tiering* (Criteria) and agree to an independent review.

With the advent of the Patient Charter and increased regulatory standards required by other states, uniform NCQA Physician and Hospital Quality (PHQ) Standards have been created to certify physician and hospital measurement programs. The NCQA's updated PHQ certification program is based on principles of standardization and sound methodology; transparency for consumers and providers; collaboration; and action on quality and cost, or quality only, but never cost alone.

Transparency Relating to the Marketing of Prescription Drugs

In the past decade, the cost of pharmaceutical drugs has become a frequent topic of discussion in the health care costs debate. The constant rise in cost of pharmaceutical drugs has led many states and businesses to evaluate their impact and implement various cost savings measures. A unique factor associated with pharmaceuticals, as opposed to providers, is the substantial marketing of pharmaceuticals, both directly to the consumers and to the physicians prescribing those drugs.

Most pharmaceutical companies employ sales representatives who work directly with physician offices to provide ongoing education and marketing for their particular drugs. To measure this marketing strategy, pharmaceutical companies often purchase the prescribing data of physicians.

Prescriber data is also used by the pharmaceutical companies and the United States Food and Drug Administration to manage the risks associated with numerous products used in the treatment of serious diseases. Pharmaceutical companies are responsible for monitoring prescribing patterns, assuring adherence to federally endorsed "risk management" plans, and providing targeted safety and educational messages.

There have been concerns that physicians are being unduly pressured to prescribe certain drugs because of the sales representatives' ability to track when and if a physician prescribes a certain brand of drug. In response to that concern, the American Medical Association (AMA) has created a nationwide program that allows physicians to opt-out of the prescription data collection process.

The Physician Data Restriction Program (PDRP) was created in July 2006 by the American Medical Association. The PDRP provides an alternative that permits physicians to opt out of the data collection at their discretion, rather than encourage various legislative bans on the collection of this data that could compromise the public health aspects of prescriber data use.

Specifically, the PDRP provides physicians with an opt-out mechanism to prohibit the release of their prescribing data to pharmaceutical sales representatives for a period of three years. Also, the PDRP establishes a means for registering complaints against pharmaceutical companies or individuals who use prescriber data inappropriately. Since 2006, the AMA has worked with state medical societies to inform physicians of the program. In that time 4,000 physicians have enrolled.

Corporate Practice of Medicine

Background

In Texas and other states, the prohibition of the "corporate practice of medicine" dates back to the early 1900's to curb the unlicensed practice of medicine in response to a concern about unqualified people peddling "miracle cures" and potions to cure a litany of medical and psychological conditions. Many of these so-called cures were nothing more than a very high dose of alcohol and rarely cured the concerning ailment.

As growth in the medical profession developed, many private businesses saw opportunity in the practice of medicine, and they began to develop clinics with hired physicians to provide medical care to the public.[7] The medical community had concerns about this growth of "corporate clinics" and sought legal and legislative prohibitions to these practices. Physicians were concerned that the corporations, boards of directors or shareholders would direct medical care to the benefit of profit rather than the health and well-being of patients.

In response to these medical community concerns, many states, including Texas, created requirements that only an "individual" could be licensed to practice medicine. Courts have consistently interpreted this requirement as a prohibition against the corporate practice of

[7] Senate Committee on State Affairs Hearing, Nov. 5, 2008 (testimony of Charles Bailey and Jerry Bell, Texas Hospital Association).

medicine.[8] Four significant cases in the last 50 years have addressed the prohibition in Texas. However, there has been no significant case interpreting the prohibition in the last 20 years.[9]

Many physicians continue to support the prohibition of corporate practice of medicine. They are genuinely concerned that if employed by a corporation, a physician could be pressured or influenced to make medical decisions based on financial reasons rather than quality medical care. The Texas Medical Association continues to oppose any changes to the current structure.[10]

Texas is one of only five states that explicitly defines or actively enforces some form of the prohibition of the corporate practice of medicine.[11] Some states prohibit corporate entities from engaging in the practice of medicine, but also provide for limited exceptions, such as employment by nonprofit corporations, health maintenance organizations or hospitals.[12] Additionally, 24 states have chosen not to prohibit the corporate practice of medicine. Where corporate practice of medicine is allowed, most statutes also require that the corporation may not exercise control over the physician's independent medical judgment.

Discussion

While the term "Corporate Practice of Medicine" is not defined in Texas statute, the following provisions set out in the Texas Occupations Code lay the groundwork for a prohibition of the practice of medicine by anyone other than a licensed individual.[13]

> Section 155.001 - provides that a person may not practice medicine in the State of Texas unless that person holds a license.
>
> Section 155.003 - describes the eligibility requirements for a license to practice medicine which can only be met by an individual, and not by an entity or corporation.
>
> Section 157.001 - authorizes a physician to delegate certain medical acts but prohibits the delegation to a person falsely representing to the public authorization to practice medicine.

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[8] Adam M. Freiman, *The Abandonment of the Antiquated Corporate Practice of Medicine Doctrine*, 47 EMORY L.J. 697 (1998); *Institutional Control of Physician Behavior: Legal Barriers to Health Care Cost Containment*, 137 U. PA. L. REV. 431 (1988); *Hospitals and the Corporate Practice of Medicine Doctrine*, 45 CORNELL L. REV. 432 (1960); Annotation, *Right of Corporation or Individual Not Himself Licensed to Practice Medicine Surgery or Dentistry Through Licensed Employers*, 103 A.L.R. 1229 (1936).

[9] Garcia v. Texas State Board of Medical Examiners, 384 F.Supp. 434 (W.D. Tex. 1974); Flynn Brothers, Inc. v. First Medical Associates, 715 S.W.2d 782 (Tex. App. - Dallas 1986); Watt v. Texas State Board of Medical Examiners, 303 S.W.2d 884 (Tex. Civ. App. - Dallas 1957); Rockett v. Texas State Board of Medical Examiners, 287 S.W.2d 190 (Tex. Civ. App. - San Antonio 1956).

[10] Senate Committee on State Affairs Hearing, Nov. 5, 2008 (testimony of Bill Hinchey, MD, Texas Medical Association).

[11] State Bar of Texas Health Law Section, *The Impact of the Corporate Practice of Medicine Doctrine on the Formation of Integrated Delivery Systems in Texas*, State Bar Section Report, Winter 1997. Also verified by the Texas Medical Board for research performed by Senate Research Center, August 2008.

[12] Senate Committee on State Affairs Hearing, Nov. 5, 2008 (testimony of Charles Bailey and Jerry Bell, Texas Hospital Association).

[13] TEX. OCC. CODE ANN. §§ 155.001, 155.003, 157.001, 164.052(8) (13) (17), 165.156 (Vernon 2003 & Supp. 2008).

Section 164.052, subsection (8) - prohibits a physician from using or selling the physician's medical degree or license to practice medicine; subsection (13) prohibits a physician from permitting another to use his/her license or certificate to practice medicine; and subsection (17) prohibits a physician from directly or indirectly aiding or abetting in the practice of medicine by a person, partnership, association or corporation that is not licensed to practice medicine.

Section 165.156 - specifically provides that a person, partnership, trust, association or corporation commits an offense if it in any manner indicates entitlement to practice medicine when it is not licensed to do so.

While the above statutory provisions establish a list of prohibitions, Texas has also created specific exceptions. These exceptions have been addressed on an ad hoc basis and never as part of a large reform of the doctrine. For example, Texas allows private nonprofit medical schools, school districts, nonprofit health organizations certified by the Texas Medical Board, federally qualified health care centers, and migrant/community/homeless centers to employ physicians. Additionally, the Legislature has allowed approximately 10 hospital districts to change their enabling legislation to employ physicians. The state itself is allowed to employ physicians to work in state academic medical centers, state hospitals and prisons.

The practice of medicine has changed dramatically in recent years. Fewer physicians operate as individual practitioners, but rather choose to work in large, multi-specialty, multi-location medical practices.[14] While these large practices are physician-owned and controlled, they often have the appearance of a business rather than just a doctor's office.

Recent surveys show that newly trained physicians coming out of medical school may prefer employment options with more regular work hours and less frequent on-call responsibilities over establishing and operating their own business enterprise. The Committee heard testimony from the East Texas Area Health Education Center (AHEC) on a survey they conducted of resident physicians of Texas family medicine, internal medicine and pediatric residencies in May and June 2008. Of the residents surveyed, 75 percent indicated they would prefer to be an employee of a hospital or other health facility, with salary and defined benefits, rather than operating their own practice.

Proponents of the continued prohibition of the corporate practice of medicine often cite nonprofit health organizations, referred to as 501(a) corporations, as a solution to the barriers of a prohibition of corporate practice. These nonprofit organizations are authorized under Section 162.001(b) of the Texas Occupations Code and must be certified by the Texas Medical Board.

According to testimony from the Texas Hospital Association, Section 162.001(b) was written in the 1970's and the Committee cannot ascertain its original purpose. However, in the 1990's, when hospitals were facing significant recruitment and retention problems, they utilized 501(a) corporations and Section 162.001(b) to address these problems. Today, hospitals routinely utilize 501(a) corporations as a means to recruit and retain physicians to serve in their hospitals. While the hospital is involved in the creation of these organizations, the 501(a)

[14] Senate Committee on State Affairs Hearing, Nov. 5, 2008 (testimony of Charles Bailey and Jerry Bell, Texas Hospital Association).

corporate entities are required to have at least three board members who are licensed physicians currently practicing in Texas.

According to the Texas Hospital Association (THA) and Texas Organization of Rural and Community Hospitals (TORCH), employing a physician through a nonprofit health organization may not be a viable option for all hospitals and rural hospitals in particular. The requirement of at least three physician board members can be difficult to achieve in a medically underserved area. Also, establishing a 501(a) corporation can be a costly endeavor. Costs include a filing fee of $2,500 to the Texas Medical Board; fees of approximately $1,000 each to the Secretary of State and IRS; a biennial recertification fee of more than $1,000; and legal fees of approximately $5,000 or more.[15] As a legal entity independent of the hospital, the 501(a) requires separate accounting, and financial records, tax filing, payroll, personnel and operating policies, and employee benefits.[16] For rural and small hospitals, these costs and additional requirements can be prohibitive and serve as a disincentive for recruitment of physicians to practice in rural or medically underserved areas.

TORCH provided testimony from rural hospitals that own and operate clinics. These rural hospitals are experiencing issues with how Texas' corporate practice prohibitions interface with federal IRS requirements. Traditionally, rural hospitals contract with physicians as independent contractors to provide care in their clinics. Under a recent audit of a number of Texas hospitals, the IRS concluded that these physicians are improperly classified as contractors, and directed the hospitals to categorize them as employees and pay employment taxes despite the fact that Texas law prohibits such an arrangement. The ruling has left these hospitals open to sanctions from the IRS with little ability to change their circumstance.[17]

The issue of physician employment also arises during discussions of "balance billing." Some argue that if hospitals were permitted to employ their hospital-based physicians, the possibility of a patient being seen by a physician who was out-of-network would be reduced. If the hospital were the employer of the hospital-based physicians, those doctors would enjoy the network status of the hospital and the patient could be seen by all network providers while in an in-network facility.

Recommendations

After reviewing the testimony received, the Committee makes the following recommendations:

- The 81st Legislature should consider legislation to establish due process for physicians improperly classified by health plans tiering, ratings or classification systems.
- The 81st Legislature should consider changes to current statutes prohibiting the employment of physicians.

If the Texas Legislature is to move forward with amendments to the Corporate Practice of Medicine doctrine, it is <u>essential</u> that provisions are included that expressly prohibit an

[15] *Id.*
[16] *Id.*
[17] Senate Committee on State Affairs Hearing, Nov. 5, 2008 (testimony of Don McBeath, Texas Organization of Community and Rural Hospitals).

employing corporation from ever compromising or influencing the medical judgment of a physician. Protecting the integrity of a physician's diagnosis, treatment or medical decisions is of the utmost importance. Considerations should also be given to the scope and extent of such a change. It may be appropriate to limit changes to facilities in counties under a certain populations, medically underserved areas, or to certain specialties that practice solely in a facility setting.

Charge No. 2

Study and make recommendations for reducing the number of uninsured Texans, focusing on the following:

- *Options to increase access to private health insurance, including 3 Share programs, employer sponsored plans and portable, individual insurance;*
- *Incentives for encouraging counties and local governments to participate in private health insurance cost sharing for their respective residents;*
- *Options to reduce health care premiums, including creation of special plans with increased deductibles and catastrophic coverage;*
- *Implementation and possible expansion of health services districts;*
- *Other state programs for increasing market-based coverage of the uninsured, including costs and effectiveness;*
- *Options that will increase consumer choice and personal responsibility; and*
- *Analysis of state and federal regulations that contribute to higher premium costs.*

Background

The challenge of the uninsured has plagued Texas for decades, and the state has made numerous attempts to solve the problem. Some have had profound, but limited, impact and others have resulted in limited success. These solutions have been both statewide and local in scope. The reality is there is no "silver bullet" that will allow for a sweeping, all encompassing solution.

An issue that became apparent to the Committee was the lack of current demographic data on the Texas uninsured population. The Texas Department of Insurance (TDI) presented the most recent data available from a study conducted in 2007 from 2006 United States Census Bureau.

In 2006, Texas' population was approximately 23 million. Of that number, 75.5 percent were insured -- 52.2 percent with employer-based coverage, 7.5 percent with individual market coverage, and 24.9 percent with government-based coverage. This leaves 5.7 million, or 24.5 percent, uninsured Texans -- which causes Texas to be labeled as the highest uninsured state in the nation. According to TDI, the percentage of uninsured Texans has ranged from 21.4 percent to 25.8 percent in the last 11 years. The chart below provides a breakdown of common demographics of the uninsured.

Demographics of Texas Uninsured

- 45% are aged 18-24 years of age
- 36% are 25-34 years of age
- 55% are Hispanic
- 63% are under 200% Federal Poverty Level
- 76% of uninsured are US citizens
- 54% of non-citizens are uninsured

Figure 2-1
Source: Texas Department of Insurance

One of the more troubling aspects of the uninsured population is that 66 percent of the uninsured adults are employed -- 44 percent of these work for businesses with less than 25 employees, and 25 percent work for firms with 500 or more employees. This large group of Texans is either declining employer-offered coverage, or they are working for businesses that do not offer health insurance coverage to their employees. According to TDI, employers report that barriers to offering insurance include cost, participation requirements, inability to offer multiple plans, rate stability, and underwriting/rate variability due to employee demographics.

Legislative and Local Actions to Address the Uninsured

Small Group Market

According to TDI, several initiatives to reform the small group market are in effect, including: guaranteed issue provisions, establishment of minimum participation requirements, creation of standardized small group plans, rating bands, coalition and cooperative group purchasing and creation of Consumer Choice Plans that exclude certain mandated benefits. The Consumer Choice Plans have provided insurance for 130,000 Texans since their implementation in 2004. Of that number, 14,000 had been previously uninsured.

Local Programs

In recent legislative sessions, lawmakers have attempted to expand or support certain types of locally sponsored uninsured programs. One of these initiatives is commonly referred to as a "three-share" program. This program provides access to health care with limited benefit packages. For example, the Central Texas Health Coverage Project was created to implement a three-share program in the Central Texas region. This project offers a basic health plan for small employers who have not offered insurance for a defined time period. The goal for this organization is to provide a minimum coverage for at least 10,000 employees by the third year of the project. Premiums are either offered as a traditional two-share (employer/employee) status or as a three-share for lower income individuals, with a certain level of subsidy.

There have been other three-share programs offered around the state. TDI and the Health and Human Services Commission have allocated state grant funds to an El Paso three-share program.

Another local program providing testimony to the Committee was the CareLink program in Bexar County. CareLink is a financial assistance program for residents of Bexar County that provides a payment plan for services received within the University Health System and its

network of providers. Members have a monthly obligation and a series of co-payments for services. These payment levels are determined on a sliding scale based on the member's ability to pay.

Ninety-five percent of all CareLink members have a medical home or primary care physician within the University Health System providers. This medical home provides opportunity for the program's case management initiatives. Since its inception in 2006, the CareLink program has seen a 39 percent reduction in average hospitalization costs per member; 80 percent reduction in hospitalization utilization; 71.4 percent reduction in average emergency room cost per member; and 83.3 percent reduction in number of emergency room visits per member.

It is important to note the programs discussed above are not considered insurance products, but rather programs that provide access to health care.

The Committee also heard from the Lubbock Chamber of Commerce. The Lubbock Chamber of Commerce has successfully implemented a health insurance cooperative program. This initiative was made possible by Senate Bill 10, 78th Legislature, which allows the formation of business health care cooperatives and coalitions. Stakeholders began meeting in August 2005 to discuss the formation of a health care cooperative for small and medium-sized businesses in the Lubbock area. The Lubbock Chamber rolled out their product in May 2006. By July 2006, 275 groups representing 3,156 lives had enrolled in the plan. Since that time, the cooperative has grown to 1,045 groups covering 10,011 lives. The program features are described below.

Affordability

- Small and medium businesses are able to access the membership benefits of a large group plan
- Rates are guaranteed until June 2009.

Employer Requirements

- Employers must be Chamber members
- The plan must be purchased from a FirstCare-qualified agent who is a Chamber member
- Each business must meet a minimum of two verifiable employees per business; and 75 percent of eligible employees must participate
- The employer must cover at least 75 percent of employee premium.

Choice of Plans and Flexibility

- Seven plan designs are available
- PPO plans provide out-of-town coverage
- Area of availability covers 9 total counties.

These are examples of only a handful of local programs across the state created to address the needs of the uninsured. While their scope is local, the impact of each is impressive and a significant step toward making changes in this ongoing challenge.

Recommendations

The Texas Legislature should continue its incremental process in addressing Texas' uninsured problem. While there may not be an easy, comprehensive solution, each incremental change or new local program is progress in the right direction.

A significant number of uninsured Texans work in the small-employer market. Referencing successes in other states, TDI has created a comprehensive, market-based proposal to assist insurance carriers in providing affordable coverage for the small business market. *Healthy Texas* is a concept that utilizes a range of tools, including a reinsurance program for Texas small businesses that have been unable to offer health insurance for the previous 12 months. An extensive explanation of this proposal can be found at: http://www.tdi.state.tx.us/reports/life/documents/hlthytxph1rpt08.pdf

A state-funded reinsurance program in the small business market could establish reinsurance coverage for carriers and provide protection against unexpectedly high claims costs or high volume of claims. Reinsurance would establish a means of spreading risk in the small business market and help to provide predictability of claims for these enrollees. These changes would reduce premium amounts for the covered population and decrease the number of uninsured, employed Texans.

Considering funding availability, the 81st Legislature should implement a public/private, market-based reinsurance program for the uninsured in the small business market.

Charge No. 3

Study and make recommendations relating to the Texas Health Insurance Risk Pool, including the current eligibility for coverage requirements, the economic profiles of participants and former participants, the affordability of the insurance products' premiums and deductibles, and the public's awareness of the Pool.

Background

The Texas Health Insurance Risk Pool (Pool) was created in 1989 to cover medically uninsurable Texans. The Pool did not have a funding mechanism until 1997, when the state activated the program to comply with federal Health Insurance Portability and Accountability Act (HIPAA) laws. HIPAA regulations require states to provide guaranteed issue coverage to individuals with at least 18 months of prior creditable, employer-sponsored coverage. Forty-two percent of the Pool population is composed of individuals covered by the HIPAA mandate.

Texas also provides expanded, non-mandated access to the Pool. The criteria for this portion of the program is United States citizenship or permanent residency, younger than 65 years of age for a three year minimum coverage, and be one of the following: (1) rejected by an insurer for health reasons or coverage acceptance but with medical exclusion; (2) diagnosed with one of 55 presumptive medical conditions approved by the Pool board; or (3) certificated by a Texas insurance agent that the person would be declined for coverage. Individuals are excluded if they are covered or eligible for employer-sponsored coverage; were previously terminated from the Pool within the prior 12 months; imprisoned; previously terminated from the Pool for

fraud; hit the lifetime maximum of $1.5 million; or if premiums will be paid or reimbursed by a government sponsored program, government agency or health care provider. These members are also subject to a 12-month pre-existing condition exclusion period.

According to testimony provided by the Pool, during the first years of the program enrollment steadily increased, but in recent years growth has plateaued at around 27,000 Texans as premiums have increased. The average age of Pool participants is 51 years and 65 percent of members are between the ages of 50-64. Females comprise 54 percent of the enrollment.

Funding

The Pool is funded by a combination of enrollee premiums and an assessment on the insurance industry.[18] Currently, Pool members pay 63 percent of the costs of the program and insurer assessments cover 35 percent of costs.

The enabling statute requires member premiums to be set at 200 percent of the "standard risk rate" or twice the average rate available in the commercial market.[19] Premiums are calculated every six months, and in 2007, the average, individual monthly premium was $540.[20] Since 1997, premium rates paid by members have increased an average of 13 percent per year. In an attempt to alleviate the impact of premium increases, Texas has received a total of $9.2 million in federal funds through the State High Risk Pool Funding Extension Act of 2006. Still, consumer groups testified that high premium costs continue to be a significant reason why many low-income Texans are unable to access the Pool.

Prior to the Committee's interim hearing on this issue, the Pool did not collect any data on their members' income. To better understand the make-up of the Pool and get a firm grasp on the impact of premiums on lower income individuals, the Pool surveyed their membership with questions regarding income levels. The results of that survey can be found below.

Texas Health Insurance Risk Pool - Income Survey Responses
June, July, September 2008

Income	<200% FPL*	200-300% FPL	300-400% FPL	>400% FPL	Total
# of Surveyed	458	415	323	706	1902
% of Total Surveyed	24%	22%	17%	37%	100%

*Federal Poverty Level

Figure 3-1
Source: Texas Health Insurance Risk Pool

The insurer assessment portion of the funding is calculated based on a formula that is reflective of each company's share of the private market. In 2007, 180 insurers were assessed by the Pool, with assessments ranging from $7 to $21 million for a total assessment of $62.8

[18] In 1998, the state provided a one-time $500,000 appropriation to the Pool to cover start-up costs.
[19] TEX. INS. CODE ANN. § 1506.105 (e) (Vernon Supp. 2008).
[20] Individual premiums vary by age, gender, zip code, smoker status and level of deductible.

million. This amount was a significant decrease from previous years' total assessments ranging from $82 to $84 million.

The insurance industry continues to support the existence of the Pool; however, they question the fairness of the current funding structure. The industry asserts that because the state has opted to expand eligibility to populations other than the HIPAA mandated population, the state should fund a portion of that additional financial burden to fund the program.

Recommendations

As the state continues to struggle with the escalating costs of health care for the uninsured, action should be taken to ensure that individuals on the brink of leaving the Pool based on high premium rates can remain in the program. Their departure from the ranks of the insured would add to the burden of the uninsured. Based on the foregoing, the Committee makes the following recommendations.

- Subject to available General Revenue Funds, the Legislature should consider the implementation of a premium assistance program for certain, low-income Pool enrollees. Funding for such a program could be achieved with a direct General Revenue appropriation or through an additional assessment on the insurance industry.

  Discussion surrounding this significant program change for low-income Pool enrollees should include consideration of a financial/tax credit to the insurance industry for this portion of the Pool costs.

- Consider a legislatively created program to provide assistance and incentives for chronic disease advocacy groups to fund a premium assistance program in the form of a public/private venture.

Charge No. 4

Study the issue of security and accuracy in Texas elections. The study should include the benefits and risks of electronic voting technology, including the necessity of maintaining a paper record of each electronic vote. The study should also include an analysis of fraud in Texas elections, including prosecution rates for voter fraud, the processes for purging ineligible voters from voter lists, and the integrity of the mail-in and provisional ballot systems. Study the effectiveness of electronic voting technology and voter ID laws in other states. Monitor the implementation of the federal Help America Vote Act of 2002, including the implementation of the Texas Election Administration Management system. Recommend statutory and regulatory changes designed to ensure that only eligible voters are allowed to vote in Texas elections and that each vote is accurately counted.

Security of Elections

Electronic Voting Machines

Elections in Texas are conducted according to federal and state election laws. With a few exceptions, political subdivisions in Texas are required to use electronic voting systems for all

elections.[21] The Office of the Secretary of State has adopted procedures for certifying systems and has certified systems provided by three different vendors: Hart Intercivic, Inc., Election Systems & Software, Inc. (ES&S), and Premier Election Solutions. Additionally, the Secretary of State has adopted procedures for testing these systems before, during, and after an election.[22]

County Clerks and Election Administrators are the primary offices charged with securing the voting systems and conducting elections. County Clerks testifying before the Committee emphasized the amount of testing conducted on the machines as well as the care and planning taken to ensure fair and accurate elections.[23]

In support of the security of electronic voting systems, Michelle Shafer with the Election Technology Council testified that external tests of the integrity and security of electronic voting systems generally remove the system from its election day environment and are performed only on the system itself. Ms. Shafer noted that such tests do not incorporate a realistic view of voting systems as they ignore current election administration best practices and security. Ms. Shafer also testified that there have never been any documented instances of fraud carried out on electronic voting equipment. She contends that investigations into irregularities revealed human errors, such as deviation from standard election day procedures, as the true cause of system errors.[24]

The Committee also heard testimony from persons who question the security of electronic voting systems. Electronic voting systems have three main vulnerabilities: (1) human factors; (2) machine failures; and (3) voter fraud perpetrated by tampering with the voting system with the intention of influencing the outcome of an election. In his written testimony, Dan Wallach noted that all voting systems present their own problems; however, electronic systems are susceptible to fraud on a larger scale because a person tampering with the memory card or hacking into the system could alter the outcome of an election without having to "touch" each ballot. In support of his contention, Dr. Wallach cited instances of machine failures, human errors, and system security testing conducted by himself and the state of California.[25]

Dr. Wallach also included the following recommendations in his testimony. First, if Texas continues to use electronic voting systems it should increase the review and oversight of internal vendor processes and procedures. Second, because present-generation systems have unacceptable security risks, Texas should follow California and limit the use of electronic voting machines to one per polling place to ensure accessible voting, but have all other voters use paper ballots. Third, Texas should require hand audits of paper ballots between completion of the election and the certification of election results. Fourth, the Secretary of State should incorporate human factors into its system certification process. Fifth, Texas should eliminate straight ticket voting and rotate the order of candidates on the ballot. Finally, he recommended that future systems be designed using "sophisticated cryptographic and other techniques to provide a level of security and auditability not available with any voting system on the market today." And if

[21] TEX. ELEC. CODE ANN. § 61.012 (Vernon Supp. 2008); TEX. ELEC. CODE ANN. § 61.013 (Vernon Supp. 2008).
[22] See Appendix IV, Election Advisory No. 2007-06 and supplemental memo dated Oct. 1, 2008
[23] Senate Committee on State Affairs hearing, Oct. 15, 2008 (testimony of Dana DeBeauvoir, Travis County Clerk and Joy Streater, Comal County Clerk); Appendix IV.
[24] Senate Committee on State Affairs hearing, Oct. 15, 2008 (testimony of Michelle M. Shafer, Election Technology Council).
[25] Senate Committee on State Affairs hearing, Oct. 15, 2008 (testimony of Dan Wallach, Ph.D., Rice University).

vendors do not respond by developing such systems, Texas should commission its own systems.[26]

Election Fraud

The Office of the Attorney General (OAG) has original, though not exclusive, jurisdiction to prosecute election fraud. It receives referrals of complaints from the Secretary of State's office as well as local election officials. Because local officials may prosecute election fraud without the assistance or knowledge of the OAG, there is no system in place to track fraud allegations or to identify patterns and practices throughout the state.

Eric Nichols with the OAG testified that the Office has prosecuted 28 cases since July 2005; of those, 20 related to mail-in ballots. The OAG has yet to receive any complaints alleging the manipulation of electronic voting systems or data.[27] Such manipulation is a first degree felony pursuant to Penal Code § 33.05. In the event of an allegation that a system had been tampered with the OAG could investigate and discover any such tampering through the analysis of computer records, specifically, through an examination of each system's required real time audit log.[28]

Relying on prosecutions alone may not give the whole picture because activity may occur, but never become subject of a criminal complaint. This is certainly the case if an election official is involved in the fraud. However, Mr. Nichols clarified that in his experience it is the election official who notes suspicious behavior or files the complaint with the OAG or Secretary of State.

Overall, the OAG and the Secretary of State agree they are confident there are maximum protections in place to ensure the security and integrity of the elections, especially as election officials become increasingly familiar with the electronic voting systems. Additionally, if fraud is perpetrated, the OAG is confident they can detect and prosecute any such fraud.

Voter Registration

The federal Help America Vote Act of 2002 (HAVA) included voter registration securities that have been in place in Texas since 2006. Chief among these securities is the requirement that the Secretary of State verify a voter's identity prior to adding them to the statewide voter registration list. When a voter registers they provide their driver license number. If they do not have a driver license they may provide the last four digits of their social security number.[29] These numbers are then verified against databases maintained by the Texas Department of Public Safety and the federal Social Security Administration.

In the event a voter does not have either of these numbers, the voter is accepted for registration, but their registration is flagged and the voter is required to provide identification to the poll worker (or include a copy with their mail-in ballot) the first time they vote. If one of the numbers is provided, but does not match the respective databases, the Secretary of State sends a

[26] *Id.*
[27] Senate Committee on State Affairs hearing, Oct. 15, 2008 (testimony of Eric Nichols, Office of the Attorney General).
[28] Senate Committee on State Affairs hearing, Oct. 15, 2008 (testimony of Eric Nichols, Office of the Attorney General and Ann McGeehan, Secretary of State's Office).
[29] TEX. ELEC. CODE ANN. 13.002(c)(8) (Vernon Supp. 2008).

message to the county stating that the record could not be verified. The county then sends a notice to the voter explaining that the application could not be verified, and informs the voter to reapply in the event there was an error such as the numbers being transposed. If the voter responds by reapplying and the record still fails verification, the applicant is registered, but their registration is flagged for identification. If a flagged voter does not provide valid identification to the poll worker (or include a copy with their mail-in ballot), they may cast a provisional ballot which will only be counted if a valid form of identification is later provided.

Voters may be removed from the statewide voter registration list in one of three ways. First, voter registrars are required to perform ongoing maintenance of the list as they receive notification of ineligibility such as death, mental incapacity, felony conviction, election context or lack of citizenship.[30] Second, now that the state maintains the official list of registered voters, when a voter registers in a new county of residence, the Secretary of State automatically removes that voter from the old county of residence. In addition to this ongoing maintenance, the statewide voter registration list is purged on November 30th of even-numbered years in accordance with state and federal law.[31] In the event a registration is flagged as no longer residing in the county of registration or the return of a voter registration certificate, a voter is placed on the suspense list and will be removed from the rolls if two general elections have occurred since the voter was added to the suspense list and the voter failed to update their registration.

Voter Photo ID

To address voter fraud, some states have adopted voter identification laws requiring all voters to present photo identification to poll workers prior to casting their ballot. The Committee examined this issue in detail and reported its findings and recommendations to the 80th Legislature.[32]

Since the Committee's report to the 80th Legislature, the U.S. Supreme Court took up and considered the case of *Crawford v. Marion County Election Board* wherein a group challenged the photo identification law adopted by Indiana.[33] In April 2008 the Court upheld Indiana's law stating that it did not present an undue or unconstitutional burden to voters to require photo identification. In short, the Court determined that requiring photo identification was rationally related to Indiana's interests in preventing fraud and protecting the integrity and reliability of elections.

Recommendations

The integrity of elections must balance prevention and detection of fraud. Thus, regardless of the voting platform, electronic system or paper ballots, all procedures in place need to provide a high level of assurance that they prevent ballot tampering and if tampering occurs, that it can be detected.

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[30] TEX. ELEC. CODE ANN. §§ 13.001 (death), 16.002 (mental incapacity), 16.003 (felony conviction), 16.004 (election contest), 16.0332 (citizenship) (Vernon 2003 & Supp. 2008).
[31] TEX. ELEC. CODE ANN. 16.032 (Vernon 2003); 47 U.S.C. 1973gg-6.
[32] Senate Committee on State Affairs Report to the 80th Legislature at 16 (2006).
[33] Crawford v. Marion County Election Board, no. 07-21, 553 U.S. ___ (April 2008).

The Legislature should consider requiring that the Secretary of State issue a post-election assessment of electronic voting systems' performance following each uniform election date. Such a report would serve to catalog any electronic voting system malfunction.

Charge No. 5

Review and make recommendations for requiring insurance coverage of routine medical care for patients with a life-threatening disease or condition who have elected to participate in a clinical trial.

Background

The State of Texas has adopted several health insurance mandates that identify certain illnesses, medical conditions, diseases or treatments requiring coverage by group health insurance policies. During the interim, the Committee examined the possibility of adopting a new mandate to require insurance coverage of routine medical costs associated with clinical trials. Although the focus of the testimony at our hearing, as well as the discussion below, is on clinical trials relating to cancer, the mandate under consideration would apply to clinical trials relating to any life-threatening disease or condition.

It should be noted that not all group health insurance policies must include the state mandated benefits. Group policies issued pursuant to the federal Employee Retirement Income Security Act of 1974 (ERISA) are not required to comply. Additionally, Chapter 1507 of the Insurance Code relating to Consumer Choice Plans provides that such plans are exempt from many of the mandated benefits.

Discussion

Current Insurance Plans

Without a statutory mandate or the collection of data, there is no real estimate of the number of insurance plans that currently cover routine medical costs for persons participating in a clinical trial. Many policies address coverage or exclusions of treatment relating to "experimental or therapeutic drug treatments" rather than routine versus non-routine care in relation to clinical trials. Most insurers apply any exclusion on a case-by-case basis.[34]

Medicare began covering routine care costs in 2000, and now more than 20 states require such coverage.[35] The American Association of Health Insurance Plans (AAHIP) has adopted the position that insurers should cover routine medical costs associated with clinical trials.[36] Taken together, these examples have resulted in an increase in the number of plans providing coverage.

[34] Senate Committee on State Affairs hearing, May 21, 2008 (testimony of Dianne Longley, Texas Department of Insurance).
[35] *See* http://www.ncsl.org/programs/health/clinicaltrials.htm for a summary of state laws compiled by the National Conference of State Legislatures.
[36] Senate Committee on State Affairs hearing, May 21, 2008 (testimony of Dianne Longley, Texas Department of Insurance).

Insurers testified to the Committee that plans excluding coverage for clinical trials do so for the following reasons: (1) safety concerns; (2) the preference to devote limited funds to proven treatments; (3) a lack of clarity as to what are "routine" medical costs; and (4) a belief that the financial burden of a clinical trial should be carried by the trial's sponsors and not by the healthy population covered by the policies.[37]

Cancer Prevention & Research Institute of Texas

The 80th Legislature adopted House Bill 14 and House Joint Resolution 90, which required a vote on Proposition 8 relating to the creation of the Cancer Prevention & Research Institute of Texas (CPRIT).[38] The CPRIT was approved by the voters in November 2007, and is now charged with developing the Texas Cancer Plan. CPRIT is authorized to raise $3 billion through the issuance of general obligation bonds to fund grants for cancer research and prevention, including clinical trials.

The legislative intent behind the creation of the CPRIT was to make Texas a leader in cancer research; however, witnesses testifying before the Committee noted that such intent would be thwarted if clinical trials are unable to recruit sufficient participants due to a lack of group health insurance coverage.[39] Dr. Gabriel Hortobagyi, professor of medicine at MD Anderson Cancer Center, testified that in 2003, approximately 900 patients were recruited into clinical trials. In 2007, only 350 patients participated citing insurance denials.[40] Dr. Hortobagyi asserted that Texas institutions are currently at a disadvantage when compared to other states' institutions because of a lack of mandated coverage.

Policy Notes

With regard to the CPRIT, one witness testified that it is fundamentally unfair to Texas citizens who worked for the passage of Proposition 8 to continue to allow insurers to exclude coverage for routine costs associated with a clinical trial. Some see Proposition 8 as a method for Texas taxpayers to underwrite cancer research and therefore, those taxpayers should be able to reap the benefits of their actions.[41]

Additionally, Dr. Frederick Hausheer, CEO of BioNumerick, argued in favor of a mandate because such coverage gives physicians another tool they can use to care, treat, or in some cases save, a patient.

Conclusion and Recommendations

The Committee concludes that it should be the public policy of the State to require coverage for the routine medical costs of those patients suffering a life-threatening disease or condition and elect to participate in a clinical trial. The Legislature should look to other states,

[37] Senate Committee on State Affairs hearing, May 21, 2008 (testimony of Jared Wolfe, Texas Association of Health Plans).
[38] Acts 2007, 80th Leg. ch. 266.
[39] Senate Committee on State Affairs hearing, May 21, 2008 (testimony of Gabriel Hortobagyi, MD, MD Anderson Cancer Center).
[40] *Id.*
[41] Senate Committee on State Affairs hearing, May 21, 2008 (testimony of Marjorie Gallece, Breast Cancer Resource Centers of Texas).

Medicare rules, regulations of the federal Food and Drug Administration, and language recommended by AAHIP to ascertain what qualifies as a life-threatening disease or condition and what costs would be considered routine. Such a statute may also reference industry guidelines outlining the standard care for the appropriate disease or condition.

Although there are concerns that such a mandate could serve as a subsidy for drug companies, these concerns are mitigated by the fact that coverage of only routine costs, those typical of the treatment to be provided, would be required. The trial sponsor would continue to be responsible for the costs of any pre-trial testing, experimental drug or therapy, and all administrative costs associated with the trial.

Charge No. 6

Study the economic impact of recent civil justice reform legislation in Texas.

The Texas Legislature began enacting civil justice reforms more than 20 years ago.[42] These changes addressed many areas of the law, most notably the filing of frivolous lawsuits, forum shopping, products liability actions, damages, lawsuits relating to asbestos exposure, health care liability claims, and economic damage caps. The true economic impact of these changes would be fairly impossible to measure; however, anecdotal evidence combined with data modeling provides some insight into the positive effect of the policy changes over time.

During its hearing on this issue, the Committee received testimony on the economic impact, as well as other impacts, of civil justice reform over the last 20 years. Copies of various reports presented by witnesses may be found in Appendix VI of this report.

Charge No. 7

Study whether Texas should adopt the Restatement 2nd of Torts Sec. 674 (Wrongful use of Civil Proceedings) and whether a person should be allowed to recover court and attorneys fees when he has been forced to defend a lawsuit filed without probable cause or for intimidation purposes.

Background

Currently, Texas courts recognize a common law action for malicious prosecution of a civil claim.[43] To prevail on a malicious prosecution claim, the claimant, a person who was a defendant in a civil case, must establish the following:

> (1) the institution or continuation of civil proceedings against the [claimant]; (2) by or at the insistence of the defendant; (3) malice in the commencement of the proceeding; (4) lack of probable cause for the proceeding; (5) termination of the proceeding in [claimant's] favor; and (6) special damages.[44]

The special damages requirement has traditionally been a tough hurdle for such claimants to overcome. Concluding that the "mere filing of a lawsuit cannot satisfy the…requirement," the

[42] *See* Appendix VI for a summary of selected enactments from 1987 to 2007 compiled by Texas Legislative Council staff.
[43] *See* Texas Beef Cattle Co. v. Green, 921 S.W.2d 203 (Tex. 1996).
[44] *Id.* at 207 (citing James v. Brown, 637 S.W.2d 914, 918 (Tex. 1982)).

Beef Cattle Court held that "it is insufficient that a party has suffered the ordinary losses incident to defending a civil suit, such as inconvenience, embarrassment, discovery costs, and attorney's fees."[45] The Court further held that "there must be some physical interference with a party's person or property in the form of an arrest, attachment, injunction, or sequestration."[46] However, if there is "special injury" or "physical interference," then money damages for ordinary losses may be recovered.[47]

Adoption of Section 674, Restatement (Second) of Torts, would expand the law in this area to provide a separate cause of action for frivolous litigation without the "special injury" requirement, thus lowering the bar for recovery of court costs and attorney's fees.[48]

Section 674 provides:

> One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.[49]

The Committee is not aware of any state that has statutorily adopted Section 674 in its entirety. However, courts in 30 states have adopted Section 674, and it represents the majority common law rule.[50]

Currently, Texas has statutes and rules that generally deal with frivolous litigation or malicious prosecution.[51] Under the Texas Rules of Civil Procedure, the court can impose a sanction for bringing a groundless or bad faith claim or one for the purpose of harassment.[52] An available sanction includes ordering payment of reasonable expenses, e.g., attorney fees.[53] Similarly, Chapter 10 of the Civil Practices and Remedies Code grants courts discretion to impose sanctions against those who file frivolous and groundless pleadings and motions, or those without proper purpose that harass and cause delay.[54]

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[45] *Id.* at 208-9 (referencing Martin v. Trevino, 578 S.W.2d 763, 766-69 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.)).
[46] *Id.* at 209 (citing Sharif-Munir-Davidson Dev. Corp. v. Bell, 788 S.W.2d 427, 430 (Tex. App.—Dallas 1990, writ denied)).
[47] *See id.* at 209.
[48] *See* RESTATEMENT (SECOND) OF TORTS § 674 (1977). Section 674 provides the general rule for an action in the wrongful use of civil proceedings. Incidentally, Section 677 provides a narrower rule that is similar to Texas' malicious prosecution.
[49] RESTATEMENT (SECOND) OF TORTS § 674 (1977).
[50] *Id.* at Reporter's Notes.
[51] *See* Appendix VII for an exp ansive list of applicable law that deals with frivolous litigation.
[52] TEX. R. CIV. P. 13 (referencing TEX. R. CIV. P. 215-2b (1990, superceded 1998)).
[53] *See* TEX. R. CIV. P. 215.2(b)(8); *see also* Olibas v. Gomez, 242 S.W.3d 527, 535 (Tex. App.--El Paso 2007, pet. denied).
[54] TEX. CIV. PRAC. & REM. CODE ANN. § 10.001 et seq. (Vernon 2002). Chapter 9 also addresses frivolous litigation, but does not apply to proceedings to which Chapter 10 and Rule 13 apply. *See* TEX. CIV. PRAC. & REM. CODE ANN § 9.012(h) (Vemon 2008). Thus, Chapter 10 and Rule 13 are "the main controlling provisions on groundless pleadings." *See* JEFFERSON JAMES DAVIS, TEXAS JURISPRUDENCE § 28 (3d ed. 2008).

Chapter 11 also provides penalties against excessive and abusive litigants.[55] A person can be classified as a vexatious litigant and prohibited from accessing the civil justice system if, *inter alia*, the person is found to be unsuccessful in five litigation events or to have relitigated the same issue.[56] The Texas Disciplinary Rules of Professional Conduct also require a lawyer to bring only those claims which he or she reasonably believes to be meritorious and not frivolous.[57]

Discussion

Proponents for adopting Section 674 argue there is currently no feasible remedy for those subjected to abusive litigation. The present common law cause of action does not provide real relief because of the special damages limitation. Eliminating this requirement would modernize the law to permit reparation in ordinary cases seeking simple money damages.

Those favoring adoption also assert it would provide deterrence of frivolous litigation. They argue that current sanction mechanisms are not sufficient at discouraging improper litigation because of the lack of uniformity in the enforcement of standards of conduct and application of penalties. Sanctions are based largely on judicial discretion; whereas, Section 674 actions would be decided by a jury and subject to oversight via judicial appeal.

In addition, the sanctions of Rule 13 and Chapter 10 are directed at attorneys, but Section 674 penalties could be directed to litigants as well as lawyers. This difference in the subject of the penalty provides for broader deterrence toward all parties participating in unmeritorious litigation. If a party faces the specter of having to pay the lawyer fees of his opponent and expense of litigating a subsequent claim, he would consider the merits of initiating the original lawsuit more carefully.

Adoption of Section 674 would also provide a remedy for certain types of abusive, strategic litigation scenarios. There are hypothetical cases that adoption of Section 674 would serve to remedy. One, typically labeled a "slap suit," involves a plaintiff suing to impose litigation costs and quiet the opposition of the plaintiff's business plan, such as in the case of a land development project. A variation of this example is a "strike suit," in which a plaintiff sues to stall a pending transaction while hoping to obtain a windfall settlement, prompting release of the claim in order to resume the transaction.

Another common example cited involves suit against a "straw" party resident in order to establish state court venue in a target county to bring all defendants to that county. This tactic also serves to defeat federal court jurisdiction in a case against a non-resident party by initiating suit against a Texas resident to eliminate diversity-of-citizenship.

Opponents assert that incorporating this tort into Texas statutes is not needed to deter frivolous lawsuits. There are already adequate mechanisms that provide relief for those subjected to groundless or frivolous lawsuits. Judges are most qualified to control frivolous activity and can do so on their own or a party's motion.

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[55] TEX. CIV. PRAC. & REM. CODE ANN. § 11.001 et seq. (Vernon 2002 & Supp. 2008).
[56] *Id*. at §§ 11.054 and 11.101.
[57] TEX. DISCIPLINARY R. PROF'L. CONDUCT 3.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (Vernon 2005).

They also argue the current special injury requirement is needed to maintain an open civil justice system. It "assures good faith litigants access to the judicial system without fear of intimidation by a countersuit for malicious prosecution."[58] Similarly, eliminating this requirement might have the chilling effect of reducing legitimate filings, especially fringe cases that are important to the development of the state's jurisprudence, but have unclear questions of fact or law.

In addition, Texas trial judges are not experiencing significant numbers of frivolous filings, according to a 2007 Baylor Law Review article.[59] The article presents a survey of Texas district court judges, in which 44 percent had not observed a single frivolous lawsuit during the previous four years.[60] Ninety-nine percent of the judges experienced only 1-25 percent of the cases as being frivolous.[61] Further, 85 percent of the respondents had sanctioned an attorney under Rule 13 only one time or less during the previous four years.[62] (Sixty-five percent had never sanctioned in that time period.[63]) And 86 percent did not believe there was a need for more legislation addressing frivolous litigation.[64]

Opponents also argue that adoption would be a radical departure from current law. As the *Beef Cattle* Court observed, "the countervailing policies supporting [the] heightened [special injury] threshold … are compelling and well-established in Texas law."[65] Also, awards under a successful Section 674 claim might prove meaningless as plaintiffs in original proceedings are often not able to afford a verdict. Therefore, most costs may be borne by original defendants. Of course, an informed litigant would likely consider an opponent's ability to pay before instituting a Section 674 claim.

Furthermore, critics suggest adoption may actually increase instances of litigation in which the original plaintiff and defendant sue each other back and forth. According to the *Beef Cattle* Court, "the special damage requirement … prevents successful defendants in the initial proceeding from using their favorable judgment as a reason to institute a new suit based on malicious prosecution, resulting in needless and endless vexatious lawsuits."[66]

Recommendations

The Committee makes no recommendation on whether the Legislature should adopt the Restatement (Second) of Torts, Section 674.

Charge No. 8

Monitor the Texas workers' compensation system, and the continued implementation of the reforms of HB 7, 79th Legislature, Regular Session, by the Texas Department of Insurance and

[58] *Beef Cattle*, 921 S.W.2d at 209 (quoting *Trevino*, 578 S.W.2d at 768).
[59] Larry Lyon et al., *Straight from the Horse's Mouth: Judicial Observations of Jury Behavior and the Need for Tort Reform*, 59 BAYLOR L. REV. 419 (2007).
[60] *Id.* at 432.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.* at 433.
[65] *Beef Cattle*, 921 S.W.2d at 209.
[66] *Id.* (referencing Pye v. Cardwell, 110 Tex. 572 (Tex. 1920)).

other state agencies. Specifically evaluate the recent decision by the Texas Supreme Court in Entergy v. Summers in terms of its impact and the impact of previous legislation on the workers' compensation system.

House Bill 7

House Bill 7, as adopted in 2005 by the 79th Legislature made the following major changes:[67]

- Abolished the Texas Workers' Compensation Commission and transferred its duties to a separate division at the Texas Department of Insurance - Division of Workers' Compensation (DWC);
- Created the Office of Injured Employee Counsel (OIEC) as a stand-alone, independent agency to represent the interests of the injured workers;
- Authorized changes in rate settings;
- Provided for the establishment of medical networks to provide care to injured employees and developed standards for workers' compensation insurance carriers not using a network;
- Increased the maximum income benefits; and,
- Changed the indemnity dispute resolution process.

House Bill 7 included a very specific timeline for the implementation of various provisions in the bill. The timeline can be found at www.tdi.state.tx.us/wc/transition/hb7timeline.html. Additionally, both DWC and OIEC are required to report to the 81st Legislature on the implementation of H.B. 7. The reports should include any recommendations for legislative changes.[68]

Health Care Networks

One of the most significant changes mandated by H.B. 7 relates to the delivery of health care services to injured workers. House Bill 7 created the framework for workers' compensation carriers to assemble medical networks to treat injured workers insured by their policies. The Commissioner of Insurance certifies those networks. In 2006, when the Committee last reported on the status of networks, there were 17 networks extending over 164 counties.[69] As of April 2008, there were 32 certified networks covering 231 counties. Additionally, a majority of the counties have several network options.[70]

[67] Acts 2005, 79th Leg., ch.265. For a more extensive discussion of H.B. 7 see Senate Committee on State Affairs Interim Report to the 80th Legislature at 50 (2006).
[68] The reports may be found on each agency's website.
http://www.tdi.state.tx.us/reports/wcreg/documents/settingthestandard201.pdf and
http://www.oiec.state.tx.us/documents/pub_08leg_report.pdf.
[69] *See* Senate Committee on State Affairs interim Report to the 80th Legislature at 33 (2006).
[70] *See also* 2008 Workers Compensation Network Report Card Results available online at
http://www.tdi.state.tx.us/reports/wcreg/documents/2008_Workers_Compens.pdf

The Workers' Compensation Research and Evaluation Group (REG) is required to produce an annual report card comparing networks certified by the Department of Insurance. The first report card was issued in 2007 followed most recently by another issued in Fall 2008. The REG states at the outset that:

> [The report card] represents an evaluation of certified health care networks at the infancy of their development and implementation in Texas. As of February 1, 2008, network claims only represented approximately 16 percent of all new injuries and 9 percent of new lost-time injuries in Texas.… [I]t should be noted that many of these newly certified networks were "ramping up" during this time.[71]

Texas Mutual Insurance has the most comprehensive network in the state. It offers a 12 percent discount to employers who opt into their Texas Star Network option. Texas Mutual estimates that 62 percent of all policies include the network option. This amounts to 77 percent of their premiums and includes 73 percent of all 2008 claims.

Office of Injured Employee Counsel

The Office of Injured Employee Counsel (OIEC) was created by H.B. 7 to assist injured workers. The Office dramatically increased in size after the 80th legislative session through the addition of 25 employees to the Ombudsman Program and 36 employees to the Customer Service Program.

OIEC recently contracted for the conduct of a customer satisfaction survey. The survey was designed to measure the satisfaction of injured employees who have had a dispute over their workers' compensation claims or were assisted by an Ombudsman.[72] The survey was designed in a manner that the results could be compared with a 1997 satisfaction survey conducted by the former Research and Oversight Council on Workers' Compensation. When compared with the 1997 survey the responses showed an increase in overall satisfaction with the service provided by the Ombudsman.

Entergy v. Summers

Background

On April 25, 2007, the Texas Supreme Court issued what has become a widely-publicized decision at the crossroads of workers' compensation and tort liability law. In *Entergy Gulf States, Inc. v. Summers*,[73] the Court held that a premises owner may act as a general contractor to obtain "statutory employer" status for the purposes of workers' compensation laws and thus immunity from employee suit under the law's exclusive remedy provision.

John Summers suffered injuries while working as an employee for International Maintenance Corporation (IMC) at an Entergy Gulf States (Entergy) facility. Summers, who

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[71] *2008 Workers' Compensation network Report Card Results*, Texas Department of Insurance Workers' Compensation Research and Evaluation Group at 1 (2008).

[72] Survey results may be found at: http://www.oiec.state.tx.us/documents/Non-job%20posting%20files/omb_cs_survey08.pdf

[73] Entergy Gulf States, Inc. v. Summers, 50 Tex. Sup. Ct. J. 1140, 2007 Tex. LEXIS 799 (Tex. Aug. 31, 2007, reh. granted).

was covered by workers' compensation insurance, was prohibited from suing his employer, IMC, under the exclusive remedy doctrine of the Workers' Compensation Act.[74]

However, Summers filed suit against Entergy, the premises owner, seeking damages allegedly caused by the negligence of Entergy. On its motion for summary judgment, Entergy argued it was immune from suit as a statutory employer by acting also as a general contractor and providing workers' compensation coverage to IMC's employees. Under the Workers' Compensation Act, a general contractor, who enters into an agreement to provide workers' compensation coverage for its subcontractors and their employees, enjoys the immunity of an employer under the exclusive remedy provision. [75]

The trial court granted summary judgment in Entergy's favor, but the court of appeals reversed. However, the Texas Supreme Court reversed the court of appeals to rule in Entergy's favor, holding that, notwithstanding its status as a premises owner, Entergy was also a general contractor entitled to "statutory employer" status barring Summers' tort claims. The Court adopted a construction supported by the statute's *plain meaning* to conclude that the current definitions of "general contractor" and "subcontractor" contain no language mandating or implying that a premises owner cannot serve as its own general contractor.

In distinguishing prior judicial decisions holding that a premises owner was not a general contractor, the Court concluded that subsequent legislative amendments to the definition of "subcontractor"[76] no longer precluded the dual role of owner/contractor.[77]

The Court has granted a motion for rehearing, but has not issued another opinion as of the date of this report.

Discussion

There has been much discussion about the Court's interpretation of the governing statute in *Entergy*. While it is useful for future Legislatures to understand how the Court construed the statute, the Committee's charge primarily focuses on the decision's impact on the workers' compensation system, including the policy considerations that arise.

Arguably, the decision may have a limited, fundamental effect on the workers' compensation system. Presumably, following the 1989 amendments to the Workers' Compensation Act, a premises owner could have availed itself of the workers' compensation bar by operating as general contractor and providing coverage under a written agreement. However, widespread use of this mechanism has not been observed, perhaps either because no one thought

[74] TEX. LAB. CODE ANN. § 408.001(a) (Vernon 2006); *see also* TEX. LAB. CODE ANN. § 406.034(a) (Vernon 2006)..
[75] TEX. LAB. CODE ANN. § 406.123(e) (Vernon 2006); TEX. LAB. CODE ANN. § 408.001(a) (Vernon 2006).
[76] Apparently relying on Summers' briefing, the Court implied that a 1993 codification bill actually changed the definition of "subcontractor." In reality, the 1989 omnibus workers' compensation reform legislation changed the wording in the definition of "subcontractor."
[77] *See* TEX. REV. CIV. STAT. ANN. art. 8307, § 6(b). The pre-1989 workers' compensation reform amendments defined a subcontractor as one "who has contracted to perform all or any part of the work or services which a prime contractor has contracted *with another party* to perform." (emphasis added). The language was amended in 1989 to remove the phrase "with another party." The Court relied on this change to hold that the Act no longer precluded a premises owner from occupying the dual role of "premises owner" and "general contractor" for the purposes of workers' compensation laws.

the law provided such immunity or because only relatively large businesses can afford to administer an insurance program such as in *Entergy*.

This construction of the workers' compensation statute takes the system, at least in the construction industry context, a step closer to a completely no-fault regime. To the extent that a premises owner qualifies as a statutory employer under the Court's ruling, the behavior that causes a certain injury will not be examined in a third-party suit. No legal fault will be assessed, and the injured worker's exclusive remedy will be a workers' compensation benefit. While this may result in efficiency in obtaining employee benefits and predictability in calculating employer costs, it also results in the abrogation of a cause of action for injured workers.

Of course, this begs the question of whether current benefits are sufficient to compensate an injured worker in the absence of third-party liability. Without the opportunity to seek judicial redress and compensation for economic and other damages caused by a tortfeasor, an injured worker must rely solely on limited income benefits as provided under the Workers' Compensation Act. The ruling implicates the adequacy of benefits under the current system.

Moreover, in eliminating this common law right of action, the injured worker gets nothing in return--no *quid pro quo*. Historically, the bargain engrained in workers' compensation law has been a trade-off; the employer provides benefits in the event of a work-related injury, and the employee waives his right to legal remedies upon injury. Under *Entergy*, the bargain is extended to a fictional employer who gains immunity, yet the employee gains nothing in return. Of course, the workers' compensation coverage is still being provided, albeit from an extended fictional employer.

Some also argue that eliminating a legal mechanism to hold premises owners financially accountable may have a tendency to decrease the incentive on employers to provide a safe workplace. While administrative regulations and corporate responsibility strive to provide oversight and accountability, an effective check to encourage best safety practices and deter lax safety management systems is the threat of financial loss. This is important because premises owners are often in control of workplace facilities.

Others argue the decision may have a negative impact on the cost of the workers' compensation and healthcare system. A workers' compensation insurer has a right of subrogation in a third-party suit for the amount paid out in benefits by the insurer. With third-party immunity and no subrogation, system costs may be shifted to the carriers who may then pass on those financial liabilities.

Conclusion and Recommendation

In the eyes of many, the *Entergy* opinion represents a major shift in the well-developed balance of the workers' compensation system. The Committee is not aware of evidence that the statutory changes relied upon by the Court in reaching its decision were the subject of any deliberation reflecting legislative intent to grant statutory immunity to a premises owner. In fact, tort reform interest groups have persistently and unsuccessfully supported such legislation in

recent years.[78] Any expansion of this immunity under the statutory exclusive remedy doctrine is best left to the clear, not implied, intent of the Legislature.

If the Court's decision after rehearing is consistent with its originally published holding on whether a premises owner may operate as a general contractor and obtain immunity as a statutory employer, the Legislature should take the opportunity to reevaluate the public policy involved in recognizing third-party immunity in the workers' compensation system.

Charge No. 9

Study and make recommendations to reduce illegal gambling in Texas, including, but not limited to, the illegal use of Eight-Liners.

Discussion

Illegal Gambling

Gambling in Texas is governed by Chapter 47 of the Penal Code and is generally prohibited.[79] Specifically, a person violates the law if they make a bet on a game or contest, political nomination, appointment or election, or if the person "plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device."[80]

David Glickler, Assistant Attorney General, testified that illegal gambling is prevalent in all parts of the state. Although jurisdictions have requested opinions from the Attorney General on possible gambling scenarios such as neighborhood poker games, the only area with which law enforcement routinely requests assistance relates to eight-liners.[81] It is unknown how many eight-liners are in operation in Texas. The machines must be registered with the Comptroller pursuant to the Occupations Code;[82] however, the tax permit application requires the machine owner to classify their machines as one of the following: phonographs; pool tables; pinball games; video games; darts or other.[83]

An eight-liner is a video terminal, similar to what is commonly thought of as a slot machine, where the player deposits money in the machine and it pays off based on patterns of symbols shown on the machine's video display. An eight-liner is not illegal per se, rather the question hinges upon how it is operated. The Code sets up a two part analysis. First, it must be determined whether an eight-liner is a "gambling device" under the definition in section 47.01(4). Second, it must be determined under what circumstances the eight-liner was being used and whether its use constitutes an offense under section 47.02.

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[78] *See, e.g.*, H.B. 2279, 74th Leg., Reg. Sess. (Tex. 1995); H.B. 2630, 75th Leg., Reg. Sess. (Tex. 1997); H.B. 3024, 75th Leg., Reg. Sess. (Tex. 1997); H.B. 3548, 76th Leg., Reg. Sess. (Tex. 1999); S.B. 1404, 76th Leg., Reg. Sess. (Tex. 1999); H.B. 2982, 78th Leg., Reg. Sess. (Tex. 2003); and H.B. 1626, 79th Leg., Reg. Sess. (Tex. 2005).

[79] TEX. PENAL CODE ANN. Ch. 47 (Vernon 2003 & Supp. 2008); *see* § 47.02(c) for defenses such as acts under the Texas Racing Act and the State Lottery Act.

[80] TEX. PENAL CODE ANN. § 47.02(a) (Vernon 2003).

[81] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of David Glickler, Office of the Attorney General).

[82] TEX. OCC. CODE ANN. § 2153.051 (Vernon 2004).

[83] *See* Appendix IX.

A gambling device is defined as "any electronic, electromechanical, or mechanical contrivance . . . that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance."[84] This includes "gambling device versions of bingo, keno, blackjack, lottery, roulette, video games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits."[85] However, the Code excepts a machine made for amusement purposes if it "rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or $5, whichever is less."[86]

Thus, the question for prosecutors, judges and juries is whether an eight-liner falls within the exception by rewarding noncash merchandise with a wholesale value of less than ten times the amount played or $5.00. If it does not, it is considered a gambling device and its operation is generally prohibited.

Testimony to the Committee asserted both the legal and illegal operation of eight-liners in Texas. Because illegal gambling investigations, arrests and convictions are done at a local level there is no statewide agency that collects such information. Thus, the pervasiveness of the illegal activity is based on anecdotal evidence. In his testimony Mr. Glickler discussed one particular instance where law enforcement seized 150 machines from one company that operated four locations.[87] Additionally, other witnesses noted instances in which illegal machines were confiscated and auctioned off to out-of-state bidders, but were later discovered in Texas.[88] Houston Police officers cited public safety concerns surrounding high instances of robbery due to the large amounts of cash on-hand at game rooms; as well as instances where eight-liner operators refused to pay out large prize amounts leaving citizens with no recourse.[89]

Proposed Statutory Changes

During, as well as after its hearing, the Committee received testimony relating to proposed statutory changes to the current regulation of eight-liners. Mr. Glickler stated that the Attorney General's position is that the current statute, along with court interpretations, is adequate to allow law enforcement to seize illegal eight-liners and prosecute companies or individuals who violate the law.[90]

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[84] TEX. PENAL CODE ANN. § 47.01(4) (Vernon 2003).
[85] *Id.*
[86] *Id.*
[87] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of David Glickler, Office of the Attorney General).
[88] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of David Glickler, Office of the Attorney General and Charles A. Vazquez, Houston Police Department).
[89] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of Charles A. Vazquez, Houston Police Department).
[90] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of David Glickler, Office of the Attorney General).

Currently, the most contentious issue surrounds new forms of prize payouts such as gift cards or stored-value debit cards. The Attorney General has concluded that the Supreme Court's decision in *Hardy v. State* clarified that a gift certificate is not a "noncash merchandise prize" and therefore cannot be awarded for eight-liner play pursuant to section 47.01 of the Penal Code.[91] However, some may argue this interpretation is counter to the Attorney General's conclusion that a prepaid credit card was not a negotiable instrument under the Charitable Raffle Enabling Act.[92]

The Committee also heard testimony from Lee Woods on behalf of the Amusement Machine Operators of Texas (AMOT). AMOT supports a location license requirement for amusement redemption machine operators similar to Senate Bill 1996 from the 80th legislative session.[93] This would require locations with more than ten eight-liner machines to obtain a license from the Comptroller. AMOT members oppose a statutory change which would automatically classify amusement redemption machines, or eight-liners, as illegal.[94]

The City of Houston has an ordinance that requires a license to operate a game room and sets forth physical requirements such as signage and uncovered windows.[95] Additionally, representatives from the Houston Police Department provided the Committee with its proposal for amendments to the Penal Code and Code of Criminal Procedure relating to illegal eight-liners. Current law requires law enforcement to seize and thereafter store eight-liner machines necessary to provide the criminal charges. Houston recommends amending the statute to allow seizing of one machine and the mother boards from all other machines. They also support the required registration and posting of a bond by eight-liner distributors or machine owners. Many times the operators lease the machines and it is difficult to ascertain the true owner. Finally, they support a repeal of the current law allowing for the sale of eight-liners after court disposition. In lieu of selling the seized machines, the agency should be required to destroy the machines and collect the bond money posted by the owner.[96]

Recommendations

The Committee has reviewed the testimony provided and makes the following recommendations:

- The Legislature should consider new statutory language that clarifies whether a gift certificate or card, a prepaid credit card or a stored-value debit card qualifies as a "noncash merchandise prize" for the purposes of Penal Code § 47.01(4)(B).
- The Legislature should consider new statutory language requiring the registration of owners and/or operators of machines similar to the language proposed by Senate Bill 1996. 80th L.S. or by the City of Houston.

[91] Attorney General Opinion GA-0527 (2007).
[92] Attorney General Opinion GA-0341 (2005).
[93] Senate Committee on State Affairs Hearing, Oct. 15, 2008 (testimony of Lee Woods, Amusement Machine Operators of Texas).
[94] *Id.*
[95] HOUSTON, TEX., ORDINANCES, Art. VI.
[96] *See* Appendix IX.

- The Legislature should consider amending the Code of Criminal Procedure to allow law enforcement agencies seizing eight-liners to seize one representative machine and the mother boards for all other machines.

Charge No. 10

Analyze the advantages and disadvantages of phasing in a defined-contribution pension for future employees versus the existing defined-benefit pension plan. Study options for transition or implementation issues and how the phase-in could be structured. Evaluate the possibility of requiring the state employee contribution rate to meet the annually required contribution for the statewide retirement funds each biennium in order to prevent unfunded liabilities.

Background

A defined benefit (DB) plan promises a specified monthly benefit at retirement. Typically, benefits are calculated through a formula that takes into consideration such factors as salary and service.[97]

Defined contribution (DC) plans, on the other hand, do not guarantee a specific benefit at retirement. Instead, employees, employers, or a combination of both, contribute to the employee's individual account under the plan. These contributions are either invested on the employee's behalf, or individually directed by the employee. The employee ultimately receives the balance in their account, which is based on contributions plus or minus investment gains or losses. The value of the account will fluctuate due to the changes in the value of the investments. Examples of defined contribution plans include 401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans.[98]

The State of Texas offers both DB and DC plan to employees of the State and school district employees. The pension funds administered by both the Employees Retirement System of Texas (ERS) and the Teacher Retirement System of Texas (TRS) operate as DB plans. Benefits are generally calculated based on the following formula:

Final Average Salary x 2.3% per year of service = Standard Annuity[99]

ERS offers employees access to a DC plan through its Texa$aver program. Both 401(k) and 457 options are available to most state agency employees. No state match is provided for employees contributing to either program. TRS members also have access to a DC plan. School districts around the state may enter into a 403(b) plan salary reduction agreement with its employees if the 403(b) investment product is offered by a company that is certified to the TRS Board of Trustees.[100]

The State also provides an opportunity for certain employees in higher education to opt-out of the TRS DB plan in which they would otherwise be eligible to participate and instead enroll in the Optional Retirement Plan (ORP). The ORP operates as a conventional DC plan. Eligible employees are provided a one-time irrevocable decision to enroll in ORP in lieu of TRS.

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[97] http://www.dol.gov/dol/topic/retirement/typesofplans.htm
[98] *Id*.
[99] http://www.ers.state.tx.us/htdocs/retirement/planning/annuity_calc.aspx
[100] http://www.trs.state.tx.us/info.jsp?submenu=403b&page_id=/403b/403b_welcome

At the request of the Committee, the Texas Pension Review Board (PRB) provided detailed written testimony addressing many of the issues surrounding both DB and DC plans. Specifically, the testimony examines issues that could arise if the state attempted to transition away from its DB plans into a DC plans. It also reviews the general advantages and disadvantages of each type of plan. That testimony is provided in Appendix X.

The Committee also heard testimony from Keith Brainard, Research Director for the National Association of State Retirement Administrators. His testimony provided a national perspective on pension benefits and concluded that when compared to retirement plans provide by private and corporate employers, state plans "stand out in terms of their ability to provide a regular retirement income that is reliable and cost effective."[101] Written testimony offered 10 reasons Texas should not switch to a defined contribution plan for public employees, as shown in Appendix X.

The Committee received no invited or public testimony supporting a shift away from the state's current retirement benefit structure.

Recommendations

No compelling information or testimony was provided to the Committee to support a shift away from defined benefit programs. Therefore, it is recommended that the state continue to operate its retirement programs under the current structure.

Charge No. 11

Study the relationship between the public mental health system and the criminal justice and civil courts systems, including the identification and sharing of information regarding mentally ill offenders, including minors, among criminal justice and mental health agencies, the courts, state hospitals, and the Veterans Administration. Study how current confidentiality laws impact the exchange of information among groups described above. Study the sentencing of mentally ill offenders compared to non-mentally ill offenders, including minors, and the affect that has on statewide prison capacity and on the quality of health care provided to mentally ill offenders. (Joint charge with Senate Criminal Justice Committee)

The Senate Committee on State Affairs refers to the Criminal Justice Committee's report for discussion related to this charge. The Senate Committee on Criminal Justice interim report can be found at: http://www.senate.state.tx.us/75r/senate/commit/c590/c590.InterimReport80.pdf

Charge No. 12

Review and evaluate appropriate state regulation of a private operator of the state lottery should the state receive bids for a lease of the lottery that merit strong consideration. Provide recommendations for ensuring the security and integrity of the lottery and for adequate consumer protections. (Joint charge with Senate Finance Committee)

[101] Senate Committee on State Affairs hearing, Nov. 20, 2008 (testimony of Keith Brainard, National Association of State Retirement Administrators).

Background

The Texas Lottery is under the purview of the Texas Lottery Commission and most day-to-day operations are handled via contract arrangements with private entities. Net revenues are deposited into the Foundation School Account, while unclaimed prizes are divided between the Mulicategorical Teaching Hospital Account and General Revenue. Currently, many states have given consideration to the privatization or long-term lease of their state-run lotteries. In Texas the issue was raised to the 80th Legislature, however, no action was taken.

Discussion

During the Committee's joint hearing with the Senate Finance Subcommittee on General Government Issues, the committees heard testimony from representatives of several financial services companies. In their testimony the witnesses discussed various options open to the State for the privatization and/or monetization of the lottery. The witnesses also addressed the valuation of the lottery in the event the State chose to enter into a long-term lease with a private entity and the impact policy decisions may have on such a valuation.

Following the joint hearing, on October 16, 2008, the Office of Legal Counsel of the U.S. Department of Justice issued an opinion interpreting federal statutory provisions relating to state-run lotteries.[102] In that opinion, the Office concluded that a State must exercise control over a majority of business decisions at the lottery as well as retain most of the equity interest in the profits and losses of the lottery in order for it to be considered to be "conducted by a State" and thereby permissible under federal law. The Office concluded that a state-run lottery may enter into a contract to provide goods and services necessary for the operation of the lottery; however, a long-term lease to a private operator would not be permissible.[103]

Conclusion

The Office of Legal Counsel's opinion was issued after the Committee met to take testimony on this issue; therefore, the full impact of the opinion has not yet been determined. However, the Committee concludes further consideration of lottery privatization should be deferred until it can be reviewed by appropriate legal counsel and the advisability of investing the state's time and resources in reviewing the question of privatization can be weighed.

Charge No. 13

Study the feasibility and the advisability of establishing an investment policy that is consistent across all state trust funds, including the trust funds of the Employees Retirement System, the Teachers Retirement System, the Permanent University Fund, and the Permanent School Fund. Identify best investment policies for state trust funds. Examine recent portfolio diversification strategies and the effect they have on long-term fund performance. The recommendations should

[102] Scope of Exemption Under Federal Lottery Statutes for Lotteries Conducted by a State Acting Under the Authority of State Law, 32 Op. Off. Legal Counsel (Oct. 16, 2008). The full text of the Opinion may be found in Appendix XII or online at http://www.usdoj.gov/olc/2008/state-conducted-lotteries101608.pdf

[103] *See* 18 U.S.C. §§ 1301-1304; 1953(a) (2000 & West. Supp. 2008

consider what is an acceptable rate of return, an acceptable degree of risk, the appropriateness of certain investments. (Joint charge with Senate Finance Committee)

Background

The testimony from the invited panelist and subsequent comments from the members of the Committees identified three main topics of concern: risk, infrastructure and fiduciary duty. This report will focus on the four major funds in Texas: the Employees Retirement System (ERS), the Teacher Retirement System (TRS), the Permanent University Fund (PUF) and the Permanent School Fund (PSF), referred to as the "Funds". Additional detail on the funds can be found in the Legislative Budget Board's report on these funds.[104]

Discussion

Risk

The financial markets are affected by many different types of risk. They include credit risk, liquidity risk, market risk, and political risk, to mention a few. While the various types of risk are evaluated when determining the appropriateness of investment in a specific market sector or asset, downside market risk is the dominant concern. Simply put, downside market risk is the chance that the investment or asset will lose value over time.

The governing boards of the individual Funds have established processes for evaluating and quantifying risk. These processes allow each board to establish appropriate risk parameters for their entire portfolio, as well as for individual asset classes. The primary factor considered in setting these parameters are downside market risk tolerance and rate of return. In assessing risk tolerance, the Funds must consider the overall purpose of the fund and beneficiaries for whom it was established.

While the processes used by the Funds to establish its risk parameters and investment policies are fundamentally similar, it does not appear feasible to implement a statewide investment policy. However, reporting the potential downside risk and the actuarial assumptions used in determining the investment policy would improve the State's ability to better evaluate investments the Funds have deemed appropriate.

From testimony provided, risk cannot be quantified by a single measure. However, a widely accepted measurement for downside market risk is Value at Risk (VaR). VaR is defined as "the loss that will be incurred in the event of an extreme adverse price change with some given, typically low, probability."[105] This measurement provides, within a certain probability, the expected market loss of an asset given past volatility of the asset's value. VaR should be added to the reporting requirements currently set out in the Government Code, Section 322.014(b).

[104] http://www.lbb.state.tx.us/Investment_Funds/AnnualReport_MajorStateFunds_0508.pdf
[105] BODIE, KANE, MARCOS, INVESTMENTS G-13 (7th ed. 2006).

Infrastructure

Currently, each of the Funds has the authority to invest in infrastructure-based assets and have been exploring these types of assets. Two of the four Funds have together made $700 million worth of commitments to invest in infrastructure-based assets. The infrastructure assets class includes toll roads, airports, water plants, etc. Testimony was provided to the Committee that focused primarily on public toll roads.

The typical structure of a toll road project provides multiple opportunities for investment depending on the risk/return being sought. Investors have the option of buying tax exempt debt or debt on the open bond markets. Investors could also take an equity position in the project. A common equity position would cover the amount of the project that cannot be bonded due to debt coverage ratios.

An investor who takes a debt position in a project is provided a fixed return over a specified period of time. Revenues from the project are paid to these investors first. An investor who takes an equity position is not guaranteed a fixed return. However, with this higher risk position an opportunity for greater return also exists. For those with an equity position, returns are determined, like other equities, by returning any profit or excess revenue from the project to the investor on a pro rata basis.

Opportunities exist for the Funds to take both debt and equity position in these types of projects. It is unlikely a debt position will be attractive to the Funds due to the tax exempt status of the Funds. Additionally, the State lacks a structure that would allow the Funds to invest in an equity position in these projects in Texas. A Transportation Finance Corporation would serve as the vehicle to facilitate this type of investment opportunity.

Fiduciary Duty

The governing boards of the Funds serve a fiduciary role which requires them to perform their duties for the exclusive benefit of the Fund's members. The Texas Constitution requires the four investment Funds to follow the exclusive benefit rule and the prudent investor standard.[106] While the rule and standard are similar for each of the Funds, the Funds have the discretion to individually interpret the rule and standard to reflect the purpose and mission of their Fund.

In addition, the federal government requires pension funds to comply with the Employee Retirement Income Security Act (ERISA). The federal Department of Labor describes ERISA as an act that "protects your plan's assets by requiring that those persons or entities who exercise discretionary control or authority over plan management or plan assets, have discretionary authority or responsibility for the administration of a plan, or provide investment advice to a plan for compensation or have any authority or responsibility to do so are subject to fiduciary responsibilities."[107] Additionally, the federal Department of Labor indicates:

> the primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they

[106] TEX. CONST. Art. 16, § 67; Art. 7 §§ 5 & 11b.
[107] http://www.dol.gov/dol/topic/health-plans/fiduciaryresp.htm

must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must avoid conflicts of interest. In other words, they may not engage in transactions on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, services providers, or the plan sponsor.[108]

In light of the recent developments in the financial markets and the previous increases in investment authority, additional oversight may be necessary to guarantee that fiduciary duty is being upheld to the highest standard. Additional oversight could focus on conflicts of interest, ethics policies, actuarial assumptions, governance and transparency.

Recommendations

The Committee recommends the following to the 81st Legislature to consider taking appropriate action in regard to state investment policies.

- Add Value at Risk to the reporting requirements in the LBB Report on Major Investment Funds (Government Code Chapter 322, Section 322.014(b)).
- Increase the oversight authority of the Pension Review Board and the Office of the Attorney General to require that ethics and investment policies be submitted to each for review and comment prior to adoption or amendment.

Charge No. 14

Monitor the implementation of legislation addressed by the State Affairs Committee, 80th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. In particular, monitor and report on the effect of HB 2365, which allows public entities to report "other post employment benefits" (OPEBs) on a statutory modified accrual basis, including any effect on auditor opinions, bond ratings, or other fiscal issues. Monitor the implementation of Senate Bill 1731, relating to transparency of health information, and Senate Bill 1846, relating to TRS.

Senate Bill 1731[109]

Background

The purpose of Senate Bill 1731, 80th Regular Legislative Session was to encourage transparency in the various components of the health care industry. In previous sessions and interim studies, the Legislature has worked to address the rising cost of health care. In doing so, policy makers often cited the lack of meaningful information and data from health plans and providers necessary to implement effective public policy goals. As an incremental step forward, S.B. 1731 was passed to increase information and cost transparency for all stakeholders. This transparency was intended to benefit both insured and uninsured health care consumers.

[108] *Id.*
[109] Acts 2007, 80th Leg., ch. 997.

Senate Bill 1731 was an omnibus bill negotiated with input from various stakeholders. The goal was to ensure the legislation applied fairly to all impacted parties and to balance additional reporting or transparency requirements among the stakeholders.

Implementation Issues

Below is a summary of components of SB 1731 that either required a report to the Legislature or encountered problems with implementation.

Texas Department of State Health Services (DSHS)

Senate Bill 1731 required DSHS to create and publish on its website a "Consumer Guide to Health Care." The guide is intended to assist the average consumer in understanding and navigating the often complex health care industry. The website provides definitions and explanations of pricing practices and links to other websites that publish quality and cost comparison information on Texas hospitals. The website was finalized and published in November 2008.[110]

DSHS was also directed to expand their current facility data collection to include out-patient data for hospitals, ambulatory surgical centers, and imaging centers.[111] Specifically, language in S.B. 1731 directed the data expansion to "prioritize" the collection of radiological and surgical outpatient services and excluded emergency room services.[112]

Rules have been proposed by DSHS to require the submission of outpatient data by hospitals and ambulatory surgical centers. However, DSHS has not been able to propose rules to collect data from imaging centers. Imaging centers are not regulated by DSHS and there is presently no definition that accurately identifies imaging centers in state or federal law. DSHS' regulatory authority is limited to imaging devices that produce ionizing radiation. Therefore, magnetic resonance imaging (MRI) and hybrid imaging devices are neither licensed nor regulated by the state. Because of the lack of complete information and appropriate regulatory authority, DSHS will be unable to promulgate rules for the collection of out-patient imaging data.

Finally, various unanticipated administrative delays preclude the implementation of the data collection expansion to hospital and ambulatory surgical center out-patient data until July 2009. Moreover, DSHS has identified an issue with their data collection system. Currently, both inpatient and outpatient data collected from hospitals and ambulatory surgical centers is "de-indentified" so that personal information does not track with the collected data. This was not a problem when DSHS tracked only inpatient data. However, now that the state is also collecting outpatient data, they are unable to match inpatient and outpatient encounters of the same individual because the data has been "de-identified." If DSHS could match an individual's inpatient and outpatient data, the state would be able to better track the cost and utilization impact of these different health care delivery methods.

[110] http://www.dshs.state.tx.us/thcic/ConsumerGuide/ConsumerGuide.shtm

[111] Previously, DSHS was only authorized to collect in-patient data from Texas facilities.

[112] The expansion to include all out-patient data would have increased the amount of data collection to a prohibitive level.

Texas Department of Insurance

The Texas Department of Insurance (TDI) has implemented a significant portion of S.B. 1731, which included two new data collection projects. The first project was the collection of reimbursement rates from health plans around the state. Senate Bill 1731 allowed TDI to adopt rules for a data call of aggregated reimbursement rates, by region, as a dollar amount.

Reimbursement Data

As the Legislature debates the rising cost of health care, the distinction between "cost" and "charge" is often discussed. Often, health care costs are stated in terms of "charges" rather than an actual cost or reimbursement rate. Health care providers normally have a charge master that serves as the price list for the services they provide. However, stakeholders acknowledge that the amounts listed on that charge master do not reflect the true cost or reimbursement. Therefore, the only so-called "cost" data that policy makers are able to discuss is the inflated and rarely utilized "charge" data. Hence, this transparency was designed to create a report that would more accurately reflect the "value" of health care for a list of common procedures.

Stakeholders were helpful and involved in the rule making process for this data call. However, in the midst of the project, TDI discovered a significant barrier. The Federal Health Insurance Portability and Accountability Act (HIPAA) standards require physicians to operate and bill under Current Procedural Terminology (CPT) codes. TDI needed to reference the CPT code and the corresponding, common descriptor to publish the data collected from this project in a means useful to the public. The CPT codes and their common descriptors are owned and copyrighted by the American Medical Association (AMA). When TDI approached AMA regarding the use of the CPT codes and common descriptors, AMA quoted a price that would have been prohibitive.

Although TDI and AMA continue to negotiate for a license to use these CPT codes and descriptors. As of the date of this report, an agreement has not been achieved.

Network Adequacy

Senate Bill 1731 also created the Network Adequacy Advisory Committee. This committee includes members of the various stakeholder groups and to study the adequacy of health plan networks. During discussions surrounding balance billing, providers often assert that the health plan networks and contracts with hospital-based physicians[113] are not sufficient to ensure that enrollees can avoid balance billing.[114] However, reliable data has never been collected for policy-makers to accurately evaluate these issues.

The stakeholders committee met numerous times during the interim and finalized the rules for the data call on health plans. The data call for this project will only collect data from the health plan and will not include information from physicians or hospitals. Although all health care providers impact the network status, TDI only has authority to collect data from

[113] For the purposes of the Network Adequacy Advisory Committee, hospital-based physicians are defined as radiologist, anesthesiologist, pathologist, emergency room physician and neonatologist.

[114] Balance billing occurs when a PPO enrollee is treated by an out-of-network provider and then billed by the provider the difference between the health plan's non-network reimbursement rate and the billed charge.

Texas health plans. Health plan representatives testified about concerns over this lack of state collected data from the other health care entities.

In an effort to address those concerns, TDI, in cooperation with the Texas Hospital Association (THA), sent a voluntary survey to all Texas hospitals with questions relating to their practices for securing in-network status and contracting with their hospital-based physicians. Additionally, the Texas Medical Association (TMA) provided the Committee with the results of their member survey regarding similar concepts. While these survey results are not collected and its analysis controlled by a state agency, the information provides healthful additional insight. TDI anticipates the final report from this study will be available for publication early in 2009.

Recommendations

The Committee makes the following recommendations with respect to the subjects addressed in S.B. 1731:

- Continue discussions to support increased transparency for all factions of health care. It is imperative that the transparency is fair and equally applied to all parties. Transparency should not be used as a tool to further the historical tensions between the affected parties.
- Pending the results and findings from the Network Adequacy Advisory Committee report, the Legislature should continue discussions regarding health plan networks, non-network payment rates and the contracting practices of hospitals and hospital-based physicians. The state should encourage concepts that could lessen the impact of balance billing to the citizens of Texas.
- Allow the Texas Department of State Health Services to collect data that includes patient identification information, while maintaining the highest level of privacy standards, to better match in- and out-patient data sets for improved analysis.
- Investigate means for appropriate regulatory agencies to collect data from Texas physicians and facilities to better understand the findings from similar health plan data currently collected by the Texas Department of Insurance.

House Bill 2365 and Senate Bill 1846

The Committee took testimony on the implementation of House Bill 2365 from the Employee Retirement System, the Teacher Retirement System, the Office of the Comptroller, and Susan Spataro, Travis County Auditor, regarding the calculating and reporting of future Other Post Employment Benefit (OPEB) cost projections. Since the issues surrounding the implementation of H.B. 2365 are still developing, the Committee concluded that the Legislature should continue to monitor its implementation and the resulting effects.

The Committee heard testimony on the implementation of Senate Bill 1846 from the Teacher Retirement System. It was concluded that SB 1846 was fully implemented and no further action is necessary.

APPENDIX IV

ELECTION ADVISORY
NO. 2007-06

Electronic Voting System Procedures

Pursuant to Section 122.001(c) of the Texas Election Code, the Office of the Secretary of State prescribes the following procedures for use of Electronic Voting Systems.

1) Acceptance Testing
   a) The following tests should be performed at the local jurisdiction level upon voting system delivery from the vendor:
      i) Confirm that the system delivered is certified by the Texas Secretary of State Office;
         (1) Verify model number and/or name of system;
         (2) Verify software and/or firmware version;
      ii) Perform a hardware diagnostic test of all equipment received; and
      iii) Perform a Logic and Accuracy Test simulating a mock election for your jurisdiction, if this is a system your jurisdiction has never used.

2) Election Set-up and Definition (Reference: Texas Election Code (TEC), Chapter 125)
   a) Program and configure election management system software, direct recording electronic, electronic ballot marker, optical scan, and any other devices used in an election, as applicable to your jurisdiction.
      i) Set different passwords for each election, as applicable;
      ii) Replace and/or recharge batteries, if necessary.
   b) Proofing the programming of your election for accuracy shall include, but not be limited to, the following:
      i) Verify races within each precinct;
      ii) Verify precincts included in each ballot style;
      iii) Verify candidates associated in each race;
      iv) Verify party affiliation with candidates;
      v) Check for all contests on ballot and verify that candidate/proposition spelling is correct;
      vi) Check contest order;
      vii) Verify the correct number of votes allowed for each race;
      viii) Verify that write-in positions are correct;
      ix) If available, verify the audio ballot; and
      x) Verify straight-party associations to appropriate candidates in applicable elections.
   c) As part of a Business Continuity and Disaster Recovery Plan, back-up your election programming at various stages of the election definition process.
      i) At a minimum, as soon as you finish the programming of your election and its been locked down, create a back-up copy for storage at a secure off-site location.

ii) If another entity does your programming, keep your own back-up copy at a secure off-site location that is in your control, not the programming entity's control.

d) Election setup materials shall be secured by limiting access to the person or persons so authorized in writing by the county clerk and/or election official.

e) Any audit logs and ballot definition files created shall be included with retention material for that election.

3) Voting System Testing (Reference: TEC, Chapters 125, 127 and 129)

a) Three types of voting system testing shall be performed for each election within a jurisdiction. The three tests are:

- A Hardware Diagnostic Test;
- A Logic and Accuracy Test; and
- A Post-Election Audit Test.

b) Hardware Diagnostic Test (Reference: TEC §125.002)

i) The general custodian of election records shall commence the Hardware Diagnostic Test prior to the election and allow time for each electronic voting device, to be deployed in the election, to be tested, repaired and/or replaced, if necessary. Each device shall be tested to verify that mechanical components are working correctly. This test shall include, but not be limited to, the following:

(1) All input and output devices;
(2) Communications ports;
(3) System printers;
(4) System modems, when applicable;
(5) System screen displays;
(6) Boot performance and initializations;
(7) Firmware and/or software loads;
(8) Confirmation that screen displays are functioning;
(9) Verify, and adjust to correct date and time, if necessary;
(10) Verify and adjust calibration, if applicable;
(11) Confirm that the unit is cleared of votes;
(12) Confirm that it is configured for the current election; and
(13) Confirm that physical security devices are in working order (locks, seal hasps, etc.)

c) Logic and Accuracy Test (Reference: TEC, Chapter 127)

i) The designated general custodian of election records shall conduct a Logic and Accuracy Test according to the following requirements:

(1) The designated general custodian of election records shall create a Testing Board consisting of at least two persons, one from each major political party, when possible. (This is a best practice recommendation. You may use normal staff members.)

(2) Prior to the commencement of voting and no later then 48 hours before voting begins on the equipment, the designated general custodian of election records shall conduct the public Logic and Accuracy Test. A public notice must be published 48 hours prior to the testing. (Recommendation: An internal L&A test should be done soon after the programming and proofing of your election is complete. This will provide you time to make corrections as necessary and be better prepared for the public L&A test.)

(3) The Public Logic and Accuracy Test shall be open to representatives of the press and the public to the extent allowable. (Reference: TEC, §127.096)

(4) Test Ballots – In preparation for the Logic and Accuracy Test, the designated general custodian of election records shall design a method which directs the Testing Board to cast votes which will verify that each precinct, each ballot style, each contest position on the ballot can be voted and is accurately counted.

(a) This can be done by marking test ballots or providing the Testing Board with some other form identifying how each test vote shall be cast. (We strongly recommend that you devise your own test ballots, rather than using the test deck provided by the vendor.)

(b) Optical scan test ballots must be prepared on the same ballot stock as the official ballots.

(c) The testing shall include overvotes and undervotes for each race and write-in votes, when applicable.

(d) The testing shall include straight party votes and crossover votes, as applicable.

(e) The testing shall include electronic processing of provisional votes, if applicable to the system being used.

(f) The testing shall be designed in a manner which provides a different number of vote totals for at least three candidates in races with more than two candidates, or each candidate in races with exactly two candidates

(g) The predetermined results must be pre-calculated from the Test Ballots to allow comparison after the votes are tallied. (Reference: TEC, §127.094)

(5) An appropriate number of voting devices will be available and the testing board may witness the necessary programming and/or downloading of memory devices necessary to test the specific precincts.

(6) Prior to the start of testing, all devices used will have the public counter reset to zero and presented to the testing board for verification.

(7) Conducting the Test

(a) (DRE and AutoMARK Only) Manual vote choices are made by entering the votes indicated on the Test Ballot or designed form as stated above. To help prevent human error, all entries are made by a team of two people. One person calls out the votes and one person enters. Both team members verify the votes on the summary screen before the ballot is cast or printed.

(b) (DRE and AutoMARK Only) To test the audio, at a minimum, one set of vote choices will be entered using the audio feature. Both team members listen to the summary prior to casting or printing the ballot.

(c) (AutoMARK Only) Verify that the printed ballot reflects the choices entered on the AutoMARK. Also, if applicable, process the AutoMARK ballots with the optical scan equipment.

(d) (Optical Scan Only) Optical Scan Equipment must be tested as prescribed in TEC Sec. 127, Subchapter D. Pursuant to TEC §127.094(e) the design of the test ballots must also include the design Section 3(c)(i)(4) of this advisory.

(e) (Precinct Optical Scan and DRE Only) The Secretary Of State has determined that it is not feasible to conduct the 2nd and 3rd test on precinct tabulators as described in TEC §127.152(b).

(f) Test any other disability component, as applicable.

(g) Test the transmission of results by modem, if applicable.

(h) When all votes are cast, the designated general custodian of election records and Testing Board shall observe the tabulation of all test ballots and compare the results to the predetermined results.

(i) A test is successful if the results report of the electronic voting system matches the predetermined results and the voting system otherwise functions properly during the counting of the test ballots.

(j) If the initial test is unsuccessful, the general custodian of elections shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

(k) The Testing Board and the designated general custodian of election records shall sign a written statement attesting to the qualification of each device that was successfully tested, the number/characters of the seal attached to the voting device at the end of the test, any problems discovered, and provide any other documentation as

necessary to provide a full and accurate account of the condition of a given device.

(l) Upon completion of the testing, the Testing Board shall witness and document the resetting of the public count to zero and place the tested voting device in secure storage.

(8) All test materials, when not in use, shall be kept in a container with a uniquely identified tamper-resistant or tamper-evident seal. The general custodian of election records and Testing Board shall document the certificate of test materials.

(a) The designated general custodian of election records shall be the custodian of the container.

(b) The container may not be unsealed unless the contents are necessary to conduct another test. If the container is unsealed, the general custodian of elections shall reseal the contents when not in use.(Reference: TEC §127.099)

d) Post-Election Audit (Partial Manual Count)(Reference: TEC, Chapter 127)

i) In a general election for state and county officers, primary election, or election on a proposed amendment to the state constitution or other statewide measure submitted by the legislature, the Secretary Of State shall notify the election official, on the day after the election, of the selected precincts that must be manually counted. The election official shall begin the manual count within seventy-two (72) hours after the polls close. (TEC, §127.201(b))

ii) For local elections, the county may be conducting the required partial manual count, in which case the precincts are determined by the local authority.

iii) On selection or notification, as applicable, of the precincts and contest(s) to be counted, the general custodian of election records shall post in the custodian's office a notice of the date, hour, and place of the count. (TEC, §127.201(c))

iv) The general custodian of elections is authorized entry into the ballot box or container containing election records for the purpose of the partial manual count. When the count has been completed, the records shall be restored to their secured condition for the preservation period. (TEC, §213.007)

v) Conduct of Partial Manual Count for Direct Recording Electronic (DRE)

(1) The appropriate official will print the cast vote records (ballot images) for the precincts selected and manually count the race/contest assigned.

(2) Verify that the manual count total of the cast vote records (ballot images) matches the election results reported for that precinct.

(3) The Secretary of State may authorize other records to be used, in lieu of the cast vote records (ballot images), when conducting the manual count.

(4) The general custodian of election records, who conducts an election in which a DRE is used for the first time, must conduct a manual count in one percent of the election precincts or three election precincts, whichever is greater. (TEC, §127.201(a) and §129.001(d)).

vi) Conduct of Partial Manual Count for Optical Scan Equipment

(1) The actual paper ballot will be hand counted for optical scan systems and verified to see if it matches the election results reported for that precinct.

vii) If there are discrepancies in the audit, the election official shall continue its audit until it determines the cause of the discrepancy.

viii) Each candidate is entitled to be present and to have a representative present. The designated election official may appoint additional deputized clerks to assist in the functions of the audit. (Reference: TEC §127.201(d))

ix) At all times relevant to the Post-Election Audit, the designated election official shall take every precaution necessary to protect the confidentiality and security of the ballots cast by the voters.

x) Upon completion of the audit, the designated election official shall promptly report the results of the audit to the Secretary of State's Office. The report shall contain:

(1) The count of the specific race or races as provided on the summary report printed at the close of polls or the report generated for the audit;

(2) The count of the specific race as manually verified;

(3) An explanation of any discrepancy found; and

(4) The signature of the election official.

4. Central Accumulator System Procedures, if applicable.

a) Testing Central Accumulator System (Reference: TEC, Chapter 127)

i) The tabulation supervisor and counting station manager of the central accumulator system shall prepare and conduct the test jointly.

ii) Times for conducting test.

(1) The test shall be conducted at least once for each election.

(2) The test shall be conducted as part of the Logic and Accuracy testing stated in Section 3(c).

iii) Design of test.

(1) The test must be designed to determine whether the central accumulator system accurately tabulates results from the electronic files used to count ballots voted in the election.

(2) The electronic files created from the Logic and Accuracy testing for the election must be used in the process of this test.

iv) Conduct of the test.

(1) The general custodian of elections shall publish notice of the date, hour, and place of the test conducted under TEC §127.093(b) in a

newspaper, as provided by general law for official publications by political subdivisions, at least 48 hours before the date of the test. (This is the same notice as your public L&A test. Recommendation: An internal L&A test should be done soon after the programming and proofing of your election is complete. This will provide you time to make corrections as necessary and be better prepared for the public L&A test).

(2) The test is open to the public.

(3) Verify that your system has been reset to zero and print out a zero report prior to performing the test.

(4) If the initial test is unsuccessful, the counting station manager shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

(5) When a test is successful, the tabulation supervisor and counting station manager shall certify in writing that a test was successful and the date and hour the test was completed. The certification shall be retained with the test materials.

v) Determining success of test.

(1) A test is successful if a perfect count of the electronic files, that contain the cast vote records (ballot images) and/or device results, is obtained and the central accumulator system otherwise functions properly during the counting of the test electronic files.

vi) Security of test materials.

(1) On completion of the test, the counting station manager or tabulation supervisor shall place the test electronic files, or a copy of the test electronic files, and other test materials in a container provided for that purpose and seal the container so it cannot be opened without breaking the seal. The counting station manager and tabulation supervisor, and not more than two watchers, if one or more watchers are present, shall sign the seal or seal log as applicable. The watchers must be of opposing interests if such watchers are present.

vii) Custody of test materials.

(1) The counting station manager is the custodian of the test materials until they are delivered to the general custodian of election records.

b) Election Night Verification when central accumulator system is used to consolidate the vote results:

i) After uploading the precinct results to the central accumulator system, the election official must verify and document that the central accumulator's record of number of votes cast matches the number of signatures on the combination form or ballot and seal certificate for that precinct. If there is a discrepancy, the Presiding Judge of the Counting Station determines if a further audit is necessary.

c) Post-Election Verification when central accumulator system is used to consolidate the vote results:

i) Prior to the canvass, the election official must verify that the vote total(s) printed at the precinct match the reports generated by the central accumulating system, for one percent of the election precincts or three election precincts, whichever is greater;

(1) The general custodian of election records has the discretion to verify a greater number of precincts then specified above; and

(2) The reconciliation shall consist of a race-by-race comparison by precinct of the number of votes reported on the precinct results tape to the central accumulator's tabulation report.

ii) If there is any discrepancy in the comparison, the results tape from the precinct level shall constitute the official results.

iii) Any political subdivision that utilizes modem transfer of election results for the purpose of being combined with other such tabulations to produce complete returns shall establish procedures to reconcile received tabulations to transmitted tabulations so that no deviation can go undetected.

5. Voting System Security

a. Personnel Security:

i. Employees authorized by the county clerk or election official to prepare or maintain the voting system or election setup materials shall be deputized by the county clerk or election official for this specific purpose and so sworn, with the following oaths, prior to the first election of the calendar year in which they will be performing one or more of these activities.

1. "I swear (or affirm) that I will faithfully perform my duty as an officer of the election and guard the purity of the election." (Section 62.003 of TEC)

ii. Criminal Background checks should be performed on all permanent and key elections personnel upon hiring.

b. Pre-election Security Procedure:

i. All electronic media (e.g., memory cards, compact flash card, PCMCIA card, PEBs, voter card encoders, supervisor cards, and key cards) shall have an external permanent unique identifier (e.g., numbers, letters, or combination of numbers and letters). The identifier can be either etched or printed on a tamper resistant label. (Recommendation: include a barcode on the label, which will make it more efficient to inventory). (Reference: TEC §127.154(c))

1. The general custodian of elections shall create and maintain an inventory of all electronic media.

2. The general custodian of elections shall create a process and maintain a procedure for tracking the custody of electronic media from their storage location, through election coding, through the

election process, to their final post-election disposition and return to storage.

3. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place.

ii. The elections official shall create and maintain a secured location for storing the electronic media when not in use, for coding an election, for creating the election media, for transferring and installing the election media into the voting device, and for storing these devices once the election parameters are loaded.

1. No election media shall be left unattended or in an unsecured location once it has been coded for an election.

a. Where applicable, coded election media must be immediately loaded into the relevant voting device, logged, and made secure or must be placed in a secured and controlled environment and inventoried.

2. For each election, the general custodian of elections or their assigned staff shall seal each election media in its relevant voting device or container utilizing one or more uniquely identified tamper-resistant or tamper-evident seals.

a. A combined master identification of the voting device, the election media, and the seal(s) must be created and maintained.

b. For election media that are device independent (e.g., PEBs, voter card encoders) these devices should be stored in a secured, sealed container and must also be identified on a master log.

3. The general custodian of elections shall create a process and maintain a procedure for tracking the custody of these voting devices once these devices are loaded with an election definition.

4. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place.

iii. The general custodian of elections shall have in place a recovery plan that is to be followed should there be an indication of a security breach in the accountability and chain of custody procedures. Any indication of a security breach must be confirmed by more than one individual.

iv. If a security breach has been discovered the Secretary of State's Office must be notified immediately.

v. The general custodian of elections shall have a training plan for relevant election officials, and staff that address these security procedures and the relevant work instructions.

c. Storage and Transport of Voting System Equipment (Reference: TEC Chapter 125):

i. The general custodian of elections shall create and maintain a secure location for storing and a secure method for transporting voting devices. This shall include procedures that are to be used at locations outside the direct control of the general custodian of elections, such as overnight storage at a polling location.

1. Secure storage must employ the use of uniquely identified tamper-resistant or tamper-evident seals and logs, or other security measures that will detect any unauthorized access.
2. For each election, the general custodian of elections shall create and maintain an inventory of these items for each storage location.
3. The chain of custody must utilize two or more individuals to perform a check and verification check whenever a transfer of custody takes place or where the voting devices have been left unattended for any length of time. Particular attention must be given to the integrity of the tamper-resistant or tamper-evident seals.
4. The general custodian of elections shall have a method of recording the names of the individuals who transport the voting system equipment and materials from one site to another and the time they left the sending site; and
5. A method of recording the time the individuals who transport the voting system equipment and materials arrived at the receiving site and the name of the individuals at the receiving site who accepted the election equipment and material.

ii. The general custodian of elections shall have in place a written recovery plan that is to be followed should there be any indication of a security breach in the accountability and chain of custody procedures. The plan must also address inadvertent damage to any seals or accountability/chain of custody documentation errors. These plans must be developed in a manner that enhances public confidence in the security and integrity of the election. Any indication of a security breach, documentation errors, or seal damage must be confirmed by more than one individual.

iii. The general custodian of elections shall have a training plan for relevant election officials, staff, and temporary workers that address these security procedures and the relevant work instructions.

d. Restrict Access to Voting Systems:

i. The general custodian of elections shall have a procedure that ensures that default or vendor supplied passwords, encryption keys, etc. have been changed.

1. The general custodian of elections must maintain these access control keys/passwords in a secured and controlled environment. Who has access to these items must be delineated in the relevant position descriptions.
2. Changes to the encryption keys and passwords are at the discretion of the general custodian of elections, but it is advisable that this

discretionary authority should not be delegated. However, the individuals(s) that implement the change must have this "authorization to change" responsibility delineated within their position descriptions(s). (Note the distinction relative to describing who may authorize a change, who implements a change, and who has access but cannot change the passwords and encryption keys.)

3. Where appropriate, the degree of access should be defined within each relevant position description and maintained at that level within the election management system and/or equipment. This applies where a voting system can limit an individual's access to certain menus, software modules, etc.

ii. An access log should be developed and utilized to document access to any device, election media, or election management system that requires the use of a password and/or encryption tool (e.g., Premier's *formerly known as "Diebold"* Key Card Tool). If possible, access should be witnessed by one or more individuals authorized to use such information.

iii. The log should be retained throughout the life of the device or election management system.

iv. The general custodian of elections shall ensure the protection of the election tabulation process by securing the premises where the vote tabulation is being conducted and not allowing unauthorized and unescorted personnel to be in contact with tabulation equipment.

v. The general custodian of elections shall have a training plan for relevant election officials, and staff that address these security procedures and the relevant work instructions.

e. Prohibit the Use of Network Connections and Restrictions on Wireless Technology

i. No voting system shall be connected to any exterior network and no connection to the Internet shall be permitted at any time.

ii. No tabulating device shall have wireless enabled with the exception of line of sight infrared technology used in a closed environment where the transmission and reception is shielded from external infrared signals and can only accept infrared signals generated from within the system.

f. Restrict Usage of Voting System Computers

i. All voting system computer(s)/server(s) shall be restricted to the sole purpose of election administration, and not used for other purposes.

ii. Only the applicable operating system, commercial off-the-shelf software (COTS) needed for the election process, and the certified voting software shall be loaded on a voting system computer/server.

iii. Remote Access to a voting system computer/server is not allowed.

6. Polling Place Preparation and Procedures

a. Arrange the polling place to allow full view by poll workers of voting and voter activity to guard against unauthorized access while protecting voter privacy.

b. The voting equipment must be in sight of the presiding judge and/or an election clerk at all times while the election is being conducted.

c. Periodically check for evidence of tampering on voting equipment during the election. For example, make sure uniquely identified tamper-resistant or tamper-evident seal is still intact. (Reference: TEC, §125.005)

d. Restrict/monitor physical access to equipment when poll workers/judge not present.

e. Secure Early Voting location and equipment to prevent theft or tampering after hours.

f. Equipment Failure During Voting

   i. Procedures and plans shall be written for handling Election Day equipment failure, including backup and contingency plans. (See TEC, §125.006 for further details)

   ii. If a DRE malfunctions during voting and there have been votes cast on that machine, extra precaution should be taken to protect the cast vote records (ballot images) and audit logs stored on that DRE. Secure the equipment and document the chain of custody when transporting the equipment to another location. (Reference: TEC, §125.006)

g. Opening the Polls

   i. The presiding judge shall verify and document the unique identifier (e.g., serial number) of the equipment delivered to the polling site.

   ii. Look for evidence of tampering and document the time this was done.

   iii. Verify that the Public Count is "0" on each applicable device.

   iv. Check the accuracy of the date and time on applicable equipment.

   v. Confirm that all units are open for voting, as applicable.

   vi. At a minimum, print one zero tape from each applicable device, and

      1. The presiding judge, an election clerk, and not more than two watchers, if one or more watchers are present, shall sign the zero tape.

      2. Maintain zero tapes in a secure location to be returned with election materials. (Ballot Box #4 or other secure means designated by the general custodian of elections)

h. Fleeing Voter

   i. When a voter began the process of making ballot selections but leaves without casting a vote on a DRE, a polling place official must cancel the ballot.

   ii. When a voter leaves without fully depositing their paper ballot into the optical scanner or ballot box, this ballot must be treated as a spoiled ballot.

   iii. The presiding judge or an election clerk shall cancel the ballot and document the cancellation.

i. Provisional Voter

   i. Provisional votes may be cast electronically on a direct recording electronic voting system only if the system segregates provisional votes

from regularly-cast votes on the election day precinct returns. Verify that no conditions are listed on the Secretary of State certification document for your system that would restrict the use of provisional voting. (TAC §81.176)

j. Curbside Voter

i. If the voter is physically unable to enter the polling place without assistance or likelihood of injury to the voter's health, then the voter may vote at the curbside.

ii. An election judge or clerk shall deliver the voting device to the curbside voter.

iii. Make sure to allow the curbside voter the same privacy as a voter in the polling place.

k. Closing the Polls

i. Verify and document the Public Count on applicable devices.

ii. Verify that the public count(s) match the number of voters on the register.

iii. After the polls have been closed on Election Day, the precinct election officials shall print out, at a minimum, two copies of the results tape from each applicable device, and secure the voting device against further use. (WARNING: Do not print out the results tape during Early Voting or the last day of Early Voting).

1. The presiding judge, an election clerk, and not more than two watchers, if one or more watchers are present, shall sign the results tape(s).

2. The copies of the results tape(s) shall be distributed as follows:

a. Envelope #3 that is delivered to the precinct judge; and

b. Ballot Box #4, or other secure means designated and delivered to the general custodian of elections along with other election media and materials.

3. Lock and secure the voting equipment and other election material from any physical access to prepare for transport.

l. Early Voting Procedures

i. Opening the Polls procedures above apply to the 1st day of early voting.

ii. Opening the polls on the 2nd thru last day of early voting:

1. Look for evidence of tampering and document the time this was done;

2. Verify and document that the Public Count matches what was on the counter at the close of polls the previous day; and

3. Confirm that all units are open for voting.

iii. Suspending and securing the Polls during Early Voting by personal appearance, except for the last day:

1. Verify and document that the Public Count matches the number of voters as documented on the early voting by personal appearance roster;

2. Lock and secure voting device, so no more votes may be cast; and
3. Restrict physical access to equipment.

iv. If the early voting device is being moved to another temporary location, the instructions listed in Sec. 4) c) of this document should be followed.

v. Closing the polls on the last day of Early Voting:

(1) Verify and document that the Public Count matches the number of voters as documented on the early voting by personal appearance roster;

(2) Look for evidence of tampering and document the time this was done;

(3) DO NOT PRINT THE RESULTS TAPE; and

4. Lock and secure the voting equipment and other election material from any physical access to prepare for transport.

7. Automatic Recount (Reference: TEC, Chapter 216)

a. An automatic recount must be conducted in an election requiring a plurality vote when two or more candidates for the same office tie for the number of votes required to be elected, unless the tying candidates cast lots to resolve the tie or one of them decides to withdraw.

b. An automatic recount must also be conducted in an election requiring a majority vote if more than two candidates tie for the highest number of votes or if two or more candidates tie for the second highest number of votes to determine who will be the runoff candidates before resorting to casting lots in order to resolve the tie.

c. An automatic recount must be held if the candidates in a runoff election tie before the tying candidates can cast lots to determine the winner.

d. The method of counting votes in an automatic recount is the same method of counting used in the election that resulted in the tie vote.

e. In order to initiate an automatic recount, the presiding officer of the canvassing authority shall request the recount in writing in the same manner as a recount petitioner, except that no deposit is filed with the request, and the cost of the recount is covered by the political subdivision.

8. Requested Recount on DRE Voting Systems (Pursuant to TEC 214.071)

a. The candidate requesting a recount may request that the recount be done electronically or manually.

b. For an electronic recount, the persons specifically permitted by law to be present at the recount are also authorized to be present as the election media are reloaded into the central accumulator system.

c. For a manual recount of a DRE election, the Recount Coordinator shall organize the printing of cast vote records (ballot images) for the affected race or issue.

i. The Recount Coordinator shall notify the parties in the recount of the date, place, and time the printing of cast vote records (ballot images) will take place.

ii. The full recount committee is not required to be present at the printing of cast vote records (ballot images) and the Recount Chair shall determine

how many members should be present. The persons specifically permitted by law to be present at the recount are entitled to be present as the cast vote records (ballot images) are printed and to have the same number of representatives as allowed for the recount.

iii. If the manual recount does not take place immediately after the printing of the cast vote records (ballot images), the printed cast vote records (ballot images) shall be locked and secured until the recount takes place.

iv. A manual count of the printed cast vote records (ballot images) shall be conducted in the same manner as a recount of hand-counted paper ballots.

v. After the recount is complete, the printed cast vote records (ballot images) shall be secured and preserved for the appropriate preservation period for maintaining election records.

9. Requested Recount on Optical Scan Voting Systems (See TEC, Chapter 214, Subchapter C)

10. Retention of election material

a. Records created as part of an election must be retained for twenty-two months. In addition to the instructions provide in TEC §66.058, electronic records shall be secured in a locked container sealed with one or more uniquely identified tamper-resistant or tamper-evident seals that is logged. This includes, but is not limited to the following:

i. Logic and Accuracy Test and results
ii. Printed audits (Real-time audit log)
iii. Forms
iv. Zero tapes
v. Results tapes
vi. Electronic Records
1. Ballot definitions
2. Cast vote records (ballot images), as applicable
3. Audit logs
4. Election results

b. The electronic files can be duplicated to another storage medium to meet the retention requirement and allow for the external memory store (compact flash card) to be reused in the next election. It is preferable that data be written to a read only Compact Disc (CD-R) rather than a read/write Compact Disc (CD-RW). A CD-R can only be written-to once and then you can only read from it. A CD-RW is a readable/writable disk and can be written-to more than once.

c. A minimum of two duplicates of the electronic data must be retained, labeled and stored in a secure manner where any opening could be detected, and each placed in a different locked area with restricted access.

d. An optical scanner used in early voting may be deployed for use on Election Day only if the system provides the capability to retain a copy of the audit log(s) showing the activity during early voting.

e. The optical scanner system provides the capability to view and print the audit log(s) as needed to retain the records listed above.

f. A DRE used in early voting may not be re-deployed for use on Election Day.

g. **Electronic data on a DRE, a DRE component (Hart – JBC) and any external memory store (compact flash card) used in conjunction with a DRE shall not be cleared until a backup of the electronic records has been performed**. Also, the electronic data on a DRE and any external memory store shall be preserved for 10 days after Election Day unless the DRE is required for another election before that time expires. In that case, the results shall be preserved until the local canvass of the returns containing the election results from the DRE is complete and a backup of the electronic records has been done.

h. A DRE shall remain secure if, before the security period prescribed above expires, the DRE's custodian receives a request to maintain security of the DRE for an extended period. This request must be in writing and signed by: (1) a person eligible to contest the election or obtain a recount; or (2) a public authority authorized to conduct a criminal investigation involving use of the DRE in the election or a person designated by the public authority to make the request.

Below are descriptions on how to backup electronic data from the various vendor products. Warning: When using a modem to send precinct results to the central counting station, only the results are transferred and not the cast vote records.

Premier Election Solutions (*Formerly known as "Diebold"*)
After tabulating and consolidating results, the central counting station manager shall prepare a CD-R which contains cast vote records, as well as vote totals, and a copy of the consolidated returns from election management system (GEMS). Open the election database in GEMS, click on **Election** in the menu bar and then click **Backup**. Follow the steps to create a unique file name for your backup, save and then copy the file to a CD.

ES&S
After the election, first backup all your election results by selecting **Copy Results** on the **Miscellaneous** menu in Election Reporting Manager (ERM). Select **Copy All Results** and click **OK** to continue. Select the letter for your floppy drive from the **Output drive Letter** list.

Enter the number of the reporting group from which you want to copy results in the **Copy group** box. In the **and merge it to group** box, enter the number of the group with which you want to merge your copied results and click **OK**. Insert a blank disk in your floppy drive and click **OK** to copy your election results.

Additional steps to backup iVotronic data:
After you have completed the above steps, you are now ready to collect and import the cast vote records, audit log records and ballot definition files from each iVotronic to ERM by using the following steps (Reminder: PEBs used to upload results do not contain the cast vote record or other audit data needed for a complete backup):

Collect audit data from the iVotronic(s)

- Refer to the Post-Election Tasks of your iVotronic operator's manual for specific instructions on either "Collecting Audit Data to the Compact Flash Card with a Prepared PEB" or "Collecting Audit Data to the Compact Flash Card with the Upload option." (Note: One compact flash card can hold data from multiple iVotronics)

Collecting audit data from an iVotronic compact flash card

- In ERM point to **Tabulators**; then point to **iVotronic – DRE**. Point to **Collect Audit Data** on the submenu and select **From Specified Drive**. The Collect Audit Data Window appears.
- Enter the drive letter of the compact flash card reader and specify the \ADT directory.
- Click **OK** to transfer your results.
- Insert your first compact flash card and click **OK**.
- Select all the files listed and click **OK** to start the transfer.
- Right-click the confirmation window and click the Eject icon that appears in order to safely remove the compact flash card.
- Insert another compact flash card and continue or click Cancel after all cards have been transferred.

Backup of all the election files to a CD-R

- Boot your computer into Windows and copy all files stored under \elecdata\<Election Name> directory to a CD-R.

Hart Voting System

In order to create a complete archive of the election that can be transferred to a CD-R, you must use SERVO to back up the cast vote records and internal audit logs from the JBCs, eSlates and eScans.

Before backing up, disconnect all eSlate batteries and verify that JBCs and eScans have no MBBs inserted.

– JBC backup

From SERVO's "Backup and Reset Menu," select "JBC" and the event associated with the data to be backed up. Using the Quatech or parallel cable, connect the SERVO computer to the JBC, and then power on the JBC. Click once on the box to the left of **Download Logs** under **Backup Data**. Wait ten seconds after you hear the "ding" to *uncheck* **Download Logs,** and then disconnect the cable from the JBC. Repeat for all JBCs. This process also stores the public serial number and the firmware version of the JBC in the SERVO database if it has not already been stored.

– eSlate backup

From SERVO's "Backup and Reset Menu," select "eSlate" and the event associated with the data to be backed up. Using the Quatech or parallel cable, connect the SERVO computer to a JBC, and then power on the JBC. Connect the JBC's gray serial cable to the eSlate to be backed up; wait 12 seconds for the eSlate to fully power on, and then click once on the box to the left of **Download Logs.** Wait ten seconds after you hear the "ding" to *uncheck* **Download Logs,** and then disconnect the cable from the back of the eSlate. Repeat for all eSlates. This process also

stores the public serial number and the firmware version of the eSlate in the SERVO database if it has not already been stored.

eScan backup
From SERVO's "Backup and Reset Menu," select "eScan" and the event associated with the data to be backed up. Using a crossover cable, connect the SERVO computer to the eScan's "data" port, and then power on the eScan. Click once on the box to the left of **Download Logs** under **Backup Data**. Wait ten seconds after you hear the "ding" to *uncheck* **Download Logs,** and then disconnect the cable from the eScan. Repeat for all JBCs. This process also stores the public serial number and the firmware version of the eScan in the SERVO database if it has not already been stored.

Backup of all the election files to a CD-R
Follow instructions in your *Hart Voting System Management & Tasks Training Manual* or the *Election Event User Guide* to back up the SERVO database and other applicable databases, depending on the Hart Voting System features used.

Glossary

Term	Definition
Audit Logs	Recorded information that allows election officials to view the steps that occurred on the equipment included in an election to verify or reconstruct the steps followed without compromising the ballot or voter secrecy.
Ballot Image	Electronically produced record of all votes cast by a single voter.
Cast Vote Record (CVR)	Permanent record of all votes produced by a single voter whether in electronic or paper copy form. Used for counting votes. Also referred to as ballot image when used to refer to electronic ballots.
Central Accumulator System	Part of an Election Management System that tabulates and/or consolidates the vote totals for multiple precincts/devices.
Commercial Off-The-Shelf (COTS)	Commercial, readily available hardware devices (which may be electrical, electronic, mechanical, etc.; such as card readers, printers, or personal computers) or software products (such as operating systems, programming language compilers, database management systems, subsystems, components; software, etc.).
Data Storage Device	A device for storing data. It usually refers to permanent (non-volatile) storage, that is, the data will remain stored when power is removed from the device; unlike semiconductor RAM. Recording can be done mechanically, magnetically, or optically.
Direct Recording Electronic (DRE)	Voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records in internal and/or external memory components. It produces a tabulation of the voting data stored in a removable memory component and/or imprinted copy.
Election Management System	Set of processing functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.
Firmware	Computer programs (software) stored in read-only memory (ROM) devices embedded in the system and not capable of being altered during system operation.
Logic and Accuracy Test	Testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles, etc.) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.
PCMCIA	Personal Computer Memory Card International Association – a portable computer card

Public Counter	Counter in a voting device that counts the votes cast in a single election.
Results Tape	A Results Tape is the tape that is printed when the polls close. It is called a Results Tape since all contests and propositions are listed and have the resulting votes next to each name or question.
Voting Device	Any apparatus by which votes are registered electronically
Voting System	The integrated mechanical, electromechanical, or electronic equipment and software required to program, control, and support the equipment that is used to define ballots; to cast and count votes; to report and/or display election results; and to maintain and produce all audit log information.
Zero Tape	A Zero Tape is the tape that is printed when the voting machine is first set up at the polls. It is called a Zero Tape since all contests or propositions should have zero votes next to each name or question.

The State of Texas

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Hope Andrade
Secretary of State

MEMORANDUM

TO: COUNTY CLERKS, COUNTY ELECTIONS ADMINISTRATORS, CITIES, SCHOOLS AND OTHER POLITICAL SUBDIVISIONS USING ELECTRONIC VOTING SYSTEMS

FROM: ANN MCGEEHAN, DIRECTOR OF ELECTIONS

DATE: OCTOBER 1, 2008

RE: ELECTRONIC VOTING SYSTEM PROCEDURES

The electronic voting system procedures contained in the 2007 directive issued by this office are valid for all elections, and have not been changed. The 2007 directive has been re-dated and posted at: http://www.sos.state.tx.us/elections/laws/ealaws.shtml. For your convenience, enclosed is the Logic and Accuracy Procedures ("L&A") for Direct Recording Electronic ("DRE") and Central Accumulator Systems. References to the Texas Election Code and Texas Administrative Code have been supplied and it is the intention for this document to complement current Texas law.

The "testing board" referred to in the L&A procedures refers to the group of people appointed by the custodian of election records to assist him/her in conducting the test.

All Texas election officials have been sent a copy of these L&A procedures to guide them in establishing local policy and procedures in the use, testing, and auditing of their jurisdiction's electronic voting system. Implementing best security management practices and use procedures will mitigate risk of threats to your voting systems and help to ensure the integrity of elections in Texas. Proper logic and accuracy testing will ensure that any mistakes or problems are discovered BEFORE the election and FIXED before the election. Please review these procedures and implement them as appropriate for your county.

AM:JW:ID

A. Logic and Accuracy Test (L&A Test) (Reference: T.E.C., Chapter 127)

The automatic tabulating equipment may not be used to count ballots voted in the election until the L&A test is successfully completed. Voting machines and programmed cards and ballots should be tested before they are used in an election, and after each election to validate the performance of the voting system devices. Each voting machine should be put through a series of diagnostic checks to ensure each component operates properly. A minimum of **three** L&A Tests of the automatic tabulating equipment are required for each election. Unsuccessful L&A Tests shall be repeated to resolve discrepancies. The general custodian of elections shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

1. Preparing for the L&A Test

   a. Test Ballots – In preparation for the Logic and Accuracy Test, the designated general custodian of election records shall design a method which directs the testing board to cast votes which will verify that each precinct, each ballot style, and each contest position on the ballot can be voted and is accurately counted.

      i. This can be done by marking test ballots or providing the testing board with some other form designed to identify how each test vote shall be cast. (We strongly recommend that you devise your own test ballots, rather than using the test deck provided by the vendor.)

      ii. Optical scan test ballots must be prepared on the same ballot stock as the official ballots.

      iii. The testing shall include over-votes and under-votes for each race and write-in votes, when applicable.

      iv. The testing shall include straight party votes and crossover votes, as applicable.

      v. The testing shall include electronic processing of provisional votes, if applicable to the system being used.

      vi. The testing shall be designed in a manner which provides a different number of vote totals for at least three candidates in races with more than two candidates, or each candidate in races with exactly two candidates.

      vii. The predetermined results must be pre-calculated from the Test Ballots to allow comparison after the votes are tallied. (Reference: T.E.C., §127.094)

2. Voting Machine Specifics

   a. **(DRE and AutoMARK Only)** Manual vote choices are made by entering the votes as indicated on the Test Ballot or the designed form (as stated above). To help prevent human error, all entries are made by a team of two people. One person calls out the votes and one person enters. Both team members verify the votes on the summary screen before the ballot is cast or printed.

   b. **(DRE and AutoMARK Only)** To test the audio, at a minimum, one set of vote choices will be entered using the audio feature. Both team members listen to the summary prior to casting or printing the ballot.

   c. **(AutoMARK Only)** Verify that the printed ballot reflects the choices entered on the AutoMARK. Also, if applicable, process the AutoMARK ballots with the optical scan equipment.

   d. **(Optical Scan Only)** Optical Scan equipment must be tested as prescribed in T.E.C., Sec. 127, Subchapter D. Pursuant to T.E.C., §127.094(e), the design of the test ballots must also include the design (II.D.1.a.i-vii) of this advisory.

   e. **(Precinct Optical Scan and DRE Only)** The Secretary Of State has determined that it is not feasible to conduct the 2nd and 3rd test on precinct tabulators as described in T.E.C., §127.152(b).

   f. Test disability components, as applicable.

   g. (Transmission of results by modem), test if applicable.

3. All test materials, when not in use, shall be kept in a container with a uniquely identified tamper-resistant or tamper-evident seal. The general custodian of election records and testing board shall document the certificate of test materials.

   a. The designated general custodian of election records shall be the custodian of the container.

   b. The container may not be unsealed unless the contents are necessary to conduct another test. If the container is unsealed, the general custodian of elections shall reseal the contents when not in use. (Reference: T.E.C., §127.099) The reseal must be witnessed by one or more individuals.

B. Performing the Logic and Accuracy Tests (Reference T.E.C., Chapter 127)

1. **Proofing Test** – Before conducting the Public L&A test, the election custodian should conduct an internal test of the automatic tabulating equipment to ensure that the equipment accurately counts ballots and

otherwise functions properly. SOS recommends you conduct the Proofing Test before conducting the public test and again before tallying election results.

a. A test is successful if the Results Report of the electronic voting system matches the predetermined results and the voting system otherwise functions properly during the counting of the test ballots.

b. If the initial test is unsuccessful, the general custodian of elections shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

2. **Public Test** – Prior to the commencement of voting and no later than 48 hours before voting begins on the equipment, the designated custodian of election records shall conduct the Public L&A Test. The custodian of the automatic tabulating equipment shall publish notice of the date, hour and location where the test is to be conducted in a newspaper, as provided by general law for official publications by political subdivisions, at least 48 hours before the date of the test. The Public Logic and Accuracy Test shall be open to representatives of the press and the public to the extent allowable.

a. **Conducting the Public L&A Test** - The designated general custodian of election records shall conduct the Public L&A Test according to the following requirements:

i. Convening a testing board. The designated general custodian of election records shall create a testing board consisting of at least two persons, one from each major political party, when possible. (This is a best practice recommendation. You may also use staff members.)

ii. An appropriate number of voting devices shall be available, and the testing board may witness the necessary programming and/or downloading of memory devices necessary to test the specific precincts.

iii. Prior to the start of testing, all devices used will have the public counter reset to zero and presented to the testing board for verification.

iv. When all votes are cast, the designated general custodian of election records and testing board shall observe the tabulation of all test ballots and compare the results to the predetermined results.

v. The public test is successful if the Results Report of the electronic voting system matches the predetermined results and the voting system otherwise functions properly during the counting of the test ballots.

vi. If the public test is unsuccessful, the general custodian of elections shall prepare a written record of what caused the discrepancy and what actions have been taken to achieve a successful test. The record shall be retained with the test materials.

vii. Upon completion of the testing, the testing board shall witness and document the resetting of the public count to zero and place the tested voting device in secure storage.

viii. The testing board and the designated general custodian of election records shall sign a written statement attesting to the qualification of each device that was successfully tested, the numbers/characters of the seal attached to the voting device at the end of the test, as well as any problems discovered, and provide any other documentation as necessary to provide a full and accurate account of the condition of a given device. The Secretary of State does not require counties using optical scan machines at central counting stations to conduct an additional L&A test before tabulating election votes when a successful public L&A test has been completed.

3. **Final Test.** The third L&A test shall be conducted immediately after the counting of ballots is completed. (Reference: T.E.C., §127.093(d))
paper Ballots only + optical Scan

Method for Developing Security Procedures in a DRE Environment

Dana DeBeauvoir, Travis County Clerk

As November 2004 approached, everyone seemed to have one issue on his or her mind. From newspapers to television comedy to conversations in coffee houses, the Presidential election was the hot topic. But, this election year was different from four years ago. The 2000 Florida controversy, the resulting large-scale implementation of electronic voting, the strong memories of the 9/11 tragedy, and the polarized opinions of the country had culminated into a general anxiety not only about who was going to win but whether our election process could be disrupted and the results trusted.

In Travis County, Texas, we not only fielded questions of concern from citizens, political parties, candidates, and media organizations; we had our own uneasy feelings, feelings that turned from worry to conviction. We were going to do whatever it took to make sure our election was protected and that the public could trust that it was safe, fair, and accurate, no matter what happened here or anywhere in the world. That was an admirable, lofty goal, but how do you implement stubborn determination?

Believe it or not, we laid an egg. Our first inspiration for the egg came from our association with the legal community and their use of the rules of evidence. According to Article I of the Federal Rules of Evidence, "these rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."

Make no mistake, we are not attorneys, but when we saw their standards for rules of evidence, we thought they were on to something. To give support and integrity to evidence, you need to make sure you have: something physical (reports, audit logs, etc.), recorded details about persons who were involved in creating or collecting the evidence (times, dates, names, signatures, etc.), and secure storage so that evidence cannot be tampered with (areas with limited access). We decided to adapt these standards to our election processes.

The second part of this idea came from our computer staff and their obsession with developing risk analyses. So, we broke down the election process into categories and began to brainstorm about the possible minor or catastrophic events that could happen in each area. (Coming up with scenarios of horrible events is easier than you think thanks not only to real life news stories, but our exposure to the creative minds of television and movie scriptwriters.)

As ideas poured out, the rule quickly became that generalities had to be broken down to tangible events. For example, to say, "someone could tamper with the DRE system" had to be followed up with ideas of specifically how someone would go about doing such a deed. Therefore, what we ended up with was a tool that provided perspective, replaced emotion with facts, and guided us to a detailed plan of action.

If you look at the attachments, you will see the evolution of our egg and examples of how we combined all of our ideas into a method of mitigating risks and providing verifiable checks and audits that election procedures were properly followed.

The result of our egg analysis was not only a new way of thinking for us, but also a plan and checklist for what needed to be done for the 2004 election and for all future elections. The process led us to reinforce and fine-tune many of our existing practices and to develop new initiatives. Listed below are some examples of new, continued, or enhanced practices that increase a secure election environment and promote public trust. Examples of these items are provided in the attachments, and since we are particularly proud of the work we did to increase security by using hash code and parallel testing, we have included more detail on these practices.

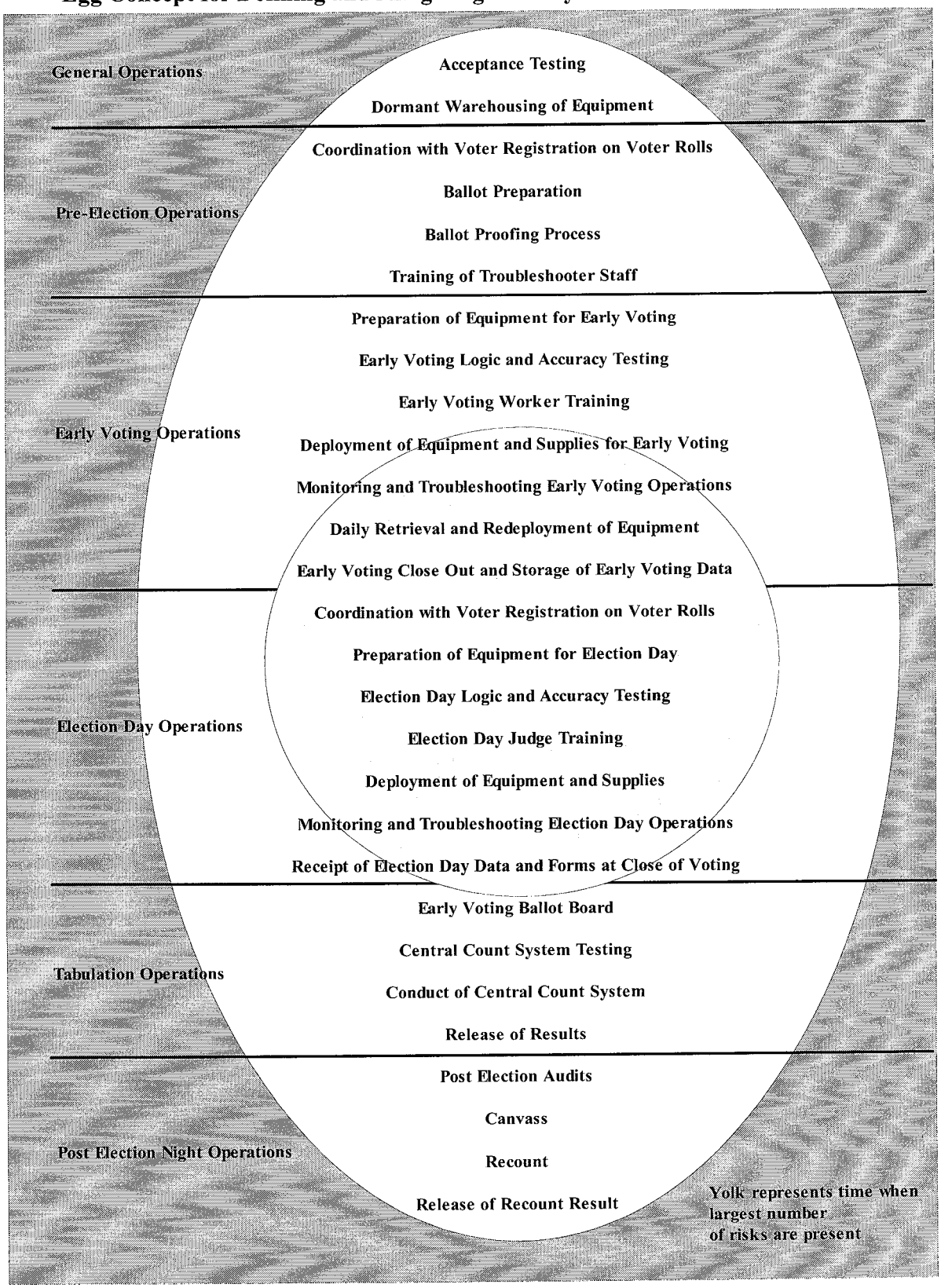
New, Enhanced, or Continued Security Practices

- Provide public invitation to attend all programming and testing activities
- Maintain written procedures and initialed tracking sheets
- Maintain independence from vendors
- Recruit, screen, and train skilled and trusted employees
- Coordinate emergency management plans with other relevant agencies
- Use Sheriff and Constable Officers to secure early voting electronic ballot boxes
- Improve security for the building where election activities occur
- Implement employee procedures that lower risk
- Conduct extensive pre-purchase testing of new equipment or software
- Provide continuous functionality testing of equipment
- Conduct Hash Code Testing on software
- Perform High Volume Testing of ballot programming
- Perform Parallel Testing
- Conduct Early Voting and Election Day audits by matching counts of voters by location as reported by the electronic voting system to the number of names on signature rosters
- Conduct post-election verification using the three redundant electronic sources, paper results printed from the electronic ballot boxes, and precinct-by-precinct election results

(When reviewing these practices, it may be helpful to understand that in Texas, a County cannot use a voting system unless the Texas Secretary of State has certified it. To date, no system allowing voter-verifiable paper ballots has been authorized, and therefore, could not be considered for use in the 2004 Presidential Election.)

Finally, about that egg concept... after you have read this, you may ask why we went with an egg shape instead of a rectangle or a circle. Truth be told, it started because the County Clerk's first drawing of an oval was less than perfect and resembled an egg. However, we capitalized on that idea. After all, we were birthing a new idea. Second, an egg has a hard shell wrapped around a permeable membrane. The shell ultimately served as a perfect metaphor and guide for determining the security levels needed for different groups (general public, candidates, law enforcement, etc.), and the membrane represented how information would flow back and forth through the process. Finally, the egg became a symbol for us. It is something with immeasurable value; something that must be given great love, care, and protection; and something that represents elections as the beginning and nucleus for a living democracy.

Egg Concept for Defining and Mitigating Security Risks in a DRE Environment



General Operations

Acceptance Testing

Dormant Warehousing of Equipment

Pre-Election Operations

Ballot Preparation

Coordination with Vote Registrar on Rolls

Ballot Proofing Process

Training of Troubleshooter Staff

Early Voting (EV) Operations

Preparation of Equipment

Logic and Accuracy Testing

Worker Training

Deployment of Equipment and Supplies

Monitoring and Troubleshooting

Daily Retrieval and Redeployment of Equipment

Close Out and Storage of EV Data

Election Day Operations

Coordination with Vote Registrar on Rolls

Preparation of Equipment for Election Day

Logic and Accuracy Testing

Election Day Judge Training

Deployment of Equipment and Supplies

Monitoring & Troubleshooting Operations

Receipt of Election Day Data and Forms at Close of Voting

Tabulation Operations

Early Voting Ballot Board

Central Count System Testing

Conduct of Central Count System

Release of Results

Post Election Night Operations

Post Election Audits

Canvass

Recount

Release of Recount Results

A Few Examples of Risk Assessments and Strategies Devised to Reduce Risks

Independently Test Voting System Products Before Purchase and Use

Risk: Equipment or software is inferior or subject to vendor manipulation.

Practice: Perform hands-on mock trial of equipment or software with vendor present only to answer questions. Produce and audit all available reports. For important demonstrations (such as purchase of new voting system) include diverse group of outside parties to view and participate in testing. Have sign in sheet of viewers and request written evaluations and comments from participants.

Prevent Physical Damage to Electronic Voting Equipment

Risk: Fire in warehouse and activation of sprinkler system damages DRE equipment.

Practice: Cover equipment carts with plastic covers to prevent water damage.

Physically Secure Ballot Programming Computer

Risk: Unauthorized user tampers with ballot programming computer.

Practice: Ballot programming and tabulation computer is kept in room with a motion detector, surveillance camera, and pass code lock. Five employees issued pass code. Ballot software is protected by a series of passwords that are issued only to five employees. Use of this computer is only done when two or more authorized employees/watchers are present.

Protect Early Voting Electronic Ballot Box

Risk: Theft or tampering of early voting ballot box after hours at early voting locations.

Practice: Every night during Early Voting, the electronic ballot boxes are picked up at the polling locations by law enforcement officers. Overnight the boxes are locked in a secured room with a surveillance camera. During the Presidential Election, we were even more vigilant and had law enforcement officers stationed outside the room during the evenings. Each morning, law enforcement transported the boxes back out to the early voting locations.

Promote Openness of the Tabulation Process

Risk: Perception that unethical practices are occurring behind the scenes on Election Night.

Practice: On Election Day and Night, poll watchers, party officials, and oversight committee members are encouraged to closely observe all election night activities. All tabulation activities are performed in a room with windows so that all members of the general public and the media can view the proceedings.

Use of Parallel Testing to Detect Presence of "Time Bomb" Software Codes

(Abbreviated version of our procedures as used with Hart Intercivic E-Slate System)

Risk: Introduction of malicious software program written so that it is activated during the actual election process and therefore goes undetected in pre-election testing.

Practice: Perform parallel testing during Early Voting and Election Day to ensure that no such program is being activated. Randomly pull out equipment slated for polling location just before it is to be sent out. Perform testing in ELECTION mode so that it mirrors the election cycle of opening polls, casting ballots, and closing polls. Conduct test in a controlled environment under video surveillance. Encourage public viewing of test.

A. Parallel Test Spreadsheet

1. Create a spreadsheet using the Logic and Accuracy spreadsheet as a template.
2. Randomly enter votes for each precinct in no particular pattern (so software will not identify if it as a test).
3. Include enough ballots to ensure at least two ballots are cast per hour per day.

B. Paper Ballots

1. Using the Parallel Test spreadsheet, mark all paper ballots according to spreadsheet.
2. Double check ballots where marked correctly to ensure 100% accuracy.
3. Make a stack of ballots for each day of Early Voting and one stack for Election Day.

C. Polling Location Equipment

1. Randomly select a polling location during the day of delivery of equipment.
2. Replace removed equipment with extra equipment.
3. Place equipment in secured area and clearly mark as PARALLEL TEST EQUIPMENT.

D. Ballot Box Preparation

1. Gather 2 Ballot boxes with red seals. (one for Early Voting and one for Election Day)
2. Lock and seal the boxes. Record the seal numbers. Seals are not broken until the end of each test period.

E. Secured Area

1. Setup all parallel test equipment where all actions are visibly recorded by video surveillance.
2. Tag area with PARALLEL TEST – AUTHORIZED PERSONNEL ONLY signs.

F. Casting Votes

1. Use ballots designated for the specified day and corresponding parallel test.
2. Retrieve an access code for the first ballot and begin voting ballot one e-Slate as marked on paper ballot.
3. Once ballot has been cast print your initials, date, and time on the top right hand corner of the paper ballot.
4. Then print your initials, date, and time on the parallel test spreadsheet.
5. Staple access code to paper ballot on top left hand corner.
6. Insert paper ballot into ballot box.
7. Two ballots per hour per day should be voted.

G. Tabulation of results

1. Once the parallel test is completed, all materials should be placed in the BOSS room.
2. Tabulation of results will occur after the Official Elections results have been finalized.
3. Create a database in TALLY named PARALLEL TEST - "Name of election".
4. Insert MBB cards from parallel test equipment.
5. Tabulate results.
6. Print Cumulative reports.

H. Backup equipment (SERVO)

1. Using SERVO, create an event using the same naming convention in TALLY.
2. Backup all parallel test equipment to this event.
3. Print out "Devices backed up report".
4. Compare totals between TALLY, SERVO, and the parallel test spreadsheet. Totals should match identically.

Use of Hash Code Testing to Detect Modification of Software
(Abbreviated version of our procedures as used with Hart Intercivic E-Slate System)

Risk: Modification of software by vendor, employee, or outsider.

Practice: Use Hash Code testing to verify that software files installed on computers are the same as the software files qualified by an Independent Testing Authority and certified by the Secretary of State. Hash Code is a digital algorithm signature of a variable-sized amount of text that is converted into a fixed-sized output that can be used to determine if two objects are equal. Testing must be performed before and after the software is used in an election.

A. Create Hash Code Spreadsheet

1. Access NIST website to obtain hash types and file names. (www.nsrl.nist.gov/votedata.html)
2. Download zip format file from website.
3. Open file CompleteNSRLfile.txt in Excel and follow steps in Excel wizard when opening the text document.
4. Sort by Product Code, then File Name. Delete rows NOT for Code 9031. (9031 is for our e-Slate system.)
5. Save file.

B. Install Hash Master Software

1. Verify that each station has the Hash Master software installed. If not, use the setup.exe file on installation CD.
2. Follow instructions in the software wizard to complete installation of Hash Master.

C. Execute the Hash Code function (from Readme.txt)

1. To calculate and display the hash of a file:
    a. From the File menu, select "Select Algorithm." The "Configure Hash Options" window appears.
    b. Select the hash algorithm to be used (Travis County uses MD5 or SHA-1).
    c. Click "Save." The hash algorithm selected displays in the Hash Master window.
    d. From the File menu, select Process Files. The "Select one or more files to process" window appears.
    e. In the Look In field, find the directory that contains the file(s) to be processed. Complete one group of files per software at a time. Refer to the Hash Code spreadsheet to determine file paths for each software type.
    f. Select the file(s) to be processed.
    g. Click the Open button. The "Select one or more files to process" window closes. The path to the last file selected and its hash value appear in the Hash Master window.
        1. To copy the hash to the Clipboard: From the Edit menu, select Copy Hash to Clipboard. —OR— While in the Hash Master window, hold down the Ctrl key and press C.
        2. To view the File Hash Report for the file(s) just processed: From the Report menu, select View Report. The "Hash Report" window appears showing the File Hash Report. The File Hash Report contains the path and hash value for each file processed with the Process Files command.
        3. To print the File Hash Report for the file(s) just processed: From the Report menu, select Print Report. —OR—View the report, then click the Print tool icon at the top of the Hash Report window.
        4. To save the File Hash Report as PDF for the file (s) just processed: From the Report menu, select Save report as PDF. The Save report as PDF window appears showing the file directory. Indicated the file name and location where you want to save. Click the save button.
        5. To run the Third Party Hash for the last file just processed: Do not change the hash algorithm that was in effect when you processed the file. From the File menu, select Third Party. A command prompt window appears. Wait until the third-party hash utility finishes.
2. After completing one group of files for a specific software and hash type, exist Hash Master and repeat the process for all files for each software and Hash Type from the beginning.

D. Compare Hash Code files

1. Generate a paper report from Hash Master for each computer, hash type, and group of files. Staple each report to the Hash Code spreadsheet that corresponds to each group of files.
2. Label each report to identify which computer it was generated from. (i.e. BOSS computer)
3. Compare Hash Code files generated from Hash Master to files located on the Hash Code Spreadsheet. All files should be accounted for and match identically.

VOTING EQUIPMENT SAFEGUARDS
Comal County, Texas
Rev10/08

1. Machines are not available to the public. Comal County voting system is neither networked, nor available to the general public at any time. Weight 43 lb each. Built racks for 10 each, recharge, etc all machines have to be periodically charged for 8 hours, 10 at a time. .
2. All local testing is done in-house. Each machine has to be checked for battery strength, etc. (Batteries are $168.00 each) Each machine is individually tested and test ballots voted on them prior to each election.
3. Logic and Accuracy (L&A) tests are done on the equipment prior to the election to assure that votes are counted accurately. (required by law)
4. We physically prepare the L&A ballots to be voted. We do not use vendor prepared ballots. (some counties depend on the vendor to do all this, we do not)
5. We physically "burn" the PEB's which activate the machines so we know they are correct. We check & recheck them prior to early voting.
6. We physically "burn" the flash cards which accumulates the votes to be tallied These cards also activate the wave files or voice for incapacitated voters
7. We physically clear and test each machine and run the (0) tapes prior to sending the machines to the polling place.
8. A tamperproof, numbered seal is placed over the flash card to assure they are not tampered with while at the polling place
9. Upon return of the machines, we check the public count against the number of signatures on the sign-in sheet at the polling place. All votes are accounted for.
10. at the end of election day we physically remove the flash cards that we use to tally the final vote and physically run the required tapes which show the totals after they are returned to the central count station (courthouse)
11. We run all tapes to show results and again verify that the number of ballots cast matches the number of voters on the combination forms. Each tape procedure takes about 45 minutes per precinct each depending on length of ballot (3 tapes must be run according to statute)
12. The law requires that we run precinct by precinct reports the day after the election and retain those reports or ballot audit data. This information is retained for 24 months as required by HAVA.
13. We gather early voting data from the flash cards.
14. We gather votes cast on election day from a special PEB that we have collected all the ballots off the machines for each specific precinct.

ELECTION TECHNOLOGY COUNCIL

Working Together for Secure and Accurate Elections

Testimony of Michelle M. Shafer,

Chairperson for the Election Technology Council

to the Texas Senate State Affairs Committee

October 15, 2008

Senator Duncan and Committee Members:

Thank you so much for allowing me to speak to you today. My name is Michelle Shafer and I currently serve as Chairperson for the Election Technology Council in addition to my position ad Vice President of Communications and External Affairs for Sequoia Voting Systems, a provider of election equipment and associated services in the United States. As a point of reference, I would like to point out that Sequoia does not currently market its products in the State of Texas.

The Election Technology Council (ETC) was established in 2003 under the Information Technology Association of America (ITAA). In 2007, the ETC filed to structure itself as an independent 501(c) 6 trade association. The ETC consists of companies which offer voting system technology hardware, software, and services to support the electoral process and who also share an interest in addressing the common issues facing our industry. Current members of the ETC are Election Systems & Software, Hart InterCivic, Premier Election Solutions, and Sequoia Voting Systems. Together our membership represents over 90% of the election technology marketplace in the United States.

As an industry trade association, our primary concern is maintaining a healthy and competitive marketplace. The Council is also committed to serving as an information resource for state and local election officials, the media, and legislators, so being here and speaking to you in this forum is a big part of the type of educational work undertaken by our organization.

On behalf of the ETC and its members, I would like to thank the Committee for inviting us to provide testimony on electronic voting, the state of the industry, and important considerations for the State Affairs Committee as it deliberates public policy concerning election integrity. As an industry trade association, it is important to note that the Election Technology Council does not endorse one type of voting platform over another

and all of our member companies provide both paper-based solutions like optical scan as well as electronic voting systems.

Within their designs, electronic voting units provide a robust platform for the efficient and effective processing of voters. Electronic voting units may provide the peace of mind for election administrators around the state of Texas as they provide an effective solution for handling an increasingly complex election environment of multiple ballot styles, multiple languages and disability access within a single solution. The need to manage a cumbersome and paper-intensive process during early voting is immediately overcome.

Although the benefits of electronic voting systems remain clear, the industry has reacted in response to growing concerns expressed from a vocal minority on the integrity of electronic voting machines. The industry responded by developing a Voter Verifiable Paper Audit Trail (VVPAT) which serves as an attachment to an electronic device. This paper trail was added to the architecture of electronic voting systems after the initial product design and, as such, is subject to its own product evolution. As an industry, we have supported the use of the VVPAT as a verification mechanism and have stressed caution to policy makers when designating the VVPAT as the official ballot-of-record. Great care should be incorporated to account for potential problems with the VVPAT such as mishandling of the paper records by pollworkers or other damage caused to the VVPAT.

It is also important to recognize that electronic voting has been used in Texas successfully for several years in jurisdictions large and small, including Travis County where we are meeting today. The difference between Texas and some other states is the consistency in voting systems used (some states are using their third voting system since the 2000 presidential election) and the high level of training and voter education undertaken by the Texas Secretary of State's office and the counties themselves. Voters and pollworkers come to the polling place both competent and confident in their ability to cast a ballot and that ballot will be counted.

Security

Recent reviews of electronic voting systems sponsored by California, Colorado, and Ohio have significantly damaged public perception over the integrity of electronic voting systems. However, it is important to note that all of these recent reviews neglected to include current or election administration "best practices" to mitigate the perceived threats. In each of these states, the effort was solely focused on an assessment of the electronic voting within an operational vacuum – classroom experiments, if you will. This is simply not a realistic view of voting systems, whether paper-based or electronic, and reflects a problem for the industry at a national level as there is no consensus for the appropriate threat model. The lack of a clear consensus on the threat models and demands of voting technology is evident from the different findings and recommendations released from California, Colorado and Ohio.

For example, one Secretary of State has been very vocal and has portrayed the presence of a memory card as a reflection of the inherent weakness in voting systems. The fact is that the memory card serves as compact ballot box and should be protected with the same level of procedures used to protect a traditional ballot box in a polling place. We obviously can't do away with ballot boxes so we develop procedures to prevent and detect intrusions.

It is important to note that there have never been any documented instances of fraud having been carried out on any company's electronic voting equipment – ETC member or otherwise - in a live election in the United States. Any issues related to election results on electronic voting equipment have been investigated by the jurisdiction and election technology providers (sometimes with other external groups and academics participating); and concrete, attributable causes other than fraud have been found for each. Post-election audits have and will continue to successfully bring to resolution any actual or perceived election results discrepancy.

Should Texas commission its own study of electronic voting systems, we feel it could stand apart from others and embrace the interdisciplinary model more indicative to election administrators by adopting these parameters:

- Testing teams consisting of experienced election officials with an extensive knowledge of each system being tested. Election system review professionals such as current members of Texas' certification efforts should also be included in this process.
- Physical security procedures and protocols already present in the Texas Election Code such as locks and tamper-evident security seals must be included.
- Industry standard electronic security measures such as passwords of appropriate length and difficulty should be included.
- All testing requirements should include normal public oversight of equipment staging, delivery, and the tabulation process on Election Day. This would include representatives from the public, county officials, and the political parties.

None of the reviews conducted by California, Ohio, and Colorado included any of these provisions. Although teams were set up to penetrate the systems, no teams were established to prevent or detect system intrusion.

In its simplest terms, the integrity of all elections comes down to a balance of prevention versus detection. Regardless of the voting platform, the procedures in place need to provide a high level of assurance that it prevents intrusion and if intrusion occurs, the intrusion can be detected. In an effort to assist election officials, the Election Technology Council released a document entitled "Safeguarding the Vote". This document outlines the various procedures that can be incorporated by state and local election officials for the 2008 General Election. Our document not only outlines the perceived threats to electronic voting systems, it also outlines the tools and items that

may be used to prevent and detect potential intrusions. You can find this and other helpful documents on our website at www.electiontech.org.

Summary

As stated by the United States Government Accountability Office – and by the ETC and its member companies on many, many occasions, election integrity comes down to a system of people, process, and technology. All three of these components must operate together in order to provide a high level of confidence that the voting system – whether paper-based or electronic - operated as it should. These three components - not just voting technology viewed in a vacuum - should be used to guide the Texas Legislature and the Secretary of State in their assessment of election integrity and reliability of voting technology in Texas.

It is also important to keep in mind that no voting system - electronic, optical scan, lever machines, punch card or hand-counted paper ballots - is perfect but imperfections can be, and are, mitigated procedurally and as technology improves and we release new products and updates to existing products, each new version is made more secure, more accessible and more reliable as part of our each of our member companies' company's commitment to continuous improvement.

As an industry we recognize the importance of working with state and local election officials to see that their needs are addressed. We also respect the need for legislators to respond to their constituents here in Texas and throughout the nation and we look forward to working with the Committee members and the Secretary of State's office.

Thank for your time today and I will be happy to answer any questions you might have.

Testimony of Dr. Dan S. Wallach
Texas House Committee on Elections
June 25, 2008

Chairman Berman, Vice Chair Bohac, members of the committee, it's my pleasure to testify before you today about the security and reliability of electronic voting machines used in our state. I am an associate professor at Rice University in the Computer Science department. My research focus is on computer security and I have been examining electronic voting systems since 2001. I am also the Associate Director of the National Science Foundation's ACCURATE (A Center for Correct, Usable, Reliable, Auditable and Transparent Elections), a $7.5M research effort across six different institutions to improve our election systems. I have served as an expert witness in seven different cases concerning electronic voting, and I have also been part of several scientific analyses of electronic voting machines, most recently working for the Secretary of State of California as part of her "top to bottom" review, conducted last summer.

Present-day electronic voting systems have a variety of security flaws, many of which you've heard about. Of course, we can find problems with any voting system, but the present-day electronic systems enable fraud of a scale and simplicity previously unknown in the administration of elections. In the limited time available to me today, I'm going to discuss three kinds of failures in these systems and discuss steps that the state might take to address them.

Practical voting machine failures

First I would like to talk about real failures in real elections. These are cases where electronic voting systems have unquestionably failed. These are cases where the outcome of the election came under question. As you can imagine, the winner is always happy to win. The challenge with any voting system is to provide sufficient evidence to convince the loser that he or she lost.

Webb County, Texas. In March 2006, in Webb County's first ever election using its new ES&S iVotronic voting system, voters also had the option of voting with an optical scan ballot. In the primary judicial race between incumbent Manuel Flores and challenger Joe Lopez, Flores won on the paper ballots and lost on the electronic ballots. Out of roughly 50,000 votes cast, Lopez won with a margin of victory of roughly 100 votes: two tenths of a percent. I served as the expert witness for Flores.

In the limited time available, we were unable to find any evidence of fraud. What we did find was evidence of procedural errors on the part of the county elections administrator that raise serious doubts as to who should have won the election [W06]. For example, the "logic and accuracy" testing that they had performed consisted of casting one Democratic slate (always including Lopez for that particular race) and one Republican slate. I concluded that 26 such "test" votes for Lopez were included in the final election tally. Likewise, we found several machines that had been cleared on election day, causing an indeterminate number of votes to be lost. We also found votes recorded as occurring on days other than election day. We later determined these machines to have had their internal clocks set wrong by directly inspecting them. In the end, Flores conceded the race to Lopez, but the questions remain as to whether he won the race or not.

Sarasota, Florida. A more widely studied election failure, also involving the ES&S iVotronic, occurred in Sarasota County, Florida in the November 2006 general election, in the race for Congressional District-13 with Republican Vern Buchanan competing against Democrat Christine Jennings. Out of roughly 240,000 votes cast, there were more than 21,000 undervotes in this one race, and the margin of victory for Buchanan was 369 votes. I served as an expert witness for Jennings.

The cause of the undervotes is still disputed. One widely accepted interpretation is that poor design of the ballot layout caused these voters to simply not see the Congressional race and skip to the next race after it [HMH+08,AL08,FHHL08]. Another possibility is that machine malfunction may have contributed to the

problem. (Many voters, while the election was ongoing, reported having problems with the machines.) Regardless, every expert who has examined the numbers agrees that, if the blank ballots were to be statistically reallocated based on how others voted, Jennings would have won the election. After a year of legal disputes, Jennings conceded the election and is now running again for the same seat.

Harris County, Texas. In November 2007, some Harris County voters were voting on a tax proposal. Apparently, 293 early voters never saw the question [B07]. As part of reconciling this issue, a Harris County election administrator used a feature of Hart InterCivic's Tally system called "Adjust Vote Totals" which does exactly what it sounds like. As it turns out, the way this feature works under the hood is that it simply replaces the totals in Tally's internal database. It leaves behind very little evidence that these "adjustments" were made. (For example, adjustments do not appear on final election reports.) Even without considering how this feature could be used in a fraudulent fashion, it's still amazingly error-prone. If you make a typo and don't catch it, it's very difficult to go back and undo any changes you might have made.

Human factors in voting systems

"To err is human, but to truly screw things up requires a computer," goes a famous saying. In recent years, researchers have begun conducting detailed, controlled human subject studies to learn how real voters might behave. These kinds of studies are incredibly valuable to our understanding of how these systems work and fail. For example, Herrnson and his team set up real voting machines in malls, nursing homes, and a variety of other places in Maryland, Michigan, and New York [HMH+08]. Their findings are fascinating. Whether on paper or with DRE systems, voters had consistently higher error rates when using straight ticket or write-in voting features [see p. 79, 85]. Voter-reported satisfaction varied, although they seemed to consistently dislike the Hart InterCivic eSlate, relative to its touch-screen competition [see p. 48-53]. This was also reflected in how accurately they were able to fill out their ballots [see p. 74].

In other studies, Byrne et al. [BGE07, EGB+08] found that paper ballots had consistently low error rates that were stable even across differences in age and education. Paper ballots yielded higher accuracy than DREs (in other cases, they seem to perform similarly; DREs are at best as good as paper, but not better). Despite this, voters preferred the DRE. In a subsequent study [S07], working with a DRE system we developed at Rice that can lie on its summary screen (you vote one candidate for president, but it either shows you another or simply doesn't show you the race at all), we discovered that *over 60% of test subjects did not notice when we manipulated the review screen*! Despite this, 95% of them reported that they felt the review screen was useful and they reliably preferred the DRE to the other methods.

In a nutshell, voters' subjective opinions of voting systems don't tell us much about how good these systems are at accurately and efficiently capturing voters' intent. Only through careful experimental studies, outside of real elections, can we ever learn what works and what fails.

Security vulnerabilities

I was first asked to testify about electronic voting systems before the Houston City Council in 2001. My opinion then, as now, is that computers are very easy to manipulate. Why should we believe that the election tallies are accurate? Efforts by others and myself have led to some serious analysis of these systems. In particular, I worked for the California Secretary of State last summer as part of her groundbreaking "top to bottom" review of electronic voting systems. I was on the team that examined the source code to Hart InterCivic's systems [CA-Hart07]. What we found was staggering.

Hart eSlate machines are connected to each other and a Judge Booth Controller (JBC) in a local network in the polling place. An attacker can plug into any eSlate and can send it a variety of commands. These include the ability to read and write to arbitrary memory addresses inside the eSlate. That means an attacker can extract all the votes from a machine and can replace them with anything else, all without

detection. Similarly, an attacker can replace the software inside the machines with an arbitrarily malicious version. It's trivial to do this and still operate without triggering Hart's tamper detection mechanisms. Even worse, we found that a single corrupted eSlate machine, when it's brought back to the warehouse and connected to the "Tally" system (used for inventory control, among other things), it's possible to attack and corrupt the Tally system, which can then attack every subsequent eSlate. This is what we call a viral attack, and I cannot overstate the impact of this vulnerability. One attacker, corrupting one eSlate, in the current election can arrange for *every* eSlate to have corrupt software in subsequent elections. The only way an election official might be able to clean up or even detect a corrupt eSlate would be to open the case and replace the chips inside. Even if an attacker cannot manage to mount one of the attacks that I've described, it turns out that eSlates record votes in such a way that it's trivial to reconstruct the list of votes in the order they were cast. This could enable traditional voter bribery or coercion attacks.

The California study also considered Sequoia (not sold in Texas) and Premier/Diebold systems. The latter are also vulnerable to viral-style attacks, where regular election procedures can result in the spread of an infection from a single AccuVote-TS or TSx system to every other system in the county. A follow-on study conducted by the Secretary of State of Ohio [Everest07] confirmed all of our results and also found an equally staggering list of problems with the ES&S iVotronic, Unity, and other ES&S systems. In short, every electronic voting system used in Texas, both DREs and precinct-based optical scanners, are unacceptably vulnerable to very simple yet staggeringly effective security attacks.

Insuficient industry response

Voting system vendors and their trade organization tend to downplay the significance of third-party studies of their systems. For example, consider this statement from Hart InterCivic:

> The Hart Voting System was introduced in order to help make voting more accessible and accurate for the voter and more secure, reliable and efficient for the dedicated elections office staff members who manage our nation's elections. Our system is being successfully used in thousands of jurisdictions. None of these have ever reported problems with fraud or security breaches of any kind on their electronic voting system. Threat model and security evaluations should be part of federal and state standards that are defined before voting systems are designed, so that the systems can be designed to meet the standards. Hart InterCivic has always complied with federal and state guidelines, and we have independently sought to improve our system security when no standard was offered for the voting system industry. [Hart07]

Vendors, such as Hart, typically point out that they have no evidence of attacks against their systems being attempted. Even if true, this doesn't discharge them of the responsibility to produce voting systems that do not have gaping security holes in their design. Furthermore, the vulnerabilities that others and we have found could well be exploited without leaving any evidence behind. Just because they are not aware of attacks does not mean that attacks have not occurred. These vendors also like to point out how they are designed to meet the federal standards and the needs of their customers. That's certainly necessary, but it's demonstrably insufficient.

I wish I had confidence that the vendors could address these concerns. To date, we have the most experience with Premier/Diebold, going back to a study that I co-authored on its security flaws that we first released in 2003 [KSRW04]. Five years later, they have clearly evolved their software, but haven't really improved their security in any meaningful way. This speaks as much to failures on the part of the vendor as to failures on the part of the federal and state certification processes. We simply cannot count on federal and state certification to ensure that our voting machines are secure. We cannot wait for the

next versions of the vendors' software to be released and naïvely assume they will properly address all the shortcomings in the present versions.

If the vendors were serious about building stronger systems, they would be engaged in a public process of describing their future technologies and encouraging public and expert feedback. The vendors should be impressing us with their openness and clever designs, rather than hiding behind a standards and certification process that has demonstrably failed us all.

Public disclosure of vulnerabilities

The California teams did a huge amount of work, reading through these vendors' source code and cataloging their problems. They also produced "private" reports to the Secretary of State that contained much more specific information that would only aid an attacker and was thus considered unsuitable for public release. According to the Ohio EVEREST teams [Everest07], they were only permitted access to the Diebold/Premier private reports after their analysis was concluded, thus limiting its ability to help them in their work. Hart InterCivic simply forbade any access to the private reports on their system. This behavior on the part of the vendors is inexcusable. Analysts operate under time and budget constraints and thus need access to the private work of their predecessors in order to more quickly get up to speed on how these systems work. Vendors should not be in a position where they can inhibit the work of state-sponsored analysts whose job is to examine their systems, nor should they have any power to censor these studies prior to their publication. The public has a right to detailed information about the strengths and weaknesses of their voting systems. Professional security analysts, working together with state sponsors, have demonstrated the ability to strike an appropriate balance between public disclosure of the *existence and severity* of vulnerabilities while relegating the sort of *supporting details* that could only aid an attacker to private appendices.

Recommendations

If Texas is going to continue purchasing and allowing equipment from the vendors who are currently certified in this state, then it is going to need to perform radically stronger oversight of these vendors' operations and future plans. **Internal vendor processes and procedures, ranging from their defect tracking to their blue-sky future system designs, need to be opened to state scrutiny and feedback.** This will be the only way to ensure that these vendors are seriously addressing the concerns that others and we have raised. If, for example, you were to demote current voting machines to a "provisional" status, pending vendor improvements, you should be able to have some confidence whether vendors are diligently fixing their systems or whether they will simply come back in two years and press for extensions. If a vendor is visibly failing to make progress, then counties using its equipment should be able to plan an orderly transition to other equipment.

Indeed, present-generation DRE systems have unacceptable security risks that cannot be mitigated simply through better election operations and procedures. California has taken the step of **limiting DREs to one per precinct**, to ensure accessible voting, while having most voters using paper ballots. That would be a prudent step to take here as well.

Electronic tabulation of paper ballots still has its security risks, but these can be mitigated with **hand audits of the paper ballots**, which can be conducted between the completion of the election and the certification of the final election results. Such audits involve randomly sampling ballots, by hand, and comparing them statistically to the electronic results. These audits can be made more accurate if the ballot tabulator were to stamp a serial number on the ballot (i.e., a number which the voter cannot see, but which is recorded both electronically and on paper). This would allow for one-to-one audits of electronic and paper records, greatly reducing the amount of effort necessary to conduct an audit.

Human factors research has shown significant variances across different voting technologies and different features of voting systems. **Human subject tests should become part of the state's certification**

process, conducted by the state's board of election examiners with test subjects from the general population. Such tests would give local election officials more objective data to use when making purchasing decisions. These tests would also give the state concrete, measurable metrics on which vendors can be compared (or required to improve). Likewise, such tests would be able to determine best practices for how ballots should be designed and how other features of these systems should be configured.

Based on the current human factors literature, we can recommend the **elimination of straight ticket voting**. The straight ticket feature simply confuses voters, causing as many as 3% of ballots to have errors. Many other states, including California, forbid straight ticket voting features. Texas should join them.

Lastly, I want to give a word of hope for future-generation DRE systems, which could be designed using sophisticated cryptographic and other techniques to provide a level security and auditability not available with any voting system on the market today. Getting these techniques from the research world to the voting system industry won't happen automatically. Legislation or regulation can require DREs to have "end to end" verification properties, and provide a high bar for vendors to prove their systems meet these goals. With such systems, we are no longer required to trust that the "black box" operates correctly. Instead, we can challenge these systems, during the election, to *prove* that they are operating correctly. Research prototypes, such as our own VoteBox system [SKW08], have these features and could form the basis for subsequent commercial systems achieving better security and auditability, both for traditional elections as well as remote and overseas voting [SW08]. The federal VVSG 2007/2008 standards have an "innovation class" that considers how such systems might be certified and tested, but none of this really matters until vendors bring products like this to the market. If the current vendors have no plans to produce better voting systems, then Texas should consider commissioning its own systems, from scratch.

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APPENDIX VI

Items included in this Appendix:

1. *Civil Justice Reform Legislation 1987-2007*, Texas Legislative Council.
2. *A Texas Turnaround: The Impact of Lawsuit Reform on Business Activity in the Lone Star State*, The Perryman Group (April 2008).
3. Materials submitted by Texans for Lawsuit Reform.
4. Information compiled by the Texas Department of Insurance relating to medical professional liability insurance.
5. Presentation materials presented by Prof. Bernard Black and Prof. Charles Silver of the University of Texas.
6. *New Tort filings in Texas District & County Courts*, Texas Trial Lawyers Association.
7. Testimony of Lisa O. Kaufman, Executive Director, Texas Civil Justice League.
8. Testimony of Evelyn Tobias-Merrill, MD, on behalf of Texans Against Lawsuit Abuse.
9. Materials submitted by Texas Alliance for Patient Access.
10. Testimony of Charlotte Smith, MD, on behalf of Texas Medical Association.
11. *The False Choice: Doctors of Accountability*, Texas Watch (Feb. 2007).
12. *Patient Justice*, Texas Watch (Jan. 2008).

CIVIL JUSTICE REFORM LEGISLATION 1987-2007

MAJOR REFORM SESSIONS (1987, 1995, 2003):

1987 [70th Regular and 1st Called Sessions]

A "tort reform" package of legislation was developed following more than a year of research and study by the interim Joint Committee on Liability Insurance and Tort Law and Procedure. The legislation was aimed at alleviating problems in the liability insurance system, such as dramatically rising liability premiums and shortages of certain types of coverage. Insurance availability and liability insurance related reforms were also enacted.

Regular Session

S.B. 202 Adds Chapter 84, Civil Practice and Remedies Code, to reduce liability exposure of certain **charitable organizations** and their volunteers and employees.

1st Called Session

S.B. 5 Topics addressed include:

(1) **Frivolous pleadings.** Adds Chapter 9, Civil Practice and Remedies Code, to provide a basis for determining whether a pleading or motion is frivolous and authorize courts to impose sanctions on an attorney or a party that files a frivolous pleading or motion.

(2) **Comparative responsibility.** Various amendments were made to existing comparative responsibility law, Chapter 33, Civil Practice and Remedies Code. Changes include the following:

In negligence cases, claimant may recover only if the claimant's own percentage of responsibility is 50 percent or less. Addition of comparative responsibility provision enacted for strict liability tort cases, including **products liability**, and certain breach of warranty cases. Claimant who is at least 60 percent responsible for claimant's own injuries in those cases barred from recovery.

Certain claims exempted from comparative responsibility law, including intentional tort claims, claims for workers' compensation benefits, DTPA actions, and certain actions related to unfair or deceptive insurance practices.

Provides for reduction of damages recoverable to reflect settlements made by claimant.

(3) **Joint and several liability.** Eliminates a defendant's joint and several liability unless defendant is more than 20 percent responsible or is more than 10 percent responsible and claimant is not responsible. For negligence action, joint and several liability is eliminated if defendant's responsibility is greater than claimant's. Defendant's joint and several liability is eliminated in action related to certain hazardous substances or certain toxic torts. Provisions

governing a jointly and severally liable defendant's right to contribution from other defendants added.

(4) **Exemplary damages.** Adds Chapter 41, Civil Practice and Remedies Code, to provide that exemplary damages may be awarded only if claimant proves the harm results from fraud, malice, or gross negligence and only if damages other than nominal damages are awarded. Various actions, including a DTPA action, are exempted from chapter. Capped at greater of four times actual damages or $200,000 unless the claim involves an intentional tort or malice. Also adds Chapter 81, Civil Practice and Remedies Code, containing provisions prohibiting recovery of exemplary damages for drug-related injuries that have since been repealed.

S.B. 6 **Prejudgment interest.** Adds provisions governing accrual of prejudgment interest.

1995

H.B. 668 **Trade practices.** Excludes from DTPA claims based on rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill, with certain exceptions. Generally, excludes claims for bodily injury or death or for infliction of mental anguish. Excludes certain large transactions not involving the consumer's residence. Limits base recoverable damages and basis for treble damages to "economic," as opposed to "actual," damages; for knowing or intentional conduct, mental anguish or treble mental anguish damages may be recovered. However, actual damages continue to be basis for damages available for claims brought under a statute outside Subchapter E, Chapter 17, Business & Commerce Code.

Allows a party to move to compel mediation. Provides for settlement offers and limits consumer's recovery if consumer rejected a settlement offer that is substantially the same as or more than the damages awarded.

Amends Chapter 33, Civil Practice and Remedies Code, concerning proportionate responsibility, to apply to DTPA claims.

Specifies claims that may be brought for unfair methods of competition and unfair or deceptive acts or practices under the Insurance Code and adds provisions concerning compelling mediation and offers of settlement.

H.B. 971 **Health care liability.** Increases amount of bond or deposit required as a substitute for an expert report. Revises criteria for qualifying as an expert witness and provides for objection to a witness's qualifications. Eliminates prejudgment interest if defendant has settled within a certain period and prejudgment interest on future damages.

S.B. 25 **Exemplary damages.** Expands scope of claims subject to limits of chapter. Changes formula for determining the maximum amount of exemplary damages that may be awarded; excludes from maximum certain felony conduct. Eliminates exemplary damages for gross negligence other than damages in a wrongful death action in which there is gross negligence or a wilful act or omission. Adds requirement that claimant prove basis for award exists by clear and convincing evidence. Makes exemplary damages available where only

nominal damages are awarded if specific intent to cause injury is shown by clear and convincing evidence. Eliminates exemplary damages for criminal acts of another. Provides for defendant's motion for bifurcated trial, first on issues of liability and amount of compensatory damages and liability for exemplary damages, and second on amount of any exemplary damages. Outlines considerations for trier of fact and requires jury instructions on those considerations.

S.B. 28 **Proportionate responsibility.** Expands proportionate responsibility, previously referred to as comparative responsibility, provisions to all tort actions. Provides joint and several liability for certain criminal conduct shown by claimant to have been conducted with intent to harm. Allows joinder by defendant of responsible third party not joined by claimant. Raises percentage of responsibility that defendant must have to be jointly and severally liable generally from 20 percent to 50 percent, except that for claims involving certain hazardous substances or toxic torts, the percentage is raised from 10 percent to 15 percent.

S.B. 31 **Frivolous pleadings and motions.** Adds Chapter 10, Civil Practice and Remedies Code, to provide that a person who signs a pleading or motion certifies as to certain facts, including that the pleading or motion is not for any improper purpose and that the claims contained in the pleading or motion are not frivolous, as described by the statute. Authorizes sanctions against a person who violates those provisions.

S.B. 32 **Venue.** Amends general venue provision to allow proper venue only in a county in which a "substantial" part of the events or omissions giving rise to the claim occurred, in the county of the defendant's residence at the time the cause of action accrued or, if the defendant is not a natural person, in the county where the defendant has a principal office in this state, or, if no other proper venue applies, in the county in which the plaintiff resided at the time the cause of action accrued. Provides that, subject to certain exceptions, to maintain, join, or intervene in a suit, a plaintiff must independently establish proper venue. Provides that any applicable mandatory venue provision governs where multiple claims are joined. Provides jurisdiction over multiple defendants if plaintiff has established proper venue against one of the defendants with respect to claims or actions that arose out of the same transaction, occurrence, or series of transactions or occurrences. Adds or amends venue provisions for various other causes of action, including suits relating to damage to real property, landlord-tenant disputes, the Federal Employers' Liability Act or Jones Act claims, DTPA claims, and certain insurance actions. Authorizes writ of mandamus to enforce mandatory venue provisions.

S.B. 400 **Forum non conveniens.** Eliminates prohibition on stay or dismissal of claims related to design, manufacture, sale, maintenance, inspection, or repair in this state of air transportation. Substitutes prohibition on dismissal of claim involving air transportation "operated" in this state.

2003

H.B. 4 Topics addressed include:

(1) **Class actions.** Adds Chapter 26, Civil Practice and Remedies Code, under which the supreme court is required to adopt rules for "fair and efficient resolution" of class actions. See Rule 42, Texas Rules of Civil Procedure. Provides for computation of attorney's fees under the rules using the Lodestar method. Requires that if noncash benefits are recovered for the

class, the attorney's fee must be noncash in the same proportion. Requires the trial court to rule on pending pleas to jurisdiction asserting jurisdiction of a state agency or asserting that a party has not exhausted all administrative remedies. Also amends Section 22.225, Government Code, to allow petition for review to the supreme court for an appeal from an interlocutory order certifying or refusing to certify a class.

(2) **Offers of settlement and cost shifting.** Adds Chapter 42, Civil Practice and Remedies Code, to provide guidelines for making settlement offers and to require payment of certain litigation costs by a party who rejected a settlement offer that would have been at least 20 percent more favorable to that party than the judgment. Requires the supreme court to promulgate rules on settlement offers. See Rule 167, Texas Rules of Civil Procedure.

(3) **Venue; forum non conveniens; multidistrict litigation.** Adds Subchapter H, Chapter 74, Government Code, to establish a judicial panel on multidistrict litigation to transfer pending civil actions involving one or more common questions of fact for consolidated or coordinated pretrial proceedings. Amends Section 15.003, Civil Practice and Remedies Code, to require each plaintiff in a suit involving multiple plaintiffs, no matter how they entered the suit, to establish proper venue and to provide for stay of proceedings for interlocutory appeal on determination that a plaintiff did or did not establish proper venue. Amends Section 71.051, Civil Practice and Remedies Code, to require a court to decline to exercise jurisdiction based on the doctrine of forum non conveniens, and to eliminate the differing standards for treatment of claimants who are legal residents of the United States and those who are not when applying the doctrine of forum non conveniens.

(4) **Proportionate responsibility and designation of responsible third parties.** Establishes guidelines for a defendant to designate a person as a responsible third party and for a percentage of responsibility to be allocated to that third party. Replaces the requirement that a claimant's recovery be reduced by the dollar amount of any settlements or by specified percentages based on the amount of damages awarded with a requirement that the reduction be made according to the percentage equal to each settling person's percentage of responsibility, except that in a health care liability claim, a defendant may elect to reduce the award by the dollar amount of all settlements. Provides that a defendant is jointly and severally liable for acting with another to commit certain criminal offenses only if the defendant acted with specific intent to do harm. Eliminates different treatment of toxic torts.

(5) **Products liability.** Amends the 15-year statute of repose for products liability actions in Section 16.012, Civil Practice and Remedies Code, to provide that a products liability action against a manufacturer or seller must be brought before the later of the 15th anniversary of the defendant's sale of the product or, in certain circumstances, the end of any written warranty period provided by the defendant. Amends Chapter 82, Civil Practice and Remedies Code, to provide that a seller who did not manufacture a product is not liable for harm caused to claimant by the product except under certain circumstances. Also establishes a rebuttable presumption against liability in pharmaceutical warning defect actions that a defendant is not liable if the warning or information provided is approved or developed by the FDA and a rebuttable presumption against liability in actions alleging injury related to a product formulation, labeling, or design that complies with certain government standards or regulations.

(6) **Prejudgment and postjudgment interest.** Amends the Finance Code to establish that the prime rate, as published by the Federal Reserve Bank of New York, is used to compute postjudgment interest rate and reduce the minimum and maximum rates from 10 percent and 20 percent to 5 percent and 15 percent, respectively. Also specifies prejudgment interest may not be assessed or recovered on an award of future damages.

(7) **Appeals.** Amends the Government Code to broaden supreme court conflicts jurisdiction to provide for review "when there is inconsistency in [certain courts'] respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants." Sections 22.001(e) and 22.225(e), Government Code. Amends Chapter 52, Civil Practice and Remedies Code, to change the manner of determining the amount of the security required of a defendant in order to suspend execution of a judgment during appeal of the judgment.

(8) **Evidence relating to seat belts and car seats.** Repeals provision of Transportation Code prohibiting admission of use or nonuse of evidence of seat belt or car seat.

(9) **Health care liability.** Transfers former Article 4590i, Vernon's Texas Civil Statutes, to Chapter 74, Civil Practice and Remedies Code. Significant changes made by the bill to the health care liability law include the following: Adds a statute of repose to provide that a health care liability claim must be brought not later than 10 years after the date of the act or omission giving rise to the claim. Establishes caps on noneconomic damages for health care liability claims other than wrongful death and survival claims, for which the existing cap on total damages is preserved. Eliminates the option to provide security instead of an expert report to maintain an action. Stays all but limited claimant discovery until expert report is provided. Adds specific criteria to qualify as a nonphysician expert witness or to qualify as an expert witness on the issue of causation. Provides for periodic payment of future losses. Amends Chapter 84, Civil Practice and Remedies Code, to limit the liability of hospitals and hospital systems arising out of charitable care.

(10) **Damages.** Amends Chapter 41, Civil Practice and Remedies Code, to affect the computation of all types of damages by the trier of fact. Allows exemplary damages only if the jury was unanimous in finding liability and in the amount of exemplary damages. Allows exemplary damages only if damages other than nominal damages are awarded. Limits recovery of medical or health care expenses incurred to those actually paid or incurred by or on behalf of claimant.

(11) **Evidence in action against nursing institution.** Amends Chapter 32, Human Resources Code, and Chapter 242, Health and Safety Code, to prohibit the admissibility of certain evidence in an action against a nursing institution.

(12) **Successor liability (asbestos).** Adds Chapter 149, Civil Practice and Remedies Code, which limits the cumulative successor asbestos-related liabilities of a corporation to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation.

(13) **Community benefits and charity care (nonprofit hospitals).** Amends Chapter 311, Health and Safety Code, to provide for certification of nonprofit hospitals by the former

Texas Department of Health (now the Department of State Health Services) to obtain limited liability for money damages.

H.J.R. 3 **Constitutional amendment on economic damage caps.** Proposed what is now Article III, Section 66, Texas Constitution, which authorizes the legislature to limit liability for noneconomic damages in health care liability claims and specifically applies to Acts of the 78th Legislature, 2003. Also authorizes the legislature to limit liability for noneconomic damages for claims or actions other than health care liability claims if the limit is approved by a three-fifths vote of all the members elected to each house and the relevant Act includes language citing the section.

OTHER CIVIL JUSTICE REFORM LEGISLATION

1989

S.B. 134 **Appeals.** Adds Chapter 52, Civil Practice and Remedies Code, to allow a trial court to require security from a judgment debtor in an amount that is less than the amount of the judgment if certain criteria are met in order to suspend execution of the judgment pending appeal. The authorization does not apply to certain claims, including personal injury, wrongful death, a claim covered by liability insurance, or a workers' compensation claim.

H.B. 18 **Health care liability.** Adds a provision to V.A.C.S. 4590i to govern qualification of an expert witness in a suit against a physician.

S.B. 1012 **Residential construction liability.** Adds Chapter 27, Property Code, to limit a contractor's liability for certain damages or other relief arising from a residential construction defect. Requires a claimant, before the claimant may file an action to recover damages resulting from a construction defect, to provide the contractor with notice and an opportunity to inspect the property and cure the defect or settle. The chapter does not apply to an action for personal injury, survival, wrongful death, or damage to goods.

1993

S.B. 76 **Appeals.** Adds provision to require appellant to pay litigation costs if certain appeals are affirmed.

S.B. 2 **Forum non conveniens.** Authorizes Texas courts, on motion of a party, to use the doctrine of forum non conveniens to decline to exercise jurisdiction over a personal injury or wrongful death action and to stay or dismiss the action in favor of trial of the action in another jurisdiction. With respect to a claimant who is a legal resident of the United States, the moving party must prove certain factors by a preponderance of the evidence. Certain actions are exempt from stay or dismissal, including an action in which a claimant is a properly joined legal resident of Texas, in which the act or omission giving rise to the injury or death occurred in Texas, or which involves certain air transportation. The authorization does not apply to a claim resulting from a violation of federal law.

S.B. 1409 **Health care liability.** Continues Medical Liability and Insurance Improvement Act of Texas (V.A.C.S. Art. 4590i) until August 31, 2009. Requires a health care liability

plaintiff to file bond or supporting expert affidavit within 90 days of commencement of action. Directs the chief justice of the supreme court to appoint the Health Care Liability Discovery Panel to promulgate standard discovery documents. Prohibits a health care provider from requesting a patient sign an arbitration agreement unless it contains statutory notice. Provides for validity of certain requests for medical records of a deceased or incompetent person.

S.B. 4 **Products liability.** Adds Chapter 82, Civil Practice and Remedies Code. Requires manufacturer to indemnify the seller in products liability claims, with some exceptions. Provides there is no liability for damages caused by an inherently unsafe product that is intended for personal consumption and commonly consumed (sugar, alcohol, tobacco, butter) and known by an ordinary consumer to be inherently unsafe. A design defect claimant, with certain exceptions, has the burden to prove a safer alternative design existed. Provides additional elements that must be shown to establish liability of manufacturer or seller of firearms or ammunition for a design defect. Adds to Chapter 16, Civil Practice and Remedies Code, a statute of repose requiring that a suit against a manufacturer or seller of manufacturing equipment must be commenced before the later of the 15th anniversary of the equipment's date of sale or the end of the useful life of the product as expressly represented by the manufacturer.

1997

S.B. 220 **Forum non conveniens.** Amends the forum non conveniens statute to provide that the doctrine may be applied to a claim or to an entire action with respect to a single plaintiff. Revises the items that must be proven by the moving party against a legal resident of the United States. Allows the court to set terms and conditions for staying or dismissing a claim. Extends by 180 days the deadline for requesting stay or dismissal. Provides that if there are multiple plaintiffs, claims of non-Texas residents may not be stayed or dismissed if plaintiffs who are legal Texas residents are properly joined and the action arose out of a single occurrence. Eliminates exceptions for certain types of actions from being subject to stay or dismissal.

H.B. 3087 **Frivolous litigation.** Adds Chapter 11, Civil Practice and Remedies Code, to allow a defendant to move to have a claimant determined to be a vexatious litigant, in which case the court shall require the claimant to provide security, stay the litigation, if applicable, or prohibit the filing of a new suit. Provides criteria for determining that a party is a vexatious litigant, makes sanctions available to victims of vexatious litigation, and requires the Office of Court Administration of the Texas Judicial System to maintain a list of vexatious litigants and provide it annually to court clerks.

1999

S.B. 215 **Charitable immunity and liability; health care liability.** Amends Chapter 84, Civil Practice and Remedies Code, to provide immunity for volunteer health care providers who serve as direct service volunteers of a charitable organization.

S.B. 717 **Firearms- and ammunition-related suits.** Adds Chapter 128, Civil Practice and Remedies Code, to limit the ability of a governmental unit to bring certain suits against a firearms or ammunition manufacturer, trade association, or seller.

S.B. 506 **Residential construction liability.** Amends Chapter 27, Property Code, to expand the applicability of the chapter by adding certain persons to the definition of "contractor" and specifying that the chapter applies to a subsequent purchaser of a residence who files a claim against a contractor. Limits a contractor's liability when an assignee of the claimant or a person subrogated to the rights of a claimant fails to give the required notice before having repairs performed by someone other than the contractor or the contractor's designee. Provides that a person who files a suit that is frivolous or for the purpose of harassment is liable for the defendant's reasonable attorney's fees and court costs. Requires certain evidence regarding a construction defect to be provided to the contractor on request. Allows any party to compel mediation if a construction defect is claimed in an amount greater than $7,500. Requires notice of the provisions of the chapter in a residential construction contract.

2003

H.B. 730 **Residential construction liability.** Adds Title 16, Property Code, to establish the Texas Residential Construction Commission, which, among other duties, administers a state-sponsored inspection and dispute resolution process to which a homeowner must submit a construction defect before filing an action for damages arising out of the defect. The recommendation of a third-party inspector or ruling of a panel of state inspectors under the process creates a rebuttable presumption as to the existence or nonexistence of a construction defect for the purpose of an action between the homeowner and builder. Chapter 27, Property Code, is amended to expand its applicability to arbitration and to allow participation in the TRCC inspection process under Title 16 to take the place of the notice required by Chapter 27. The bill makes additional changes to the offer of settlement and damages requirements of Chapter 27, including adding a provision to allow a contractor who sold the residence to buy it back in lieu of other remedies under certain circumstances.

2005

S.B. 15 **Asbestos and silica.** Adds Chapter 90, Civil Practice and Remedies Code, which raises the threshold for bringing a claim involving exposure. The plaintiff must serve on the defendant a report containing required medical evidence, including evidence of functional impairment, as opposed to exposure only. Subjects pending actions to multidistrict litigation proceedings. Prohibits joinder of claimants unless all parties agree.

H.B. 755 **Forum non conveniens.** Amends Section 71.051, Civil Practice and Remedies Code, to require, rather than authorize, the court's consideration of certain factors, including the extent to which injury or death resulted from acts or omissions that occurred in Texas when determining whether to grant a motion to stay or dismiss under the forum non conveniens doctrine. Requires court to provide specific findings of fact and conclusions of law supporting stay or dismissal. Repeals language prohibiting stay or dismissal under certain conditions.

S.B. 890 **Proportionate responsibility.** Amends provision in Chapter 33, Civil Practice and Remedies Code, that provides for the reduction of a claimant's damages to reflect settlements. Changes the previous requirement that damages be reduced by a percentage equal to each settling person's percentage of responsibility to a requirement that damages be reduced by the total dollar amount of all settlements.

2007

S.B. 791 **Products liability.** Adds oysters to the types of inherently unsafe products whose manufacturers and sellers are not subject to products liability related to personal consumption of the product.

H.B. 1038 **Residential construction liability.** Expands the applicability of Title 16, Property Code, by adding to the persons who may be considered a "builder" and reducing the threshold transaction amount for an interior improvement of an existing home required to subject a person to regulation as a builder. Requires that a builder, as well as a homeowner, must submit a construction defect to the dispute resolution process under that title before initiating an action arising out of the defect. Extends the general deadline for requesting inspection and dispute resolution and provides that, for a violation of the statutory warranty of habitability that was not discoverable by a reasonable, prudent inspection or examination within the applicable warranty period, the request must be made on or before the second anniversary of the discovery of the conditions and not later than the 10th anniversary of the initial transfer of title of the relevant home or improvement or entry into the relevant contract, as applicable.

H.B. 3147 **Residential construction liability.** Expands the applicability of Chapter 27, Property Code, by including as a "contractor" a person contracting with an owner or developer of a condominium to perform certain construction activities, including construction, alteration, or repair of common elements.

H.B. 1602 **Venue.** Limits venue options for certain federal Jones Act claims based on the location of the occurrence of all or a substantial part of the events or omissions giving rise to the claim.

A TEXAS TURNAROUND:

THE IMPACT OF LAWSUIT REFORM ON BUSINESS ACTIVITY IN THE LONE STAR STATE

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A TEXAS TURNAROUND:
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Introduction

Lawsuit reform has dramatically improved the fairness and efficiency of Texas' civil justice system. Just a few years ago, the Lone Star State held a position near the bottom of state rankings and was frequently a source of derision in the national media. Objective studies now place the state's civil justice system in the upper tier relative to many measures (though some challenges remain). This notable turnaround, from a legal system that was poorly regarded in several areas to one that is widely recognized as an effective model worthy of emulation, has brought substantial benefits in many areas.

Without a doubt, a fair and equitable system of civil justice is essential to the proper functioning of a market economy. By permitting legitimate disputes to be resolved in an appropriate manner, it

- allows for full, fair, and timely compensation of parties legitimately injured;
- encourages proper conduct in commercial matters;
- permits businesses and investors to evaluate risk and return in a predictable environment; and
- contributes to productivity and economic prosperity by ensuring a framework which is conducive to appropriate

allocation and use of economic assets and cost-effective production.

An unbalanced litigation environment can cause serious dislocations with significant economic implications. If awards are disproportionate to (or irrespective of) actual injury or harm, attorneys and plaintiffs respond to these incentives to pursue excessive litigation and potential defendants divert resources from more productive purposes to invest in avoidance strategies. The Perryman Group has studied the issue of tort reform in Texas and other states on numerous occasions and has consistently found that the misallocations of scarce societal assets lead to (1) a loss of economic efficiency; (2) increased risks of doing business; (3) cost increases unrelated to productivity; (4) escalating insurance rates, particularly in specific areas such as medical malpractice; and (5) other problems.

"Objective studies now place the state's civil justice system in the upper tier relative to many measures (though some challenges remain)."

These misallocations reduce the level of capital investment, hamper the competitiveness of many industries, and dampen the prospects for new corporate locations and expansions. Specific sectors, such as manufacturing and health care delivery, are particularly hard hit, though the problems can permeate all aspects of the economy.

Highlights of Study Findings

Through a series of significant reform measures over the past several years, Texas has changed the civil justice environment from an economic hindrance to a source of competitive advantage and productivity. The

result has been an important stimulus to business activity and a substantial decrease in the cost of the tort system from what it would be in the absence of reform.

"Tort reform has led to improvements in the Texas business climate that have generated hundreds of thousands of jobs."

In this study, The Perryman Group (TPG) developed an extensive and comprehensive assessment process to measure the incremental gains from civil justice reforms. The results clearly demonstrate the economic benefits of the more efficient and effective system. The effects of 2003 reforms limiting non-economic damages in medical malpractice litigation are also considered separately.

Tort reform has led to improvements in the Texas business climate that have generated hundreds of thousands of jobs. Specifically, TPG found that

- The **total impact of tort reforms implemented since 1995 includes gains of $112.5 billion in spending each year as well as almost 499,000 jobs in the state**.
- **The reforms with respect to asbestos/silica litigation**, which were enacted in 2005, **are already contributing $490.3 million in annual spending and 2,683 permanent jobs**.
- Reforms related to **limiting non-economic damages in medical malpractice litigation alone lead to increases of $55.3 billion in spending per year and more than 223,000 jobs**.
- **Benefits are spread across the state, positively affecting communities both large and small**. Results are provided for the state as well as every county, metropolitan statistical

area, council of governments region, planning region, and legislative district.

- The **fiscal stimulus to the State from civil justice reforms is about $2.558 billion per year**.
- Other positive benefits include an increase in the number of doctors, particularly in rural areas and other regions, which have been facing severe shortages and the **inclusion of almost 430,000 Texans in health plans who would otherwise be uninsured**.

The Perryman Group's Perspective

The Perryman Group is an economic research and analysis firm based in Waco, Texas. The firm has more than 25 years of experience in analyzing the Texas economy and assessing the economic impact of corporate expansions, regulatory changes, real estate developments, and myriad other types of events affecting business activity. The key models used in this study, including the Texas Econometric Model and the Texas Multi-Regional Impact Assessment System, were developed in the early 1980s and have been continually refined, updated, and expanded since that time.

These and other TPG systems have been used in hundreds of public and private-sector applications and enjoy an excellent reputation for accuracy and reliability. In particular, the models have played a key role in numerous major policy initiatives in Texas (including, among others, civil justice reforms, trucking deregulation, electric deregulation, tax policy,

economic development incentives, telecommunications deregulation, and transportation funding mechanisms).

TPG has conducted hundreds of economic analyses for the US and Texas economies as well as all Texas metropolitan areas, regions, and counties. Studies have been performed for hundreds of clients including many of the largest corporations in the world, governmental entities at all levels, educational institutions, major health care systems, utilities, and economic development organizations. In particular, the firm has completed several studies throughout the country relating to the need for tort reform, the potential benefits of reform, and the impact of past reform.

Cost of the US Lawsuit System

The cost of the US civil justice system provides a framework for analysis of the economic impact of tort reform in Texas. Not all tort costs are due to excessive litigation and lawsuit abuse. Clearly, there is a need for a system to create incentives for firms to produce safe products, conduct business fairly, and otherwise follow the prevailing laws. It is also important that truly injured parties have a mechanism to be fully and fairly compensated. An efficient system leads to trust among market participants, more business activity, and a higher standard of living.

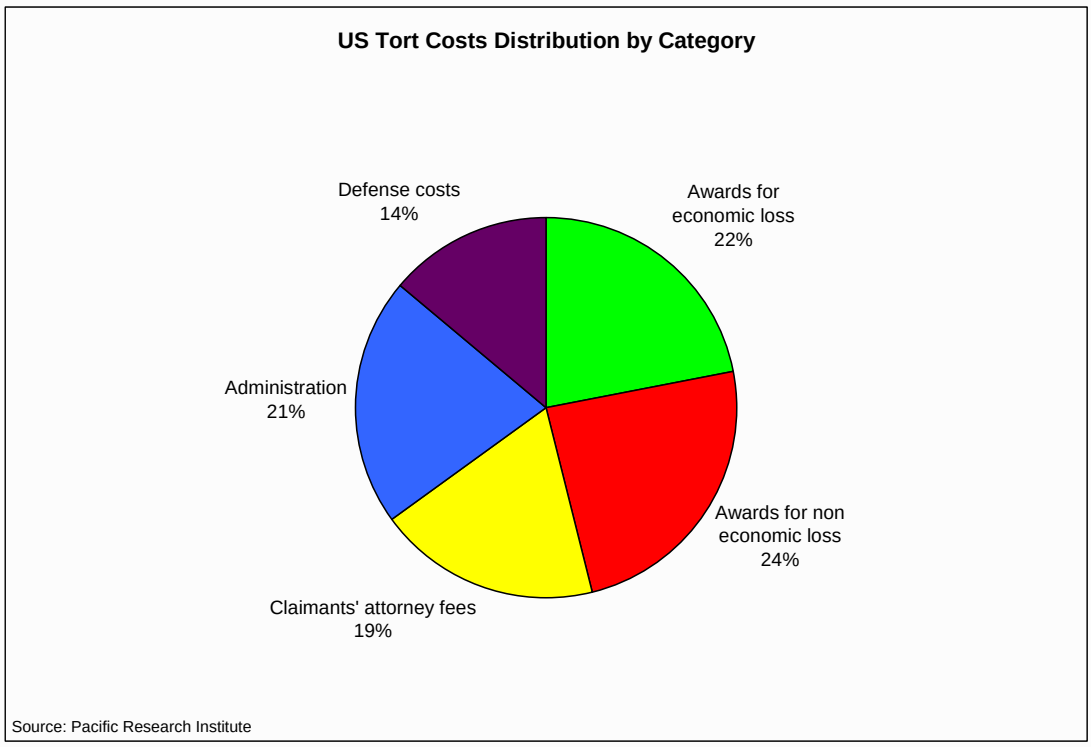
There is evidence that the US tort system is expensive by international standards. The United States spends 2.2% of its Gross Domestic Product (GDP) on direct tort costs. Other advanced countries with viable market economies spend an average of 0.9% of GDP on direct tort costs. Since 1950, tort cost growth has exceeded GDP growth by an average of two to three percentage points.[1]

> *"...**the US tort system is expensive by international standards."***

These excess expenditures reduce the competitiveness of American businesses. They also increase corporate incentives to locate factories elsewhere where there are more reasonable tort environments.

As noted, an efficient and effect system of civil justice is an important and, indeed, essential aspect of a properly functioning economy and society. In addition, those harmed through improper actions are entitled to recover their losses. However, the US tort system returns less than 50 cents of every tort-cost dollar to injured claimants and only 22 cents to awards for

actual economic losses.[2] (Using the broader measure in the Pacific Research Institute study, less than 15% of aggregate costs reflect such compensations.)



Excessive Litigation

Studies going back to 2000 and beyond have repeatedly concluded that excessive torts are very costly. The President's Council of Economic Advisers (CEA) noted, "To the extent that tort claims are economically excessive, they act like a tax on individuals and firms." The CEA conservatively pegged the cost of excessive torts at $136 billion in 2000, equivalent to a 2% tax on consumption, a 3% tax on wages, or a 5% tax on capital. For

"Over the past 50 years, tort costs in the US have increased more than a hundredfold."

the same year, Tillinghast-Towers Perrin, which compiles the most frequently cited national study on tort costs, estimated the total to be $179 billion.[3] In recent years, this amount has increased to approximately $330 billion, a substantial portion of which is excessive.[4]

Over the past 50 years, tort costs in the US have increased more than a hundredfold. In contrast, overall economic production (as measured by GDP) has grown by a factor of 37, and population has grown by a factor of less than two.[5] The Pacific Research Institute, which provides a more comprehensive and inclusive measure of civil justice costs, estimates that America wastes $589 billion each year from excessive tort litigation, as of 2006.[6] (A discussion of some of the criticisms of the Tillinghast-Towers Perrin and Pacific Research Institute approaches and their relevance to the current study is given in Appendix B.)

In addition to these totals, stockholders who invest in American companies lose substantial wealth from unnecessary tort litigation. A study of 351 events involving a wide spectrum of legal issues found that, on average, stock prices fell 0.45% after announcements for cases in which plaintiffs sought punitive awards from 235 publicly traded companies. Across all companies, the median loss in the market value of equity due to a lawsuit was $2.9 million ($3.86 million in 2006 dollars) resulting in a total annual loss in shareholder wealth of $684 billion.[7] This phenomenon has a material effect on the savings, pensions, and retirement accounts of millions of Americans.

Industry-Specific Effects

Several industries are particularly hard hit by litigation including certain types of manufacturing and health care delivery. Highly litigated **manufacturing industries** include categories such as chemicals, pharmaceuticals, tires, power tools, welding equipment, electrical equipment, and others. Litigation has threatened the viability of numerous companies in these sectors.

The threat of litigation can significantly decrease product innovation. When businesses operate in a high-liability-risk environment, they respond by reducing investments in product innovation because new products have more uncertain safety characteristics and can leave them vulnerable to lawsuits.

An unbalanced civil justice system can also reduce product safety research and the availability of safety-enhancing equipment. In fact, a 2006 study by Paul H. Rubin and Joanna M. Shepherd demonstrated that tort reforms passed in the states between 1981 and 2000 prevented approximately 22,000 net accidental deaths from occurring in the US during that timeframe. The researchers argued that an overly expensive liability system increases the cost of many risk-reducing products and services, making them less accessible, and in some cases unavailable to consumers.[8]

"Several industries are particularly hard hit by litigation including certain types of manufacturing and health care delivery."

Another vulnerable sector is **health care delivery**. Since 1975 (the first year for which insured medical malpractice costs were separately

identified), the escalation in medical malpractice litigation costs has outpaced the increase in overall US tort costs. The result has been an enormous rise in insurance premiums for providers, in some cases leading to reductions in the provision of important procedures and practitioners leaving the profession.

Another consequence of this phenomenon is an increase in "defensive medicine." Defensive medicine is defined as when "doctors order tests, procedures, or visits, or avoid high-risk patients or procedures, primarily (but not necessarily solely) to reduce their exposure to malpractice liability" and also as administering "precautionary treatments with minimal expected medical benefit out of fear of legal liability."[9]

Many of these tests are quite costly (in addition to other issues such as patients incurring needless pain or inconvenience). The savings from the elimination of defensive medicine would allow millions of Americans to obtain health insurance. Moreover, the premature deaths and lost productivity due to reduced access to health care from liability-driven rising health care expenditures could be reduced. In addition, the supply of doctors tends to be restricted by the higher risk and costs associated with an excessive system, thus further reducing access to health care.

Benefits of Reform

Tort reform involves a number of benefits including enhancing product innovation, increasing productivity, reducing accidental deaths, improving access to health care through lower costs, and many others. These

effects, in turn, enhance the efficiency of the economy and the competitiveness of the state's businesses.

"Tort reform involves a number of benefits including enhancing product innovation, increasing productivity, reducing accidental deaths, improving access to health care through lower costs, and many others."

Innovation is greater with reform; new products are often higher risk because they have a less well-defined safety history. Legal reform that decreases exposure to liability lawsuits has been shown to **enhance innovation and increase productivity and employment**.

Reform has also been linked to a net **decrease in accidental deaths** because it enables consumers to buy more risk-reducing products. As reform ameliorates companies' expected liability from such products, they respond by lowering prices and increasing product offerings for items such as pharmaceuticals, safety equipment, and medical services and devices.

The Pacific Research Institute found a measurable link between a state's legal environment and the growth rate of its real, per capita output, and concluded that the position of states relative to one another in terms of civil justice frameworks explained about 12% of the variation among the 50 states in their output growth rates.[10]

The Perryman Group has also reached a similar conclusion in several studies.[11] The Texas economy benefits from tort reform that enhances the efficiency, fairness, and predictability of the civil justice system.

Texas' Past Problems

In the 1980s and early 1990s, Texas was known for the lack of fairness and balance in its civil justice system. The distortions caused by these problems significantly eroded the state's competitive position. Fears of excessive litigation and outsized claims were a substantial disincentive for potential corporate locations and expansions.

In February 1995, *The Wall Street Journal* called national attention to the civil litigation environment in Texas, and the state became infamous as the "Wild West of Lawsuits." Even internationally, Texas was recognized as a paradise for plaintiffs. The *London Observer* reported that businesses in Texas should consider moving elsewhere to avoid the problems of the state's civil justice system.

"In the 1980s and early 1990s, Texas was known for the lack of fairness and balance in its civil justice system."

Through the 1990s, a wrongful death in Texas could be valued at $8 million compared to $1 million in other states. Many doctors stopped practicing medicine and performing higher-risk (though potentially lifesaving) procedures because of the fear of malpractice lawsuits that could potentially ruin their careers.

Between 1980 and 1995, judicial costs in Texas were increasing at more than twice the rate of growth in state output and more than 30% faster than corresponding measures for the nation as a whole.[12]

Texas' Current Status

Tort reforms implemented beginning in 1995 have had a major impact on the state's civil justice system. In 1995, the Texas Legislature passed a series of bills addressing limits on punitive damages, joint and several liability, sanctions for filing frivolous lawsuits, limits on venue shopping and out-of-state filings, modifications to the ability to claim deceptive trade practices, and medical malpractice reform.[13]

"Tort reform has dramatically changed the litigation environment in the state, and objective studies have ranked Texas number one among all states in terms of the tort climate."

In 2003, the Texas Legislature passed further reforms including limits on non-economic damages and reform related to product liability, punitive damages, medical liability, joint and several liability, and class actions. Voters also approved a constitutional amendment in 2003 eliminating potential court challenges to the law capping non-economic damages at $750,000.

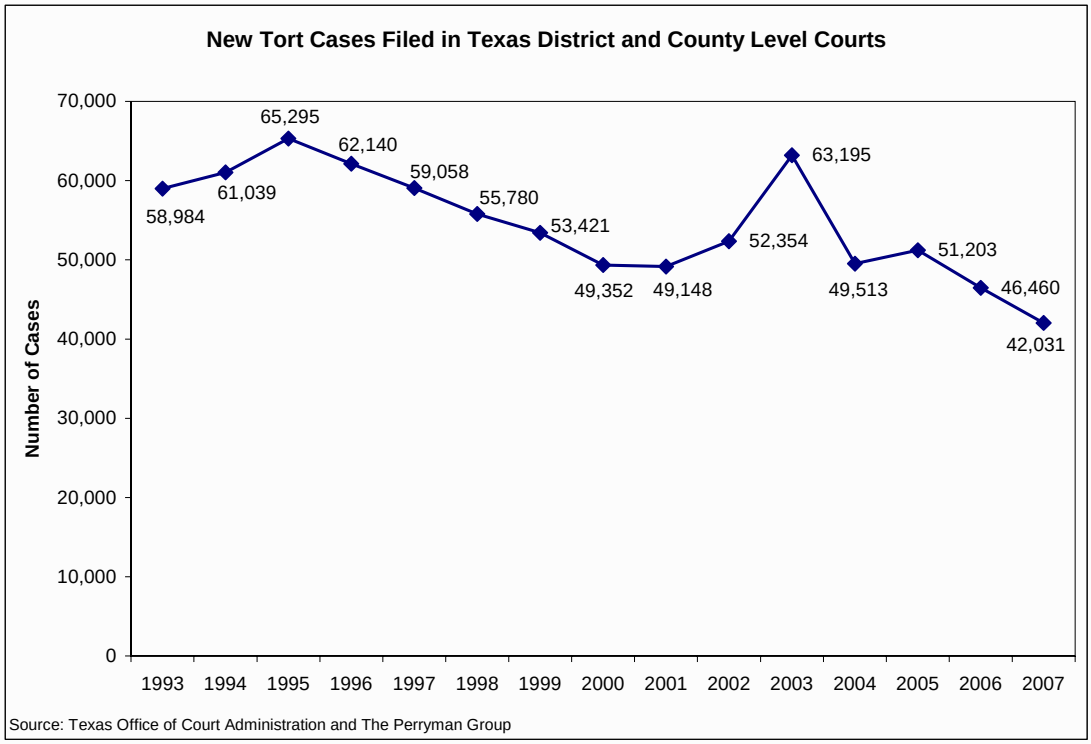
In 2005, the state enacted a measure to bring a more balanced approach to asbestos/silica litigation. This bill required demonstration of impairment by appropriate medical evidence while protecting the rights of those whose symptoms may appear in the future. It also recognized the unique nature of each individual situation and, thus, restricted the ability to include multiple cases in a single litigation.[14]

Tort reform has dramatically changed the litigation environment in the state, and objective studies have ranked Texas well among all states in terms of the tort climate. The *US Tort Liability Index*, calculated by the Pacific Research Institute, uses comprehensive, objective data on all 50

states to measure which states have relatively high tort costs and which states have enacted reforms to better position themselves for future economic prosperity. More specifically, the calculation involves 42 variables divided into five subgroups: monetary tort losses, threats, monetary caps, substantive-law rules and reforms, and procedural/structural rules and reforms. The most recent version of this index ranks Texas second among all states for "inputs" (cost factors) and eighteenth in terms of outputs (such a jury verdicts). The state ranks extremely well in terms of jury awards per capita, but continues to be hampered by concerns regarding the risk of large, unreasonable verdicts in some areas.

In 2000, The Perryman Group examined the benefits of tort reform Texas enacted in 1995. The analysis revealed that the changes in the litigation environment were already generating substantial benefits for the state economy.[15] In fact, the study found more than $20 billion in annual spending gains and almost 200,000 permanent jobs added to or retained in the state as a result of this initiative. These gains have continued and escalated in recent years, as the state experiences ongoing improvements in the efficiency and effectiveness of the civil justice system.

Since the implementation of significant reforms in 1995, the number of cases filed in Texas' courts has dropped substantially (in spite of a spike in cases in late 2002 and 2003 in anticipation of additional reform).



In August 2004, the Texas Hospital Association reported a 70% reduction in the number of lawsuits filed against the state's hospitals.

Effects of 2003 Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation

Tort reform passed in 2003 included provisions limiting non-economic damages such as pain and suffering in medical malpractice to $750,000 per claimant. Following enactment of these measures, medical malpractice insurance rates stabilized and many doctors saw substantial rate reductions—some by almost 50%.[16] These decreases represented a much-needed response to a situation that had reached near-crisis proportions.

Between 1999 and 2003, medical insurance premiums for many Texas doctors doubled. Texas had 50 insurance carriers in the late 1990s, but despite some relief from 1995 reforms, only four were still operating in the state by 2003. Orthopedic surgeons, neurosurgeons, obstetricians, and other high-risk specialists were leaving the state, adding to the already critical shortage of doctors and nurses in rural areas, the border region, and many other parts of Texas.

"In the wake of reform, physicians have begun to return to the state."

In the wake of reform, however, physicians have begun to return to the state, and at least 3,000 more physicians are now practicing in Texas. License applications jumped 30% in the past fiscal year compared to the year before. According to the American Medical Association, the increase in the number of doctors raised the state's ranking in physicians per capita from 48th in 2001 to 42nd in 2005. Still, the latest figures show Texas with 194 patient-care physicians per 100,000 population, far below the District of Columbia, which led the nation with 659. The Texas Medical Board reports licensing 10,878 new physicians since 2003, up from 8,391 in the prior four years. Even when adjusted for other factors such as population growth, the increase is notable and statistically significant.

In May 2006, the American Medical Association removed Texas from its list of states experiencing liability crises, marking the first time it has removed any state from the list.[17] A recent survey by the Texas Medical Association found a dramatic increase in physicians' willingness to resume certain procedures they had stopped performing, including obstetrics, neurosurgical, and radiation oncological procedures. According to the vice president of the Dallas County Medical Society, some of the state's crippling recruitment problems have started to ease.[18]

Since 2003, malpractice insurance rates have decreased an average of 21.3%.[19] Recent information provided to The Perryman Group during the course of this study suggests that premiums are declining even further in 2008. The following table of rates (provided by Texas Medical Liability Trust, the state's largest insurer, to State Representative Joe Nixon) illustrates how insurance rates dropped for various medical specialties in Houston between 2003 and 2007.

"In May 2006, the American Medical Association removed Texas from its list of states experiencing liability crises, marking the first time it has removed any state from the list."

Representative Changes in Malpractice Insurance Rates for Physicians in the Houston Area

Rates for Physicians in Houston	*2003*	*2007*	*2007 (with 20% renewal dividend)*
Internal Medicine	$18,507	$13,272	$10,403
Obstetrician	$56,564	$41,575	$32,585
Neurosurgeon	$103,558	$76,117	$59,659

High medical malpractice insurance rates and the litigious environment had been a significant deterrent to physicians practicing in Texas. Reducing these disincentives has substantially alleviated shortages of medical professionals and helped to offset some of the upward pressure on costs.

Regional Considerations

Activity within the civil justice system naturally corresponds with population and business activity. Approximately 77% of all tort cases in Texas over the past decade were filed in the 20 most populated counties. However, only three of those counties (Dallas, Jefferson, and Nueces) ranked in the top ten counties in terms of per-capita tort filings per year. Williamson County experienced the largest average increase in the number of tort filings over the past decade (2.4% per year), while Bell County had the largest decrease (8.0% per year).[20]

Although the benefits of tort reform are concentrated in the most populous areas, the positive effects also accrue to communities and individuals across the state. Reform has led to gains in business activity in all counties of the state. (See Appendix A for county-level results of this study.) In addition, rural areas have been historically underserved in terms of health care; the recent surge in doctors coming to the state is helpful in addressing this problem.

Challenges Remain

In spite of major strides in the direction of meaningful reform and a relatively high ranking in forward-looking studies such as the *US Tort Liability Index*, Texas does rank lower in other civil justice surveys of the states. Moreover, a substantial area of Southern Texas was listed as the second worst "judicial hellhole" in the nation in 2007 as identified by the American Tort Reform Foundation.

Judicial hellholes are described as places where laws and judicial procedures are systematically applied in an unfair and unbalanced manner, generally against defendants, in civil lawsuits.[21] In the relevant areas of Texas, a variety of problems have been cited over the years, such as (1) extremely weak evidence netting multimillion dollar awards, (2) jurors having relationships with the litigants in their cases, (3) car accident lawsuits being decided without jurors knowing all the facts (such as that the plaintiff was not wearing a seatbelt), and (4) and huge damages being awarded which are later overturned due to the use of "junk science" in their determination.[22] More recently, problems including a high volume of lawsuits related to dredging, the "pocket veto" of an appeal where a juror had accepted loans from a plaintiff, and a number of "ridiculous lawsuit filings" have been noted.[23]

Although Texas has made great strides toward improving the state's system of civil justice, some challenges remain. Neighboring states such as Louisiana and other populous states (which are often competing with Texas for potential corporate locations and expansions) such as Georgia, South Carolina, Arizona, and others continue to pursue reform. As they enact meaningful changes, they are likely to improve in comparison to Texas.

Tort reform has had marked positive effects. Continued attention to remaining problem areas will further enhance the benefits of a more efficient and effective system of civil justice in Texas.

Results of the Analysis

As noted, **improving the state's civil justice system generates a number of positive effects for the economy**. Tort reform and the resulting benefits to the legal environment enhance the prospects for investment in expansions and relocations to the state. In addition, companies already in Texas enjoy an advantageous competitive position relative to other areas. Gains in productivity stemming from a more effective and efficient tort system further add to the positive outcomes.

"Tort reform since 1995 has led to the creation of hundreds of thousands of jobs."

Numerous studies of the impact of reforms on labor productivity and employment have demonstrated that states which changed their liability laws to decrease levels of liability experienced greater increases in aggregate productivity and employment than states that did not. At the same time, states adopting measures which increase liability often see productivity and employment fall. The present study reaffirms these conclusions. In fact, tort reform since 1995 has led to the creation of hundreds of thousands of jobs.

The Perryman Group's study measures the impact of tort reforms enacted since 1995. The 2003 reforms related to non-economic damages in medical malpractice cases were considered separately to isolate their effects, in particular the implications for health care delivery in the state.

This analysis was conducted within the context of the Texas Multi-Regional Impact Assessment System (TXMRIAS) which was developed and is maintained by TPG. This system essentially quantifies the ripple or

"multiplier effects" of tort reform through the economy. The system and its underlying logic, as well as various assumptions, are described in Appendix B.

Impact of Lawsuit Reform Since 1995
(Excluding 2003 Limits on Non-Economic Damages in Medical Malpractice Litigation)

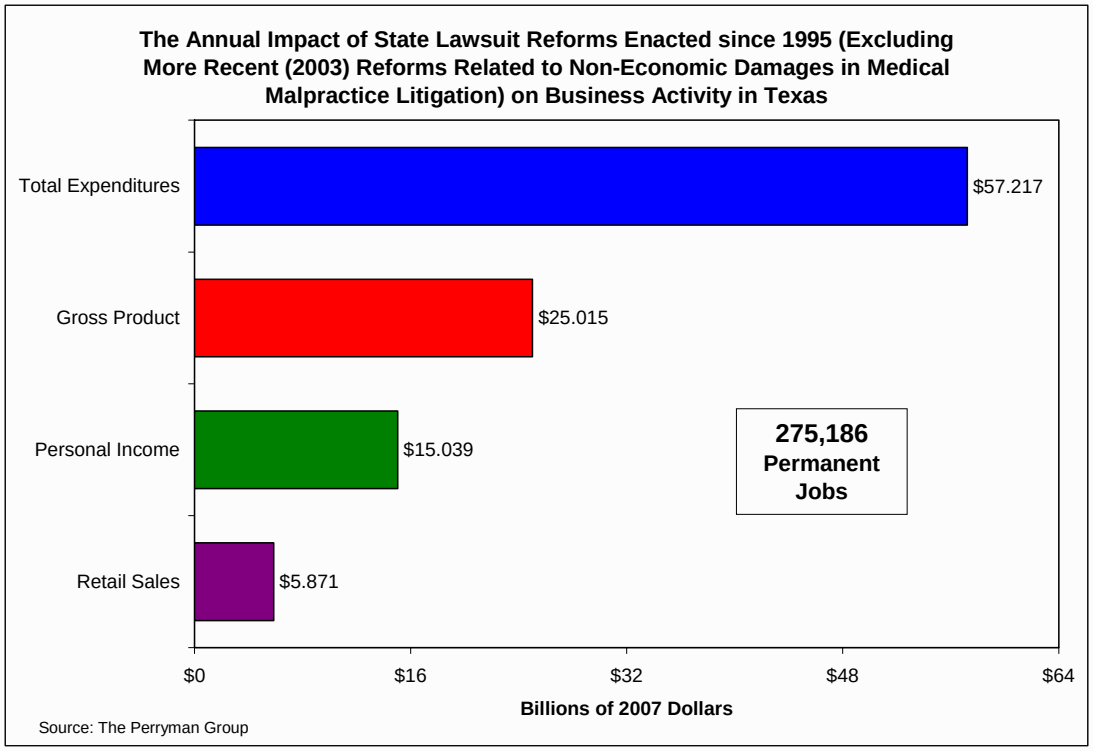
In measuring the effects of lawsuit reform, the analysis includes an assessment of

- cost savings (administrative costs, court costs, non-productive expenditures to avoid or take advantage of excessive litigation reward opportunities, and the inefficiencies in the redistribution process);
- gains from safer products (in terms of people in the workforce who otherwise would have died from faulty products);
- benefits of new products and manufacturing in Texas stemming from research, development, and innovation in a less litigious environment.

The process of quantifying the direct gains in each of these categories is described in detail in Appendix B. The specific amounts are summarized in the table below.

The Annual Direct Benefits Associated with Lawsuit Reforms Enacted in Texas Since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation)	
Category	*Annual Direct Benefits*
Cost Savings (administrative costs, non-productive expenditures, inefficiency, etc.)	$3,355.4 million
Benefits of Safer Products	$468.9 million
Net Benefits of Enhanced Innovation	$15,158.6 million

In all cases, the multiplier effects of these various gains were evaluated in relation to what the corresponding totals would have been in the absence of substantial reforms (see Appendix B for a discussion of methodology). The results of this analysis indicate that **these components of tort reform since 1995 have had a substantial effect on the Texas economy including an incremental stimulus of $57.2 billion in annual spending, $25.0 billion in annual output, about $15.0 billion in annual personal income, almost 275,200 jobs, and about $1.2 billion in annual State revenues**. (All of the relevant economic aggregates are defined in Appendix B.)



One of the key recent aspects of the ongoing pattern of effective civil justice reforms in Texas was the 2005 legislation designed to curb abuses associated with litigation related to exposure to asbestos/silica. Based on the magnitude of this segment, the initial responses to the new measure, and past effects of similar enactments, the direct annual level of savings in cost, efficiency, and avoidance of unproductive outlays is about $165.7 million. The overall yearly benefits from this initiative are estimated to be

- ✓ $490.3 million in Total Expenditures;
- ✓ $230.2 million in Gross State Product;
- ✓ $143.5 million in Personal Income;
- ✓ $58.3 million in Retail Sales; and
- ✓ 2,683 Permanent Jobs.

More detail regarding this computation is presented in Appendix B.

Impact of 2003 Limits on Non-Economic Damages in Medical Malpractice Litigation

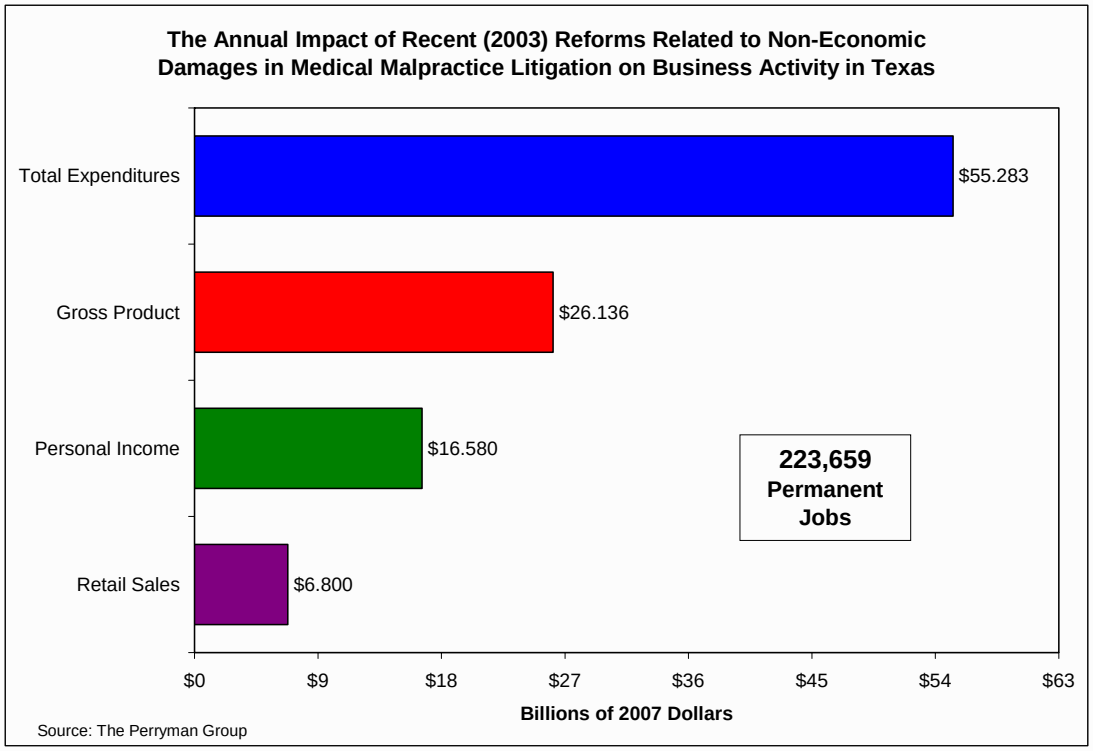
The second major area of impact measured relates to limits on non-economic damages in medical malpractice litigation embodied in the 2003 reform bill. The quantification of the benefits of this legislation include measures of the

- cost reductions from lower insurance rates;
- increases in productivity stemming from fewer uninsured receiving inferior or insufficient care;
- gains from bringing in more doctors and, thus, increasing the amount of health care provided;
- savings from decreases in the level of "defensive medicine"; and
- the multiplier effect of these various direct benefits (see Appendix B for more detail).

The direct stimulus associated with each of these elements is presented in the table below. Detailed discussions of their derivations are given in Appendix B.

The Annual Direct Benefits to Texas Associated with Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation)	
Category	*Annual Direct Benefits*
Cost Savings (administrative costs, insurance rate reductions, non-productive expenditures, inefficiency, etc.)	$1,760.1 million
Reductions in Defensive Medicine	$5,348.6 million
Enhanced Productivity from Health Improvements	$7,699.9 million
Workforce Gains for Reduced Uninsured	$180.5 million
Enhanced Health Care from Increases in Number of Physicians	$3,823.3 million

Total gains stemming from the 2003 reforms related to non-economic damages in medical malpractice litigation include an additional $55.3 billion in annual spending, $26.1 billion in output, $16.6 billion in income, and nearly 223,700 jobs. State fiscal revenues also increase by almost $1.4 billion per annum. Furthermore, **these impacts are responsible for about 430,000 individuals having health insurance than would otherwise, a particularly important benefit in that (1) approximately 5.7 million Texans are currently without health coverage, and (2) the state has by far the highest percentage of uninsured citizens in the nation.**



This segment of the analysis is somewhat parallel to the Pacific Research Institute's study, but it is localized to Texas and utilizes more conservative assumptions regarding variables such as labor force participation rates. In addition, it adds the spillover effect of the savings in health care and other benefits which resonate through the economy, as well as the positive impacts associated with the incremental increase in physicians.

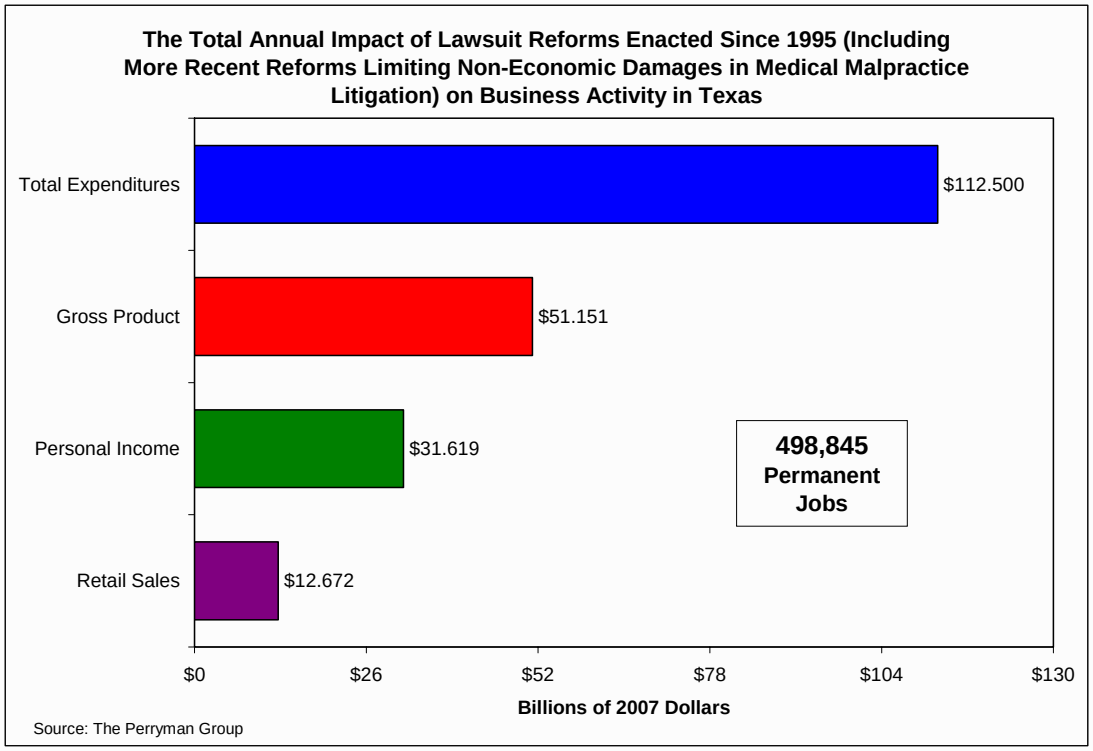
Total Impact of Lawsuit Reform Since 1995

By summing the medical malpractice and other components of the impact of tort reform, an aggregate measure can be obtained. The Perryman Group found that the **total impact of reforms enacted since 1995 includes $112.5 billion in annual spending, $51.2 billion in annual**

output, $31.6 billion in annual personal income, and almost 499,000 jobs. Tort reform's positive economic effects are substantial, even in an economy the size of the Lone Star State. In fact, **approximately 8.5% of the growth experienced in the Texas economy since 1995 is the result of tort reform initiatives**.

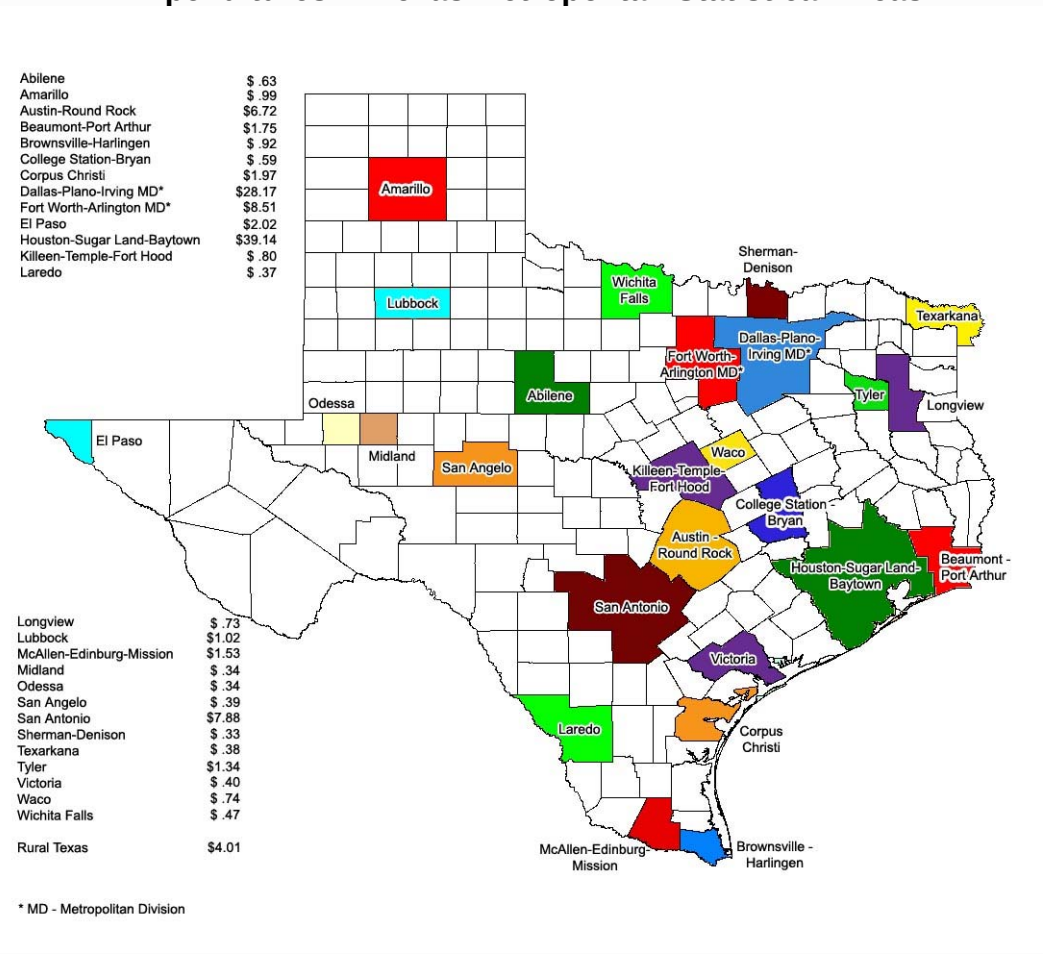
Although not specifically accounted for in this analysis, Texas has been widely recognized in the past few years as having one of the nation's most outstanding business climates and has consistently ranked among the leaders in economic development and attracting new activity. While there are many factors contributing to this success (including the creation of highly competitive incentive programs), the improved civil justice climate is a major element frequently cited by site selection professionals.

"Tort reform's positive economic effects are substantial, even in an economy the size of the Lone Star State."



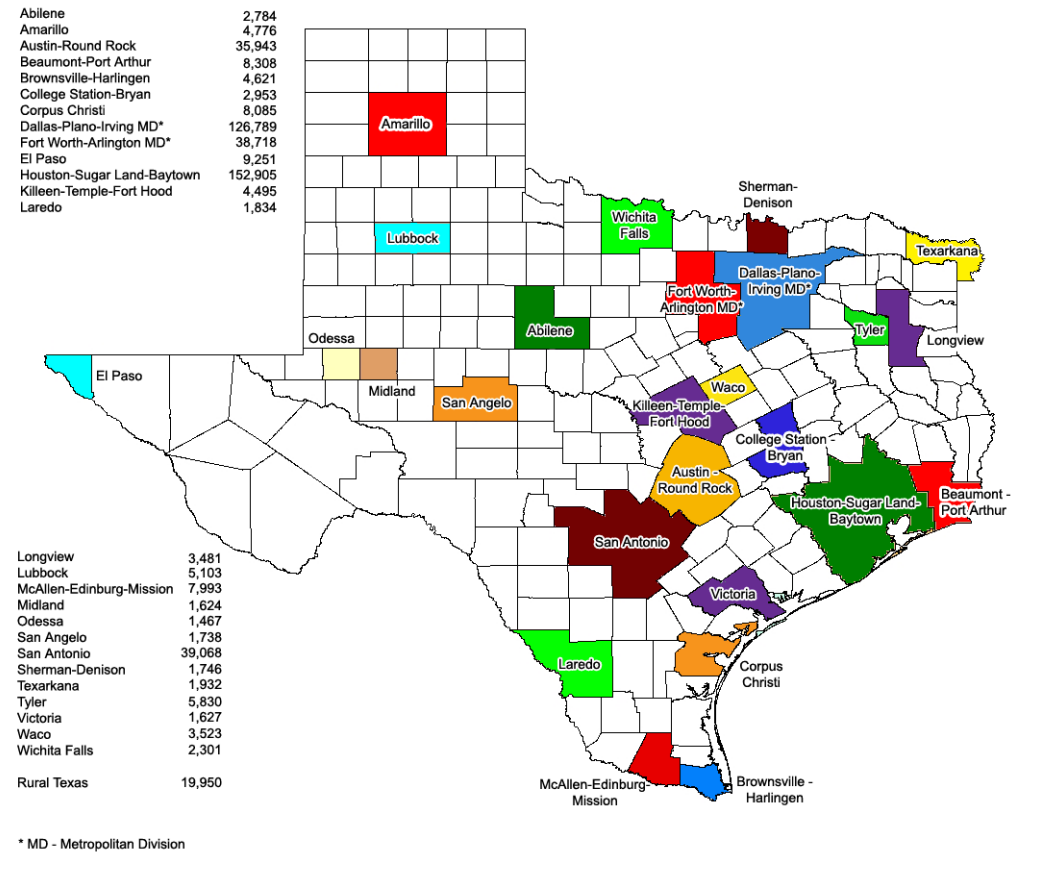
In addition to statewide totals, TPG calculated results for each county as well as metropolitan statistical area and legislative district. Detailed sectoral results for the state and other geographic areas (metropolitan areas, counties, regions, and legislative districts) are presented in Appendix A. It is worthy to note that **the rural segment of the state has gains of more than $4.0 billion in annual spending and almost 20,000 jobs**. Moreover, the **economy of the border region enjoys benefits including $5.1 billion in aggregate expenditures and in excess of 25,000 jobs**. In fact, the enhancement to business activity from civil justice reforms spans the entire state.

The Total Annual Impact of Lawsuit Reform Since 1995 on Expenditures in Texas Metropolitan Statistical Areas

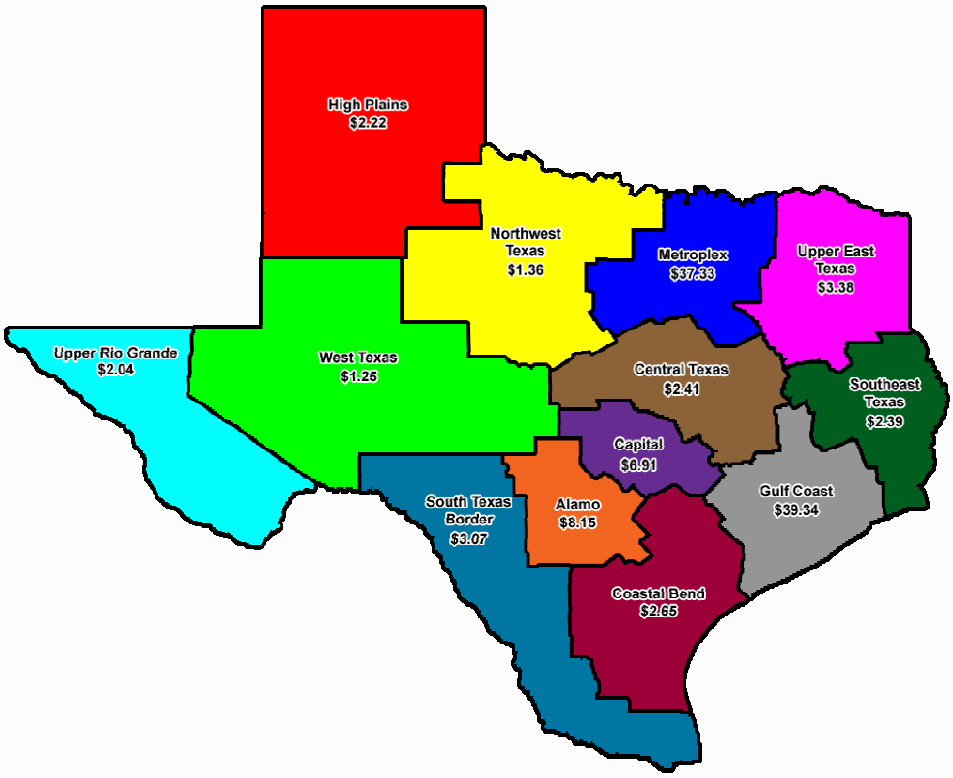


Values stated in billions of 2007 dollars.

The Total Annual Impact of Lawsuit Reform Since 1995 on Employment in Texas Metropolitan Statistical Areas

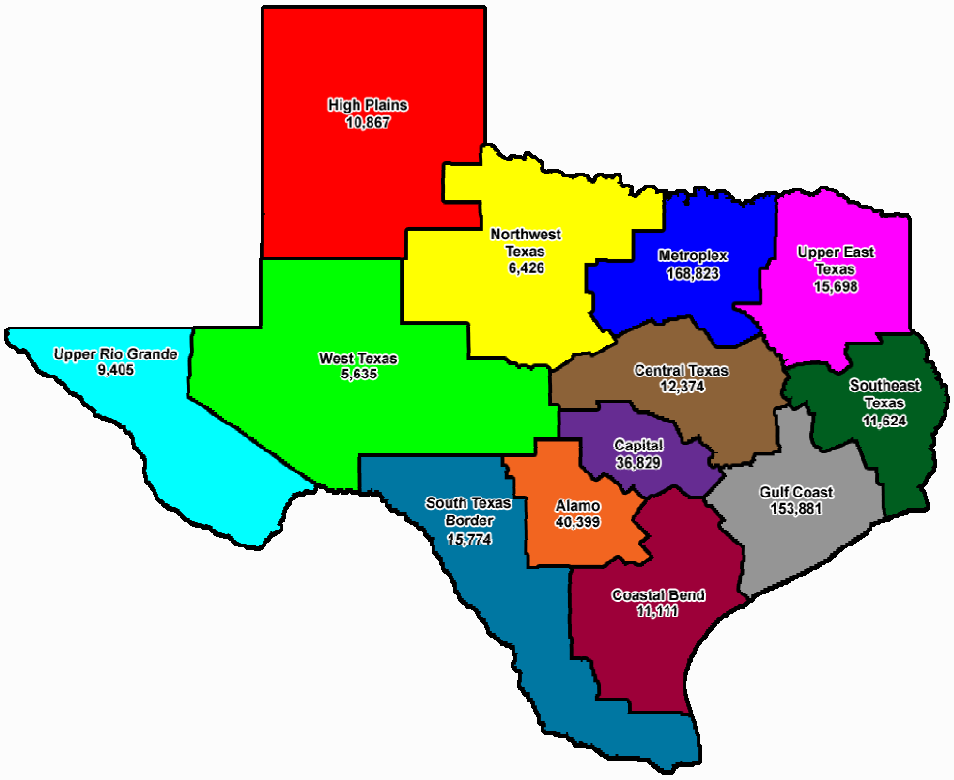


The Total Annual Impact of Lawsuit Reform Since 1995 on Expenditures in Texas Service Regions



Values stated in billions of 2007 dollars.

The Total Annual Impact of Lawsuit Reform Since 1995 on Employment in Texas Service Regions



Conclusion

Texas has brought about notable economic progress and other benefits through tort reform. By improving the civil justice system, the state has created a more fair and equitable mechanism to resolve disputes and compensate injuries, thus setting the stage for sustainable long-range growth and prosperity.

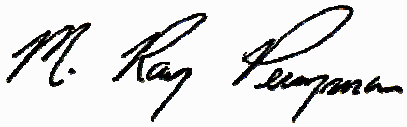
The Perryman Group's analysis of the incremental benefits of tort reform **illustrates that the gains include nearly a half-million jobs in the state of Texas and about $31.6 billion in annual personal income**. **Annual output is also $51.2 billion higher, while total spending is up $112.5 billion each year as a result of reforms.** A substantial portion of this stimulus stems from the recent efforts to limit non-economic damages associated with medical malpractice.

"The Perryman Group's analysis of the incremental benefits of tort reform illustrates that the gains include nearly a half-million jobs in the state of Texas and about $31.6 billion in annual personal income."

In addition to these quantifiable measures, there are a number of other positive outcomes such as growth in the number of doctors entering the state, a decrease in the volume of lawsuits with little real merit, and many others. Benefits accrue through multiple channels including the investment climate, business activity, insurance rates, consumer wellbeing, productivity, jobs, output, income, inflation, economic development, and fiscal soundness. In fact, **State budget resources (enhanced revenue and reduced spending requirements) are almost $2.6 billion higher each year than they would be in the absence of these reforms**.

Even so, challenges remain, with some regions of the state being known as areas where justice is not fairly administered. Clearly, continued vigilance and improvement is warranted. **Increasing the effectiveness and efficiency of the civil justice system has brought significant dividends to Texas, and ongoing efforts can help to assure long-term competitiveness, prosperity, and economic opportunity.**

Respectfully submitted,



M. Ray Perryman, PhD, President
The Perryman Group

APPENDICES

Appendix A:

Results

Impact of Lawsuit Reform Since 1995
(Excluding 2003 Limits on Non-Economic Damages in Medical Malpractice Litigation)

Table 1
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Detailed Industrial Category

Category	Total Expenditures	Gross Product	Personal Income	Employment (Permanent Jobs)
Agricultural Products & Services	$723,213,685	$200,043,059	$136,240,463	2,464
Forestry & Fishery Products	$24,912,350	$16,517,469	$6,126,047	86
Coal Mining	$115,248,101	$33,165,123	$34,948,252	266
Crude Petroleum & Natural Gas	$1,752,795,708	$383,986,929	$177,094,312	983
Miscellaneous Mining	$170,329,121	$65,987,795	$38,790,509	485
New Construction	$395,764,971	$173,047,102	$142,601,590	2,281
Maintenance & Repair Construction	$1,071,281,014	$577,875,191	$476,205,124	7,613
Food Products & Tobacco	$1,484,021,782	$379,734,507	$193,986,540	3,674
Textile Mill Products	$85,744,380	$20,193,234	$17,085,372	441
Apparel	$433,424,664	$240,338,407	$121,783,136	3,759
Paper & Allied Products	$412,467,387	$185,357,742	$83,798,858	1,439
Printing & Publishing	$430,126,383	$215,212,290	$140,473,948	2,699
Chemicals & Petroleum Refining	$11,769,098,631	$3,465,367,370	$1,627,191,175	13,644
Rubber & Leather Products	$1,140,180,767	$478,601,480	$279,788,198	6,316
Lumber Products & Furniture	$147,279,520	$51,613,061	$36,797,275	864
Stone, Clay, & Glass Products	$995,708,554	$510,856,730	$267,180,185	4,936
Primary Metal	$656,819,746	$183,825,529	$136,830,725	2,331
Fabricated Metal Products	$2,043,561,259	$814,002,849	$525,521,294	10,204
Machinery, Except Electrical	$2,119,155,560	$861,257,684	$615,286,068	7,426
Electric & Electronic Equipment	$1,880,795,431	$1,111,163,787	$664,291,500	6,254
Motor Vehicles & Equipment	$1,192,064,091	$303,308,450	$197,049,077	3,160
Transp. Equip., Exc. Motor Vehicles	$728,373,700	$374,290,621	$244,585,656	3,315
Instruments & Related Products	$340,899,488	$151,615,705	$115,241,804	1,671
Miscellaneous Manufacturing	$412,014,496	$160,886,524	$110,965,249	1,996
Transportation	$1,849,973,803	$1,206,625,926	$798,019,303	12,509
Communication	$1,017,944,210	$626,834,294	$267,615,687	2,679
Electric, Gas, Water, Sanitary Services	$2,723,390,361	$603,521,321	$263,360,623	1,261
Wholesale Trade	$2,148,673,712	$1,453,887,934	$838,324,733	10,630
Retail Trade	$3,943,903,665	$3,267,923,039	$1,954,113,482	58,106
Finance	$800,271,657	$429,579,907	$250,145,637	2,517
Insurance	$807,164,913	$495,856,542	$296,442,563	4,040
Real Estate	$4,947,123,879	$886,103,199	$142,770,463	1,434
Hotels, Lodging Places, Amusements	$466,275,996	$241,353,338	$158,336,138	4,371
Personal Services	$824,117,112	$505,567,191	$393,339,440	7,514
Business Services	$2,518,929,575	$1,631,502,980	$1,330,888,386	18,366
Eating & Drinking Places	$1,927,485,183	$1,128,640,684	$600,497,083	30,793
Health Services	$1,430,282,299	$998,196,825	$843,984,663	15,809
Miscellaneous Services	$1,225,989,041	$521,421,915	$452,029,354	12,243
Households	$60,149,322	$60,149,322	$58,876,567	4,611
Total	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**275,186**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 2
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Anderson	$21,347,344	$11,055,865	$6,912,301	$4,146,723	148
Andrews	$4,623,271	$2,296,437	$1,416,420	$748,412	28
Angelina	$65,904,703	$29,153,118	$17,896,881	$9,012,188	357
Aransas	$16,273,986	$6,736,688	$3,876,770	$2,175,665	75
Archer	$823,606	$402,983	$249,341	$172,761	5
Armstrong	$1,227,966	$586,145	$371,413	$185,712	8
Atascosa	$15,126,186	$6,380,608	$3,736,308	$1,930,470	71
Austin	$48,780,505	$21,086,462	$12,623,311	$4,772,510	223
Bailey	$1,502,747	$736,004	$451,335	$315,521	10
Bandera	$8,188,089	$3,741,987	$2,269,771	$1,599,837	50
Bastrop	$26,607,784	$12,702,122	$7,869,516	$4,784,193	171
Baylor	$1,118,785	$562,576	$352,014	$226,587	8
Bee	$6,631,513	$3,276,803	$2,048,883	$1,358,613	46
Bell	$215,757,631	$107,448,951	$67,392,567	$36,858,313	1,419
Bexar	$2,803,624,206	$1,320,883,195	$808,595,230	$397,796,944	16,271
Blanco	$5,081,847	$2,399,174	$1,462,831	$990,310	32
Borden	$109,313	$52,136	$31,571	$18,320	1
Bosque	$3,859,065	$1,806,308	$1,136,775	$569,047	23
Bowie	$58,910,776	$27,155,994	$16,793,151	$8,807,499	341
Brazoria	$271,430,794	$114,147,347	$68,005,864	$31,130,130	1,267
Brazos	$192,611,874	$89,216,109	$55,268,971	$28,796,383	1,158
Brewster	$4,870,401	$2,575,314	$1,604,421	$979,985	34
Briscoe	$196,579	$81,397	$46,375	$23,661	1
Brooks	$839,186	$427,935	$272,387	$224,431	6
Brown	$8,619,430	$4,331,387	$2,713,555	$1,696,848	61
Burleson	$4,445,804	$2,173,398	$1,383,414	$873,670	30
Burnet	$33,784,669	$15,461,891	$9,434,359	$5,104,728	190
Caldwell	$5,512,806	$2,518,845	$1,602,332	$972,383	34
Calhoun	$13,933,461	$5,111,345	$2,908,584	$1,170,047	50
Callahan	$1,649,620	$753,933	$464,239	$312,025	10
Cameron	$151,700,598	$72,064,476	$44,311,844	$22,218,784	918
Camp	$2,549,745	$1,188,805	$746,987	$465,708	16
Carson	$1,489,624	$580,417	$346,413	$126,185	7
Cass	$5,451,352	$2,526,884	$1,555,287	$979,164	33
Castro	$789,493	$345,331	$202,805	$116,499	4
Chambers	$45,771,614	$17,299,803	$9,962,751	$3,597,708	177
Cherokee	$13,409,484	$6,242,957	$3,895,476	$2,059,004	81
Childress	$1,101,881	$523,730	$320,889	$240,656	7
Clay	$3,617,606	$1,733,667	$1,119,544	$587,776	23
Cochran	$71,396	$34,912	$21,960	$11,172	0

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Coke	$170,935	$75,458	$45,755	$31,256	1
Coleman	$2,381,570	$1,116,407	$692,595	$441,487	15
Collin	$1,298,592,760	$612,063,573	$382,821,731	$185,803,676	7,536
Collingsworth	$862,777	$454,786	$287,079	$207,651	6
Colorado	$4,555,100	$2,231,126	$1,383,826	$911,800	31
Comal	$56,531,021	$26,405,328	$16,179,395	$8,808,293	346
Comanche	$3,895,842	$1,900,937	$1,175,312	$709,342	25
Concho	$148,070	$76,126	$50,016	$31,633	1
Cooke	$22,722,400	$9,775,142	$5,994,842	$2,815,940	116
Coryell	$27,284,639	$12,997,069	$8,113,275	$5,137,292	182
Cottle	$533,552	$288,217	$183,014	$98,568	4
Crane	$528,825	$264,993	$170,237	$101,752	4
Crockett	$544,606	$274,409	$168,964	$152,722	4
Crosby	$234,782	$119,153	$75,643	$37,426	2
Culberson	$109,035	$61,279	$38,360	$33,926	1
Dallam	$2,820,590	$1,471,141	$908,734	$422,049	18
Dallas	$13,663,695,382	$6,196,274,500	$3,728,800,541	$1,357,200,497	67,679
Dawson	$1,992,002	$956,469	$584,856	$398,004	13
Deaf Smith	$2,685,375	$1,233,694	$753,448	$369,491	15
Delta	$2,331,265	$1,150,931	$737,737	$288,871	14
Denton	$650,353,886	$284,091,215	$168,551,370	$69,099,224	3,110
DeWitt	$5,830,593	$2,800,288	$1,766,483	$1,070,075	38
Dickens	$199,009	$101,748	$64,487	$45,848	1
Dimmit	$800,431	$394,840	$250,255	$207,411	6
Donley	$674,582	$366,312	$232,212	$181,655	5
Duval	$492,507	$224,087	$137,576	$87,869	3
Eastland	$4,105,243	$1,866,109	$1,169,372	$752,945	26
Ector	$101,860,204	$43,870,391	$26,121,288	$12,150,364	487
Edwards	$249,727	$124,524	$74,662	$56,960	2
El Paso	$513,237,084	$234,531,097	$142,041,652	$63,270,485	2,797
Ellis	$72,186,293	$30,229,284	$17,819,861	$7,421,952	329
Erath	$17,858,709	$8,695,247	$5,482,963	$3,074,183	117
Falls	$1,748,869	$875,746	$550,386	$320,723	12
Fannin	$7,237,320	$3,544,599	$2,217,286	$1,171,299	45
Fayette	$14,610,827	$6,776,416	$4,156,688	$2,070,257	85
Fisher	$499,647	$260,484	$160,208	$121,599	4
Floyd	$384,958	$176,314	$110,020	$53,697	2
Foard	$185,965	$101,005	$65,329	$41,264	1
Fort Bend	$638,084,708	$270,835,900	$161,828,742	$68,488,268	2,949
Franklin	$3,648,488	$1,716,118	$1,047,955	$740,534	23

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Freestone	$3,373,475	$1,584,642	$969,615	$721,288	22
Frio	$2,633,191	$1,181,533	$699,725	$443,463	15
Gaines	$1,816,804	$791,707	$479,962	$288,893	10
Galveston	$279,566,689	$117,937,332	$69,508,608	$33,529,518	1,314
Garza	$1,410,966	$642,261	$397,018	$280,978	8
Gillespie	$11,892,641	$5,647,984	$3,519,098	$2,193,365	77
Glasscock	$19,655	$8,676	$5,216	$2,069	0
Goliad	$999,294	$503,052	$323,134	$266,980	8
Gonzales	$3,498,532	$1,671,777	$1,050,489	$662,406	23
Gray	$8,820,493	$3,587,892	$2,098,000	$1,121,578	39
Grayson	$58,462,596	$27,899,899	$17,431,960	$8,801,826	358
Gregg	$150,097,725	$70,468,731	$44,086,840	$19,955,072	868
Grimes	$7,069,894	$3,313,063	$2,131,168	$1,215,649	45
Guadalupe	$28,592,937	$13,333,071	$8,225,917	$4,266,912	167
Hale	$6,495,851	$3,220,906	$1,993,171	$1,433,711	44
Hall	$830,079	$402,104	$246,506	$165,833	5
Hamilton	$2,087,791	$977,021	$608,549	$402,115	13
Hansford	$1,203,682	$466,572	$263,971	$125,418	5
Hardeman	$494,817	$264,311	$163,114	$133,206	4
Hardin	$18,485,667	$8,306,021	$5,000,335	$2,953,004	101
Harris	$22,965,679,285	$9,347,586,749	$5,523,212,589	$1,790,374,637	94,900
Harrison	$61,666,633	$24,922,125	$14,948,229	$5,855,508	267
Hartley	$230,734	$110,428	$69,423	$43,395	2
Haskell	$952,384	$448,574	$284,548	$171,410	6
Hays	$91,295,030	$44,318,646	$27,592,634	$14,100,009	559
Hemphill	$713,303	$310,662	$185,960	$114,191	4
Henderson	$26,364,370	$12,076,138	$7,381,503	$4,256,247	160
Hidalgo	$260,665,533	$126,618,461	$79,027,768	$42,090,914	1,684
Hill	$6,663,943	$3,035,965	$1,862,487	$1,204,757	42
Hockley	$4,428,888	$2,038,311	$1,256,101	$810,486	27
Hood	$16,808,324	$7,570,571	$4,609,720	$2,907,278	97
Hopkins	$16,144,739	$7,733,624	$4,755,544	$2,808,111	100
Houston	$17,916,122	$7,648,755	$4,543,170	$1,771,439	82
Howard	$13,582,015	$5,743,312	$3,364,039	$1,711,258	65
Hudspeth	$43,449	$22,253	$13,086	$13,174	0
Hunt	$33,274,686	$15,434,547	$9,329,858	$5,372,161	190
Hutchinson	$6,752,851	$2,690,408	$1,578,653	$868,657	29
Irion	$200,021	$76,483	$42,385	$21,763	1
Jack	$1,652,011	$759,691	$473,650	$302,041	10
Jackson	$3,265,877	$1,571,462	$965,085	$681,423	22

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Jasper	$11,905,313	$5,897,536	$3,695,449	$2,436,970	82
Jeff Davis	$868,095	$420,315	$264,011	$188,486	6
Jefferson	$820,133,517	$356,825,993	$215,448,990	$101,306,777	4,049
Jim Hogg	$252,839	$118,278	$70,027	$54,122	2
Jim Wells	$12,328,571	$6,349,070	$3,977,777	$2,783,603	89
Johnson	$71,118,478	$31,294,170	$18,943,058	$8,345,248	365
Jones	$2,467,492	$1,187,117	$736,574	$450,934	16
Karnes	$2,761,126	$1,117,919	$640,165	$356,503	12
Kaufman	$30,792,778	$13,810,738	$8,551,001	$4,444,370	178
Kendall	$54,274,864	$22,597,310	$13,277,191	$6,732,477	255
Kenedy	$34,699	$15,802	$10,010	$9,676	0
Kent	$65,080	$30,008	$18,430	$12,056	0
Kerr	$33,504,056	$16,033,159	$9,854,824	$6,183,880	217
Kimble	$1,313,558	$524,397	$297,056	$165,543	6
King	$98,986	$50,465	$31,857	$13,119	1
Kinney	$54,118	$24,754	$14,593	$10,779	0
Kleberg	$7,043,190	$3,187,234	$1,925,455	$1,208,387	41
Knox	$268,510	$124,989	$75,572	$39,853	1
La Salle	$343,223	$177,307	$111,115	$95,990	3
Lamar	$16,054,774	$7,402,812	$4,610,771	$2,652,107	98
Lamb	$1,396,150	$608,678	$367,076	$205,154	7
Lampasas	$3,088,194	$1,536,324	$956,334	$638,914	22
Lavaca	$3,056,670	$1,540,733	$974,654	$558,453	21
Lee	$6,469,971	$3,026,115	$1,899,883	$1,095,985	40
Leon	$1,946,571	$997,649	$625,073	$457,359	14
Liberty	$19,661,567	$9,279,128	$5,861,953	$3,080,212	118
Limestone	$4,199,040	$1,864,835	$1,159,010	$716,977	24
Lipscomb	$172,353	$77,869	$46,617	$23,793	1
Live Oak	$4,021,243	$1,669,048	$972,626	$568,907	19
Llano	$4,309,505	$2,092,834	$1,280,037	$868,337	28
Loving	$80,246	$26,096	$16,398	$8,188	0
Lubbock	$198,751,614	$97,574,707	$60,798,587	$30,483,700	1,236
Lynn	$537,372	$254,673	$156,496	$65,478	3
Madison	$3,274,613	$1,640,545	$1,018,067	$841,219	24
Marion	$1,886,177	$916,841	$576,832	$404,498	13
Martin	$884,771	$362,301	$209,034	$103,893	4
Mason	$3,444,980	$1,636,195	$994,995	$638,119	22
Matagorda	$11,623,863	$4,678,611	$2,734,282	$1,549,338	52
Maverick	$12,770,124	$6,179,124	$3,788,818	$2,511,404	85
McCulloch	$4,213,357	$1,906,009	$1,154,331	$653,664	23

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
McLennan	$202,789,297	$91,431,493	$55,567,526	$26,035,927	1,126
McMullen	$228,482	$100,238	$60,722	$30,713	1
Medina	$7,491,566	$3,519,661	$2,127,445	$1,419,997	47
Menard	$263,807	$134,707	$82,572	$64,788	2
Midland	$154,036,129	$73,328,584	$45,046,963	$25,922,116	906
Milam	$6,893,498	$3,259,147	$2,066,343	$1,215,959	45
Mills	$1,448,851	$820,964	$527,318	$348,037	12
Mitchell	$2,644,091	$1,316,632	$827,660	$560,579	18
Montague	$5,340,640	$2,508,752	$1,547,862	$969,660	34
Montgomery	$654,210,928	$279,380,911	$169,914,699	$74,009,662	3,234
Moore	$7,749,053	$3,013,672	$1,705,305	$794,371	31
Morris	$13,815,916	$5,417,555	$3,216,572	$1,042,161	55
Motley	$49,206	$22,808	$13,692	$9,399	0
Nacogdoches	$38,162,642	$18,626,780	$11,746,880	$6,795,789	255
Navarro	$16,895,853	$7,590,847	$4,699,159	$2,263,046	97
Newton	$1,138,011	$693,558	$461,445	$352,498	10
Nolan	$7,172,957	$3,597,497	$2,204,506	$1,436,980	48
Nueces	$648,576,099	$269,918,530	$158,948,770	$74,209,058	2,941
Ochiltree	$2,773,179	$1,209,200	$733,801	$412,985	15
Oldham	$47,079	$23,949	$15,319	$13,563	0
Orange	$41,641,466	$17,931,633	$10,762,789	$5,086,340	204
Palo Pinto	$8,985,786	$4,036,797	$2,441,480	$1,357,138	51
Panola	$5,805,456	$2,751,799	$1,737,812	$1,063,491	37
Parker	$60,159,421	$26,324,017	$15,887,431	$7,909,208	320
Parmer	$664,724	$285,136	$177,373	$60,872	3
Pecos	$4,249,995	$2,002,860	$1,228,649	$945,152	28
Polk	$11,075,067	$5,341,248	$3,276,714	$2,177,821	69
Potter	$209,662,954	$100,630,437	$62,516,525	$34,763,888	1,307
Presidio	$1,375,519	$641,967	$392,689	$291,148	9
Rains	$2,885,964	$1,255,227	$768,409	$537,426	16
Randall	$43,203,294	$20,487,911	$12,565,615	$6,751,682	258
Reagan	$150,491	$75,153	$45,755	$35,256	1
Real	$567,209	$231,647	$132,110	$78,971	3
Red River	$574,108	$265,376	$164,884	$98,726	4
Reeves	$2,560,878	$1,215,714	$745,413	$584,905	17
Refugio	$691,488	$325,777	$196,849	$184,265	5
Roberts	$61,865	$24,728	$14,174	$11,831	0
Robertson	$2,190,257	$1,035,000	$641,268	$403,590	14
Rockwall	$72,928,536	$34,998,136	$21,595,044	$10,839,519	432
Runnels	$4,953,066	$1,953,610	$1,119,132	$548,086	21

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Rusk	$21,572,195	$9,459,386	$5,915,046	$2,877,222	120
Sabine	$4,969,614	$2,125,072	$1,269,058	$701,994	24
San Augustine	$612,878	$284,683	$175,822	$117,039	4
San Jacinto	$4,423,126	$2,131,755	$1,340,757	$885,697	29
San Patricio	$23,437,989	$9,671,217	$5,669,676	$3,080,240	109
San Saba	$1,419,910	$746,615	$463,243	$340,164	11
Schleicher	$558,305	$265,822	$166,948	$77,598	3
Scurry	$3,226,882	$1,698,707	$1,038,298	$744,671	23
Shackelford	$917,252	$430,031	$264,828	$177,874	6
Shelby	$7,457,429	$3,815,657	$2,488,413	$1,537,664	54
Sherman	$114,824	$51,131	$30,853	$14,281	1
Smith	$272,856,816	$120,489,146	$72,903,619	$36,907,430	1,485
Somervell	$2,982,598	$1,343,124	$850,826	$369,273	18
Starr	$3,799,944	$2,042,720	$1,305,561	$1,037,171	31
Stephens	$2,949,878	$1,512,145	$949,292	$680,593	21
Sterling	$103,324	$58,027	$36,782	$34,379	1
Stonewall	$85,873	$47,100	$30,051	$24,612	1
Sutton	$1,154,510	$571,160	$346,678	$264,143	8
Swisher	$396,308	$178,126	$109,418	$58,129	2
Tarrant	$3,520,591,086	$1,564,347,677	$946,140,811	$381,876,071	17,749
Taylor	$118,802,899	$53,254,803	$32,439,042	$15,014,072	643
Terrell	$147,382	$80,657	$52,094	$31,099	1
Terry	$2,249,404	$1,064,644	$629,338	$500,178	14
Throckmorton	$120,017	$59,372	$36,351	$24,415	1
Titus	$6,184,370	$2,728,958	$1,711,129	$1,088,386	36
Tom Green	$59,344,236	$27,169,399	$16,408,701	$9,454,242	356
Travis	$3,577,153,167	$1,764,815,673	$1,092,092,193	$507,690,863	20,752
Trinity	$1,380,936	$720,314	$451,428	$292,025	10
Tyler	$4,078,028	$2,016,904	$1,273,243	$816,583	28
Upshur	$11,784,038	$5,705,548	$3,504,111	$2,003,087	71
Upton	$233,501	$112,858	$68,542	$43,998	1
Uvalde	$8,527,645	$4,234,983	$2,642,999	$1,591,781	58
Val Verde	$6,950,779	$3,711,399	$2,329,022	$1,372,910	50
Van Zandt	$8,748,855	$4,546,367	$2,865,073	$1,846,393	64
Victoria	$74,827,817	$31,852,350	$18,770,247	$9,114,872	351
Walker	$12,526,365	$6,083,201	$3,771,664	$2,265,755	80
Waller	$18,673,529	$7,604,915	$4,483,873	$2,296,050	91
Ward	$3,734,498	$1,840,367	$1,132,716	$889,782	26
Washington	$21,409,362	$10,180,296	$6,371,261	$3,281,636	131
Webb	$88,343,105	$41,654,226	$25,488,425	$16,141,333	547

Table 2 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Wharton	$13,939,201	$6,616,732	$4,124,517	$2,550,070	89
Wheeler	$8,175,106	$4,232,127	$2,621,094	$2,002,179	61
Wichita	$82,605,053	$40,895,073	$25,710,174	$13,264,236	524
Wilbarger	$4,170,702	$1,779,328	$1,041,161	$567,205	20
Willacy	$959,680	$520,836	$321,907	$251,909	8
Williamson	$236,609,941	$117,156,070	$73,217,038	$33,264,813	1,426
Wilson	$6,004,326	$2,829,504	$1,775,959	$1,078,812	39
Winkler	$1,235,946	$607,374	$374,255	$268,100	8
Wise	$25,790,818	$12,367,960	$7,686,544	$4,108,971	155
Wood	$17,393,899	$8,042,778	$4,939,598	$2,877,637	104
Yoakum	$1,326,359	$595,469	$367,310	$241,536	8
Young	$8,805,133	$4,192,846	$2,584,374	$1,418,815	52
Zapata	$812,138	$407,356	$253,934	$212,063	6
Zavala	$320,763	$174,098	$113,653	$88,722	3
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 3
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Metropolitan Statistical Area (MSA) Results

MSA	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Abilene	$122,920,010	$55,195,853	$33,639,855	$15,777,031	669
Amarillo	$255,583,838	$122,284,910	$75,799,966	$41,827,466	1,579
Austin-Round Rock	$3,937,178,728	$1,941,511,357	$1,202,373,712	$560,812,261	22,943
Beaumont-Port Arthur	$880,260,650	$383,063,646	$231,212,114	$109,346,121	4,354
Brownsville-Harlingen	$151,700,598	$72,064,476	$44,311,844	$22,218,784	918
College Station-Bryan	$199,247,935	$92,424,508	$57,293,653	$30,073,643	1,201
Corpus Christi	$688,288,073	$286,326,435	$168,495,216	$79,464,963	3,126
Dallas-Plano-Irving MD*	$15,824,155,586	$7,188,052,926	$4,338,207,144	$1,640,470,270	79,467
Fort Worth-Arlington MD*	$3,677,659,803	$1,634,333,825	$988,657,844	$402,239,499	18,589
El Paso	$513,237,084	$234,531,097	$142,041,652	$63,270,485	2,797
Houston-Sugar Land-Baytown	$24,946,282,746	$10,187,290,301	$6,026,743,147	$2,012,164,390	104,301
Killeen-Temple-Fort Hood	$246,130,464	$121,982,344	$76,462,175	$42,634,518	1,623
Laredo	$88,343,105	$41,654,226	$25,488,425	$16,141,333	547
Longview	$183,453,958	$85,633,666	$53,505,997	$24,835,380	1,059
Lubbock	$198,986,396	$97,693,859	$60,874,230	$30,521,127	1,237
McAllen-Edinburg-Mission	$260,665,533	$126,618,461	$79,027,768	$42,090,914	1,684
Midland	$154,036,129	$73,328,584	$45,046,963	$25,922,116	906
Odessa	$101,860,204	$43,870,391	$26,121,288	$12,150,364	487
San Angelo	$59,544,257	$27,245,882	$16,451,087	$9,476,004	357
San Antonio	$2,979,833,195	$1,399,690,663	$856,187,214	$423,633,743	17,247
Sherman-Denison	$58,462,596	$27,899,899	$17,431,960	$8,801,826	358
Texarkana	$58,910,776	$27,155,994	$16,793,151	$8,807,499	341
Tyler	$272,856,816	$120,489,146	$72,903,619	$36,907,430	1,485
Victoria	$89,760,573	$37,466,747	$22,001,965	$10,551,899	409
Waco	$202,789,297	$91,431,493	$55,567,526	$26,035,927	1,126
Wichita Falls	$87,046,265	$43,031,723	$27,079,059	$14,024,773	552
Rural Area	$977,760,900	$453,140,643	$278,887,903	$161,189,082	5,823
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

***Metropolitan Division**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 4
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Comptroller's Economic Region Results

Economic Region	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
High Plains	$522,558,435	$250,666,358	$155,182,068	$83,727,610	3,199
Northwest Texas	$275,125,603	$129,378,293	$79,889,139	$41,702,500	1,630
Metroplex	$19,651,437,710	$8,891,692,045	$5,369,855,488	$2,065,180,881	98,940
Upper East Texas	$741,484,492	$335,219,967	$205,774,866	$103,761,004	4,153
Southeast Texas	$1,049,284,519	$461,519,026	$279,831,373	$136,243,828	5,358
Gulf Coast	$24,984,504,149	$10,204,768,215	$6,037,416,679	$2,018,555,656	104,525
Capital	$4,001,435,547	$1,971,267,786	$1,220,607,510	$570,941,878	23,319
Central Texas	$713,562,579	$336,941,139	$208,812,649	$110,379,018	4,368
Alamo	$3,030,624,210	$1,423,671,259	$870,901,026	$432,810,953	17,567
Coastal Bend	$826,011,197	$346,953,435	$204,856,178	$99,445,683	3,850
South Texas Border	$537,117,858	$258,679,030	$160,236,693	$88,021,225	3,404
West Texas	$363,305,635	$166,404,276	$100,888,592	$55,841,410	2,027
Upper Rio Grande	$520,503,583	$238,252,225	$144,354,219	$64,777,203	2,847
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 5
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Council of Governments (COG) Results

COG	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Panhandle	$303,420,747	$143,425,306	$88,447,977	$49,220,206	1,835
South Plains	$219,137,687	$107,241,052	$66,734,091	$34,507,404	1,364
North Texas	$109,347,869	$53,488,450	$33,489,575	$17,782,118	685
North Central Texas	$19,563,015,394	$8,850,472,405	$5,344,211,399	$2,052,391,816	98,421
North East Texas	$123,115,790	$56,098,252	$34,593,031	$18,505,559	703
East Texas	$618,368,702	$279,121,715	$171,181,836	$85,255,445	3,450
West Central Texas	$165,777,734	$75,889,843	$46,399,563	$23,920,382	945
Upper Rio Grande	$520,503,583	$238,252,225	$144,354,219	$64,777,203	2,847
Permian Basin	$291,695,436	$133,560,932	$81,047,654	$44,216,303	1,598
Concho Valley	$71,610,199	$32,843,344	$19,840,938	$11,625,107	429
Heart of Texas	$222,633,690	$100,598,989	$61,245,799	$29,568,718	1,250
Capital	$4,001,435,547	$1,971,267,786	$1,220,607,510	$570,941,878	23,319
Brazos Valley	$232,948,375	$108,556,059	$67,439,221	$35,869,507	1,415
Deep East Texas	$169,023,869	$78,455,380	$48,619,259	$26,897,707	1,004
South East Texas	$880,260,650	$383,063,646	$231,212,114	$109,346,121	4,354
Gulf Coast	$24,984,504,149	$10,204,768,215	$6,037,416,679	$2,018,555,656	104,525
Golden Crescent	$105,412,245	$45,051,006	$26,758,676	$13,524,256	513
Alamo	$3,030,624,210	$1,423,671,259	$870,901,026	$432,810,953	17,567
South Texas	$93,208,027	$44,222,580	$27,117,947	$17,444,689	585
Coastal Bend	$720,598,952	$301,902,429	$178,097,502	$85,921,426	3,337
Lower Rio Grande Valley	$413,325,811	$199,203,773	$123,661,520	$64,561,608	2,610
Texoma	$88,422,315	$41,219,640	$25,644,089	$12,789,065	519
Central Texas	$257,980,514	$127,786,090	$80,127,629	$44,940,793	1,704
Middle Rio Grande	$30,584,020	$15,252,677	$9,457,226	$6,014,928	209
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 6
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas Senate District Results

Senate District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$539,488,812	$242,247,422	$148,864,285	$72,836,005	2,968
2	$2,306,736,731	$1,048,741,762	$632,391,546	$241,349,251	11,632
3	$565,814,432	$252,168,206	$154,569,468	$77,391,035	3,089
4	$1,793,905,953	$756,147,490	$453,331,825	$184,927,128	8,275
5	$500,908,361	$239,718,843	$149,146,111	$73,932,111	3,013
6	$4,363,479,064	$1,776,041,482	$1,049,410,392	$340,171,181	18,031
7	$4,593,135,857	$1,869,517,350	$1,104,642,518	$358,074,927	18,980
8	$2,647,964,077	$1,220,970,253	$747,366,078	$312,449,253	14,076
9	$2,467,761,657	$1,109,276,946	$667,025,708	$251,830,421	12,212
10	$1,725,089,632	$766,530,362	$463,608,997	$187,119,275	8,697
11	$2,483,687,146	$1,016,866,789	$601,055,320	$210,179,693	10,494
12	$1,497,724,868	$664,036,005	$400,637,511	$162,023,914	7,500
13	$4,044,544,114	$1,648,673,645	$974,548,463	$319,431,107	16,782
14	$3,076,351,724	$1,517,741,479	$939,199,286	$436,614,142	17,847
15	$4,593,135,857	$1,869,517,350	$1,104,642,518	$358,074,927	18,980
16	$4,140,513,752	$1,877,658,939	$1,129,939,558	$411,272,878	20,509
17	$3,308,444,192	$1,357,782,010	$804,145,410	$278,414,963	14,009
18	$556,086,274	$240,260,074	$144,149,973	$67,837,495	2,739
19	$769,437,850	$363,191,677	$222,342,505	$112,560,942	4,510
20	$805,109,899	$346,335,689	$206,664,207	$100,367,094	3,963
21	$408,335,188	$190,299,270	$116,108,180	$62,574,127	2,376
22	$422,337,360	$188,174,578	$114,153,072	$54,574,543	2,292
23	$4,278,530,877	$1,940,247,571	$1,167,604,210	$424,981,974	21,192
24	$478,924,108	$229,285,048	$142,165,192	$77,451,178	2,969
25	$1,320,256,378	$631,114,020	$387,973,041	$188,521,771	7,650
26	$1,289,667,135	$607,606,269	$371,953,806	$182,986,594	7,485
27	$277,037,656	$132,766,655	$82,131,712	$42,629,668	1,725
28	$327,362,590	$157,449,217	$97,163,437	$52,899,183	2,019
29	$482,442,859	$220,459,232	$133,519,153	$59,474,256	2,629
30	$593,633,077	$274,467,698	$168,933,459	$82,050,360	3,335
31	$559,108,035	$260,119,724	$159,219,537	$86,387,452	3,210
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 7
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$80,064,221	$36,017,274	$22,141,843	$11,233,322	442
2	$44,909,505	$21,236,140	$12,963,340	$7,755,981	271
3	$44,937,745	$20,997,820	$13,028,020	$7,676,734	274
4	$57,157,148	$25,886,877	$15,932,504	$8,700,616	337
5	$93,394,315	$39,859,256	$24,138,925	$11,201,940	458
6	$223,742,590	$98,801,100	$59,780,968	$30,264,092	1,218
7	$199,211,952	$92,156,777	$57,209,491	$26,598,409	1,136
8	$45,815,712	$22,096,189	$13,740,086	$7,848,034	291
9	$63,107,876	$30,749,727	$19,375,622	$11,589,458	419
10	$78,850,237	$33,265,249	$19,682,347	$8,626,709	371
11	$58,703,258	$26,102,898	$16,091,504	$7,771,156	319
12	$75,786,793	$34,022,091	$20,962,308	$11,006,492	424
13	$89,786,126	$40,663,022	$24,897,404	$11,535,551	478
14	$179,129,043	$82,970,981	$51,400,143	$26,780,636	1,077
15	$294,394,917	$125,721,410	$76,461,615	$33,304,348	1,455
16	$300,937,027	$128,515,219	$78,160,762	$34,044,445	1,487
17	$70,172,318	$33,154,306	$20,562,155	$11,751,651	439
18	$89,615,618	$39,764,658	$24,430,989	$11,918,902	478
19	$54,602,510	$24,062,150	$14,502,523	$7,578,027	283
20	$113,367,972	$55,979,378	$35,014,010	$16,185,125	687
21	$434,670,764	$189,117,776	$114,187,965	$53,692,592	2,146
22	$392,125,388	$170,577,278	$102,983,072	$48,428,000	1,936
23	$174,372,291	$71,550,976	$41,936,711	$19,021,286	782
24	$150,966,012	$63,686,159	$37,534,648	$18,105,939	710
25	$154,715,553	$65,063,988	$38,763,342	$17,744,174	722
26	$259,024,486	$109,943,286	$65,692,856	$27,802,168	1,197
27	$259,024,486	$109,943,286	$65,692,856	$27,802,168	1,197
28	$152,648,467	$65,170,974	$39,051,421	$17,730,052	735
29	$128,339,105	$53,761,970	$31,976,804	$14,935,294	597
30	$87,672,446	$38,090,609	$22,673,318	$11,609,088	437
31	$31,607,521	$15,170,430	$9,343,599	$6,179,503	204
32	$125,709,446	$51,510,198	$30,116,005	$14,671,403	561
33	$288,256,044	$119,963,791	$70,643,898	$32,981,803	1,307
34	$288,256,044	$119,963,791	$70,643,898	$32,981,803	1,307
35	$42,096,417	$19,396,739	$11,759,616	$7,295,787	246
36	$65,824,630	$31,974,359	$19,956,507	$10,629,019	425
37	$60,079,445	$28,540,387	$17,549,245	$8,799,519	364
38	$60,079,445	$28,540,387	$17,549,245	$8,799,519	364
39	$65,824,630	$31,974,359	$19,956,507	$10,629,019	425
40	$65,824,630	$31,974,359	$19,956,507	$10,629,019	425

Table 7 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
41	$63,191,644	$30,695,385	$19,158,247	$10,203,858	408
42	$61,840,174	$29,157,958	$17,841,898	$11,298,933	383
43	$40,671,302	$19,253,787	$11,813,140	$6,368,273	248
44	$38,095,795	$17,834,352	$11,052,364	$6,008,131	230
45	$101,889,683	$49,236,665	$30,657,796	$16,062,702	626
46	$608,116,038	$300,018,664	$185,655,673	$86,307,447	3,528
47	$608,116,038	$300,018,664	$185,655,673	$86,307,447	3,528
48	$572,344,507	$282,370,508	$174,734,751	$81,230,538	3,320
49	$608,116,038	$300,018,664	$185,655,673	$86,307,447	3,528
50	$572,344,507	$282,370,508	$174,734,751	$81,230,538	3,320
51	$608,116,038	$300,018,664	$185,655,673	$86,307,447	3,528
52	$130,135,467	$64,435,839	$40,269,371	$18,295,647	784
53	$60,426,128	$28,317,031	$17,267,740	$10,821,161	373
54	$121,018,339	$58,903,306	$36,673,794	$20,118,383	765
55	$131,612,155	$65,543,860	$41,109,466	$22,483,571	866
56	$129,785,150	$58,516,156	$35,563,217	$16,662,993	721
57	$82,164,457	$37,464,277	$22,839,102	$11,395,825	469
58	$74,977,543	$33,100,479	$20,079,833	$8,914,295	388
59	$55,558,430	$26,734,362	$16,758,243	$10,040,241	366
60	$42,385,914	$19,747,040	$12,148,246	$7,572,676	261
61	$85,950,239	$38,691,977	$23,573,975	$12,018,179	474
62	$65,699,916	$31,444,498	$19,649,246	$9,973,125	403
63	$214,616,782	$93,750,101	$55,621,952	$22,802,744	1,026
64	$221,120,321	$96,591,013	$57,307,466	$23,493,736	1,057
65	$214,616,782	$93,750,101	$55,621,952	$22,802,744	1,026
66	$350,620,045	$165,257,165	$103,361,867	$50,166,993	2,035
67	$350,620,045	$165,257,165	$103,361,867	$50,166,993	2,035
68	$50,329,723	$22,773,491	$14,031,408	$7,465,106	283
69	$83,428,659	$41,298,056	$25,959,515	$13,436,997	529
70	$350,620,045	$165,257,165	$103,361,867	$50,166,993	2,035
71	$125,975,856	$56,852,300	$34,643,547	$16,451,052	692
72	$65,386,144	$30,260,196	$18,320,414	$10,790,748	398
73	$130,886,615	$58,392,609	$35,245,454	$19,333,972	728
74	$33,767,649	$16,957,729	$10,534,517	$6,987,493	232
75	$102,647,417	$46,906,219	$28,408,330	$12,654,097	559
76	$102,647,417	$46,906,219	$28,408,330	$12,654,097	559
77	$102,647,417	$46,906,219	$28,408,330	$12,654,097	559
78	$102,647,417	$46,906,219	$28,408,330	$12,654,097	559
79	$102,647,417	$46,906,219	$28,408,330	$12,654,097	559
80	$24,413,416	$11,651,317	$7,105,603	$4,777,766	159

Table 7 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
81	$107,719,421	$46,774,201	$27,911,963	$13,166,876	523
82	$157,675,229	$75,025,206	$46,079,632	$26,569,762	927
83	$87,144,092	$42,490,282	$26,444,768	$13,545,567	540
84	$119,250,968	$58,544,824	$36,479,152	$18,290,220	741
85	$28,596,245	$13,016,447	$7,832,698	$4,803,715	162
86	$48,987,072	$23,327,123	$14,312,540	$7,600,179	293
87	$219,016,455	$104,275,658	$64,599,096	$35,698,725	1,345
88	$38,316,118	$17,167,207	$10,354,751	$6,441,977	214
89	$319,661,161	$151,290,215	$94,331,173	$46,142,217	1,864
90	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
91	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
92	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
93	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
94	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
95	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
96	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
97	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
98	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
99	$352,059,109	$156,434,768	$94,614,081	$38,187,607	1,775
100	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
101	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
102	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
103	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
104	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
105	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
106	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
107	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
108	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
109	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
110	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
111	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
112	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
113	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
114	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
115	$853,980,961	$387,267,156	$233,050,034	$84,825,031	4,230
116	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
117	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
118	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
119	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
120	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627

Table 7 (continued)
The Annual Impact of State Lawsuit Reforms Enacted since 1995 (Excluding More Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
121	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
122	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
123	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
124	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
125	$280,362,421	$132,088,319	$80,859,523	$39,779,694	1,627
126	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
127	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
128	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
129	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
130	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
131	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
132	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
133	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
134	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
135	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
136	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
137	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
138	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
139	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
140	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
141	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
142	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
143	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
144	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
145	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
146	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
147	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
148	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
149	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
150	$918,627,171	$373,903,470	$220,928,504	$71,614,985	3,796
TOTAL STATE IMPACT	**$57,216,955,516**	**$25,015,413,054**	**$15,038,606,478**	**$5,871,388,848**	**275,186**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Impact of 2003 Limits on Non-Economic Damages in Medical Malpractice Litigation

Table 8
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Detailed Industrial Category

Category	Total Expenditures	Gross Product	Personal Income	Employment (Permanent Jobs)
Agricultural Products & Services	$934,427,618	$254,221,652	$173,139,090	1,791
Forestry & Fishery Products	$43,948,298	$23,973,741	$8,891,406	77
Coal Mining	$108,709,214	$31,326,354	$33,010,646	141
Crude Petroleum & Natural Gas	$4,506,177,475	$987,639,643	$455,498,198	1,114
Miscellaneous Mining	$59,642,906	$25,421,271	$14,943,725	100
New Construction	$1,063,141,373	$465,195,737	$383,350,254	4,688
Maintenance & Repair Construction	$1,507,589,695	$804,661,387	$663,091,101	6,291
Food Products & Tobacco	$1,802,255,483	$459,976,088	$234,977,778	2,746
Textile Mill Products	$27,880,184	$6,719,250	$5,685,123	82
Apparel	$363,668,006	$201,153,787	$101,927,689	2,133
Paper & Allied Products	$317,597,024	$142,081,874	$64,234,191	652
Printing & Publishing	$498,183,715	$248,125,254	$161,956,974	1,837
Chemicals & Petroleum Refining	$3,701,069,928	$748,938,787	$351,670,263	1,669
Rubber & Leather Products	$326,936,485	$139,542,003	$81,575,612	1,094
Lumber Products & Furniture	$194,027,119	$67,150,576	$47,874,655	585
Stone, Clay, & Glass Products	$269,869,328	$138,858,839	$72,623,774	752
Primary Metal	$263,804,443	$73,590,087	$54,776,852	446
Fabricated Metal Products	$511,480,957	$191,938,501	$123,915,736	1,264
Machinery, Except Electrical	$352,397,721	$143,386,162	$102,435,651	560
Electric & Electronic Equipment	$330,461,933	$185,684,111	$111,008,267	529
Motor Vehicles & Equipment	$202,698,621	$46,742,174	$30,366,755	232
Transp. Equip., Exc. Motor Vehicles	$111,885,426	$52,884,875	$34,558,387	212
Instruments & Related Products	$94,779,051	$39,352,547	$29,911,514	278
Miscellaneous Manufacturing	$124,201,794	$48,425,510	$33,399,661	349
Transportation	$1,823,994,680	$1,201,839,495	$794,853,748	7,758
Communication	$1,316,200,346	$810,630,141	$346,084,047	2,251
Electric, Gas, Water, Sanitary Services	$3,326,828,488	$747,150,920	$326,036,733	911
Wholesale Trade	$2,067,702,782	$1,398,811,521	$806,567,189	6,056
Retail Trade	$4,616,196,077	$3,825,327,489	$2,287,423,508	44,867
Finance	$1,160,343,233	$652,758,627	$380,103,269	2,351
Insurance	$1,069,052,521	$683,731,960	$408,761,874	3,671
Real Estate	$7,137,536,964	$1,655,784,507	$266,782,816	1,505
Hotels, Lodging Places, Amusements	$636,100,983	$323,918,978	$212,502,072	3,619
Personal Services	$943,646,308	$579,415,975	$450,795,005	5,884
Business Services	$3,871,294,562	$2,605,978,252	$2,125,810,518	21,309
Eating & Drinking Places	$2,184,111,772	$1,279,131,919	$680,566,462	22,914
Health Services	$5,838,107,604	$4,115,261,830	$3,479,492,002	57,678
Miscellaneous Services	$1,508,625,315	$663,078,934	$574,834,174	9,775
Households	$66,041,080	$66,041,080	$64,643,650	3,486
Total	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**223,659**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 9
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Anderson	$113,679,755	$58,352,181	$38,077,568	$18,031,926	542
Andrews	$4,402,333	$2,027,249	$1,258,389	$632,909	16
Angelina	$226,398,158	$114,538,647	$74,635,045	$37,389,613	1,092
Aransas	$18,036,133	$7,750,403	$4,747,250	$2,495,151	65
Archer	$1,820,371	$841,625	$520,444	$289,865	7
Armstrong	$1,855,076	$876,916	$574,953	$195,365	8
Atascosa	$52,924,923	$23,702,285	$15,108,343	$6,879,445	206
Austin	$14,482,926	$6,727,600	$4,239,141	$1,778,104	53
Bailey	$1,270,997	$639,636	$399,213	$244,231	6
Bandera	$6,896,899	$3,216,122	$2,011,142	$1,105,628	29
Bastrop	$29,122,007	$14,251,398	$9,068,852	$4,683,448	130
Baylor	$6,404,734	$3,251,442	$2,114,447	$1,034,653	30
Bee	$35,978,287	$17,612,548	$11,432,237	$5,940,263	167
Bell	$520,037,066	$279,851,177	$184,481,550	$87,655,349	2,680
Bexar	$4,574,307,083	$2,281,000,929	$1,467,392,908	$625,602,778	20,396
Blanco	$4,918,104	$2,371,005	$1,483,369	$766,158	21
Borden	$0	$0	$0	$0	0
Bosque	$14,897,672	$7,540,425	$4,933,449	$2,136,603	71
Bowie	$322,975,095	$167,706,355	$110,166,064	$53,722,047	1,591
Brazoria	$207,872,818	$94,572,636	$60,595,297	$30,833,457	842
Brazos	$372,932,337	$183,083,052	$117,423,065	$53,473,568	1,679
Brewster	$15,795,440	$8,699,284	$5,709,458	$2,766,589	83
Briscoe	$396,280	$174,263	$106,078	$62,689	1
Brooks	$4,707,393	$2,333,072	$1,552,521	$861,628	23
Brown	$64,420,787	$34,773,152	$22,905,863	$12,594,887	352
Burleson	$5,406,503	$2,605,612	$1,678,884	$925,603	23
Burnet	$50,191,523	$24,127,381	$15,172,387	$7,504,212	215
Caldwell	$32,813,711	$15,448,379	$10,094,588	$4,803,698	143
Calhoun	$8,085,177	$3,143,992	$1,968,000	$939,400	26
Callahan	$3,045,384	$1,377,048	$864,638	$445,443	12
Cameron	$765,684,297	$392,581,436	$252,088,481	$120,997,340	3,703
Camp	$9,534,419	$4,677,053	$3,080,353	$1,414,505	45
Carson	$897,391	$336,595	$188,026	$65,852	2
Cass	$24,686,351	$12,104,538	$7,932,228	$4,419,025	116
Castro	$631,236	$295,701	$182,710	$115,125	3
Chambers	$9,579,192	$3,614,798	$2,193,293	$923,724	27
Cherokee	$48,827,517	$24,915,830	$16,474,734	$8,104,160	243
Childress	$4,346,129	$2,100,889	$1,358,497	$746,978	20
Clay	$12,383,902	$6,022,890	$3,972,219	$1,732,360	54
Cochran	$896,903	$392,799	$240,744	$110,047	3

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Coke	$276,593	$122,919	$77,097	$41,288	1
Coleman	$5,493,512	$2,632,959	$1,687,000	$840,910	24
Collin	$1,261,068,201	$633,937,810	$408,268,069	$188,136,789	5,651
Collingsworth	$2,634,102	$1,367,249	$887,343	$495,463	12
Colorado	$29,453,448	$14,648,505	$9,486,661	$4,993,420	143
Comal	$142,480,711	$70,302,267	$44,592,588	$22,156,227	659
Comanche	$10,648,596	$5,461,404	$3,565,382	$1,729,535	52
Concho	$1,482,257	$787,252	$538,456	$231,901	8
Cooke	$30,011,453	$13,739,976	$8,789,610	$4,337,537	119
Coryell	$24,682,077	$12,626,383	$8,164,623	$4,232,406	122
Cottle	$799,024	$426,631	$281,476	$129,186	4
Crane	$2,158,186	$1,039,876	$683,106	$282,893	9
Crockett	$634,860	$295,136	$182,007	$128,789	3
Crosby	$4,133,935	$2,077,428	$1,356,004	$507,681	19
Culberson	$1,208,770	$657,918	$426,108	$313,154	7
Dallam	$1,564,777	$817,066	$508,133	$245,169	7
Dallas	$9,892,241,129	$4,604,979,837	$2,856,293,985	$1,021,054,615	36,545
Dawson	$3,676,727	$1,689,708	$1,017,251	$610,643	14
Deaf Smith	$3,837,559	$1,835,241	$1,146,532	$519,064	16
Delta	$3,569,350	$1,872,870	$1,248,848	$397,565	17
Denton	$854,418,459	$409,507,691	$259,029,484	$112,576,905	3,570
DeWitt	$26,690,193	$13,201,871	$8,651,550	$4,226,806	126
Dickens	$299,734	$152,812	$98,867	$53,265	1
Dimmit	$3,936,507	$1,886,100	$1,239,622	$699,801	19
Donley	$1,730,186	$955,895	$636,804	$380,908	10
Duval	$4,423,655	$2,006,799	$1,288,340	$559,329	18
Eastland	$20,069,929	$9,156,781	$5,857,401	$3,239,049	85
Ector	$239,823,607	$110,547,127	$71,184,231	$33,071,954	979
Edwards	$485,878	$230,909	$136,106	$82,810	2
El Paso	$1,502,359,998	$735,658,121	$462,278,310	$200,821,184	6,454
Ellis	$100,883,548	$46,668,694	$29,254,236	$15,246,705	412
Erath	$43,754,744	$23,401,996	$15,557,171	$8,293,886	235
Falls	$12,433,974	$6,548,615	$4,330,572	$2,019,688	63
Fannin	$25,832,920	$13,227,888	$8,673,745	$4,230,829	127
Fayette	$41,723,877	$19,889,772	$12,650,465	$5,716,422	176
Fisher	$2,135,157	$1,119,428	$721,448	$400,022	11
Floyd	$1,859,118	$874,987	$538,978	$237,146	7
Foard	$567,513	$310,759	$211,540	$95,285	3
Fort Bend	$516,411,566	$224,522,304	$139,728,839	$63,092,508	1,833
Franklin	$25,053,296	$11,755,737	$7,469,248	$3,832,804	109

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Freestone	$12,336,549	$5,655,778	$3,530,004	$2,078,686	51
Frio	$17,995,316	$8,166,275	$5,095,309	$2,525,268	72
Gaines	$2,324,159	$988,252	$590,853	$322,574	8
Galveston	$317,109,257	$147,509,542	$93,961,215	$44,246,379	1,325
Garza	$2,064,892	$923,362	$570,874	$329,405	8
Gillespie	$67,332,575	$33,430,782	$21,618,736	$10,639,950	316
Glasscock	$25,819	$10,120	$5,805	$2,010	0
Goliad	$2,764,487	$1,331,480	$879,760	$526,496	13
Gonzales	$10,057,561	$5,004,067	$3,283,540	$1,655,043	48
Gray	$30,761,734	$13,292,489	$8,453,524	$4,379,817	119
Grayson	$273,003,181	$142,223,534	$93,613,955	$47,762,325	1,389
Gregg	$488,216,080	$239,904,454	$156,427,064	$70,816,297	2,170
Grimes	$10,417,120	$5,008,347	$3,270,066	$1,679,207	46
Guadalupe	$56,168,826	$27,217,162	$17,295,609	$9,815,979	250
Hale	$29,540,133	$15,689,418	$10,265,775	$6,172,996	158
Hall	$1,525,468	$756,492	$474,089	$253,333	7
Hamilton	$8,737,598	$4,370,937	$2,863,712	$1,575,848	43
Hansford	$406,558	$148,644	$84,172	$38,149	1
Hardeman	$1,887,577	$997,812	$640,347	$432,284	10
Hardin	$54,962,612	$25,861,351	$16,360,642	$8,841,101	232
Harris	$12,351,984,290	$5,322,173,923	$3,327,388,371	$1,067,611,593	41,484
Harrison	$76,014,151	$32,923,511	$21,184,066	$8,797,020	281
Hartley	$264,023	$128,276	$80,989	$41,369	1
Haskell	$4,190,656	$2,047,458	$1,354,766	$620,473	19
Hays	$131,204,318	$67,438,760	$43,303,967	$21,182,328	630
Hemphill	$1,355,861	$552,835	$332,343	$157,409	4
Henderson	$96,820,602	$46,467,259	$29,570,614	$14,098,081	425
Hidalgo	$1,272,116,038	$663,439,864	$434,277,534	$203,989,679	6,309
Hill	$32,504,984	$15,591,910	$9,863,248	$5,329,914	150
Hockley	$16,635,992	$7,706,521	$4,961,378	$2,646,599	71
Hood	$39,283,351	$18,975,163	$12,205,332	$6,138,207	178
Hopkins	$22,909,873	$11,664,855	$7,581,628	$4,306,880	109
Houston	$26,203,960	$12,573,884	$8,185,072	$3,081,222	109
Howard	$80,763,653	$36,351,318	$23,154,404	$11,154,547	323
Hudspeth	$0	$0	$0	$0	0
Hunt	$68,408,751	$34,655,702	$22,406,782	$12,400,023	332
Hutchinson	$8,125,642	$3,368,362	$2,091,092	$1,363,996	28
Irion	$326,679	$123,681	$70,177	$38,788	1
Jack	$3,848,000	$1,743,039	$1,097,465	$609,875	15
Jackson	$3,650,176	$1,656,537	$1,033,244	$595,276	14

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Jasper	$38,103,065	$19,501,171	$12,797,313	$6,766,797	191
Jeff Davis	$2,886,702	$1,433,795	$926,701	$477,421	14
Jefferson	$748,879,249	$368,575,568	$244,570,232	$112,737,471	3,440
Jim Hogg	$3,830,369	$1,746,093	$1,057,462	$723,320	15
Jim Wells	$73,179,988	$37,088,789	$23,950,906	$12,605,526	350
Johnson	$109,170,406	$54,276,023	$35,430,081	$17,019,637	510
Jones	$8,926,520	$4,246,909	$2,735,776	$1,236,166	39
Karnes	$10,334,632	$4,443,262	$2,770,482	$1,356,347	38
Kaufman	$71,962,779	$35,362,915	$22,913,377	$11,422,765	337
Kendall	$31,318,606	$14,088,303	$8,841,654	$4,560,539	125
Kenedy	$156,539	$62,479	$38,624	$29,159	1
Kent	$64,932	$28,316	$17,020	$8,824	0
Kerr	$125,117,523	$62,153,291	$39,610,969	$20,096,719	584
Kimble	$1,694,527	$724,935	$433,109	$247,919	6
King	$0	$0	$0	$0	0
Kinney	$634,527	$279,722	$166,115	$92,584	2
Kleberg	$46,714,321	$21,962,999	$14,099,639	$6,956,018	203
Knox	$1,852,236	$878,019	$562,067	$234,381	8
La Salle	$1,624,743	$807,310	$520,519	$308,254	8
Lamar	$116,754,581	$58,623,765	$38,465,006	$19,943,753	569
Lamb	$4,183,491	$1,942,472	$1,220,589	$647,344	17
Lampasas	$13,596,080	$7,047,207	$4,562,969	$2,405,699	69
Lavaca	$21,962,857	$11,500,611	$7,558,813	$3,696,726	110
Lee	$9,759,620	$4,503,071	$2,868,352	$1,414,912	39
Leon	$1,933,090	$968,134	$602,459	$388,765	9
Liberty	$87,759,109	$42,770,685	$27,962,984	$12,835,816	389
Limestone	$37,815,351	$18,331,582	$12,111,941	$6,390,046	176
Lipscomb	$79,903	$33,022	$19,417	$8,581	0
Live Oak	$3,978,142	$1,732,689	$1,089,878	$618,748	15
Llano	$12,571,319	$6,203,706	$3,939,401	$2,019,051	58
Loving	$0	$0	$0	$0	0
Lubbock	$812,240,961	$420,914,516	$271,607,174	$122,200,260	3,847
Lynn	$592,943	$284,415	$174,575	$63,476	2
Madison	$11,203,297	$5,698,520	$3,630,044	$2,171,078	56
Marion	$7,285,648	$3,572,555	$2,327,617	$1,229,937	35
Martin	$2,901,224	$1,271,180	$807,720	$351,482	11
Mason	$4,034,636	$1,876,425	$1,168,122	$583,611	17
Matagorda	$22,462,952	$9,684,844	$6,151,008	$3,524,525	86
Maverick	$52,679,687	$26,648,859	$17,090,490	$9,238,107	260
McCulloch	$6,172,009	$3,151,948	$2,064,153	$1,047,952	30

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
McLennan	$541,904,013	$264,511,246	$167,295,152	$76,613,632	2,397
McMullen	$32,265	$12,878	$7,620	$3,149	0
Medina	$17,563,834	$8,405,427	$5,277,341	$2,749,650	77
Menard	$420,583	$199,013	$122,230	$76,294	2
Midland	$183,702,202	$85,916,552	$53,799,622	$25,454,830	718
Milam	$12,204,435	$5,893,838	$3,867,603	$2,003,170	54
Mills	$5,230,000	$3,132,555	$2,122,560	$1,131,357	32
Mitchell	$2,863,258	$1,398,584	$903,585	$460,817	13
Montague	$14,190,465	$6,584,378	$4,142,305	$2,106,544	60
Montgomery	$665,648,395	$299,960,648	$191,114,447	$77,552,662	2,559
Moore	$9,456,486	$3,758,247	$2,283,121	$1,156,256	29
Morris	$5,017,081	$2,160,857	$1,388,371	$531,998	18
Motley	$297,926	$134,389	$80,962	$43,742	1
Nacogdoches	$108,509,505	$57,420,990	$38,276,569	$20,115,478	582
Navarro	$64,840,194	$32,012,880	$20,850,784	$9,466,732	299
Newton	$2,935,641	$1,770,329	$1,220,036	$710,698	18
Nolan	$14,445,075	$7,016,818	$4,437,275	$2,257,257	62
Nueces	$1,230,592,499	$549,587,682	$348,915,886	$152,325,320	4,748
Ochiltree	$2,859,305	$1,191,658	$734,393	$360,121	9
Oldham	$2,164,440	$1,121,144	$729,922	$607,190	12
Orange	$63,140,673	$30,231,732	$19,832,252	$10,205,927	282
Palo Pinto	$18,512,258	$8,433,354	$5,221,226	$2,695,615	74
Panola	$19,964,261	$9,299,927	$6,054,894	$2,879,958	83
Parker	$73,257,991	$33,807,566	$20,955,029	$10,769,719	292
Parmer	$1,153,432	$495,412	$313,706	$89,478	4
Pecos	$6,507,045	$2,964,167	$1,861,725	$1,089,389	27
Polk	$26,133,646	$12,638,292	$8,059,838	$4,357,276	115
Potter	$641,502,675	$312,748,075	$200,631,871	$89,910,560	2,783
Presidio	$293,057	$138,874	$85,825	$51,096	1
Rains	$3,213,546	$1,435,379	$859,819	$554,205	12
Randall	$90,284,703	$45,012,688	$28,664,103	$13,803,064	404
Reagan	$228,332	$103,856	$61,570	$42,741	1
Real	$3,135,405	$1,367,042	$846,858	$431,584	12
Red River	$13,656,195	$6,582,927	$4,203,474	$2,080,101	62
Reeves	$4,471,896	$2,050,800	$1,288,373	$842,030	19
Refugio	$2,253,043	$1,000,224	$597,688	$473,300	9
Roberts	$36,104	$13,894	$8,095	$6,475	0
Robertson	$10,375,175	$5,152,591	$3,343,344	$1,953,397	50
Rockwall	$95,984,586	$48,944,643	$31,785,638	$15,161,992	457
Runnels	$5,830,144	$2,450,066	$1,494,916	$757,977	21

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Rusk	$40,647,026	$18,502,317	$11,996,327	$5,457,958	164
Sabine	$3,448,352	$1,682,118	$1,131,616	$579,452	16
San Augustine	$11,326,248	$5,291,134	$3,367,252	$1,611,055	48
San Jacinto	$3,790,633	$1,865,588	$1,193,168	$641,986	17
San Patricio	$35,367,804	$15,668,329	$10,108,964	$5,342,494	145
San Saba	$2,736,957	$1,456,537	$935,799	$531,256	14
Schleicher	$912,659	$429,929	$282,501	$89,032	4
Scurry	$4,558,376	$2,255,930	$1,384,981	$880,120	20
Shackelford	$571,174	$254,047	$157,857	$84,736	2
Shelby	$10,796,502	$5,847,523	$3,966,684	$2,047,070	59
Sherman	$36,209	$15,767	$9,588	$4,512	0
Smith	$1,071,280,626	$497,017,998	$310,398,421	$143,651,005	4,345
Somervell	$6,810,737	$3,214,762	$2,144,706	$680,401	30
Starr	$40,708,112	$21,688,729	$14,621,688	$8,425,055	225
Stephens	$6,698,619	$3,315,306	$2,112,409	$1,343,552	31
Sterling	$127,974	$65,583	$42,232	$30,377	1
Stonewall	$232,439	$117,863	$76,825	$45,878	1
Sutton	$1,258,708	$597,386	$371,760	$232,941	5
Swisher	$1,124,451	$513,919	$315,228	$163,704	4
Tarrant	$4,608,630,574	$2,206,219,344	$1,403,588,091	$590,384,804	19,146
Taylor	$498,554,808	$235,592,549	$149,077,154	$66,398,407	2,064
Terrell	$531,062	$277,679	$182,701	$90,861	2
Terry	$6,996,263	$3,187,286	$1,891,614	$1,301,060	27
Throckmorton	$415,518	$191,595	$117,455	$62,419	2
Titus	$33,975,794	$16,434,870	$10,803,279	$6,326,510	162
Tom Green	$328,317,654	$154,178,022	$96,184,020	$45,556,250	1,380
Travis	$2,324,448,176	$1,215,119,740	$781,858,166	$334,675,108	10,794
Trinity	$5,362,765	$2,839,377	$1,851,673	$966,891	27
Tyler	$7,524,529	$3,909,650	$2,558,075	$1,309,751	37
Upshur	$20,475,925	$9,829,950	$6,222,896	$3,266,487	87
Upton	$534,318	$242,246	$149,479	$71,707	2
Uvalde	$28,481,790	$14,616,586	$9,511,863	$4,637,812	139
Val Verde	$48,793,840	$27,488,235	$18,220,067	$8,915,434	269
Van Zandt	$37,363,350	$19,935,790	$13,145,254	$6,864,326	196
Victoria	$296,107,738	$134,735,788	$86,493,499	$39,405,724	1,179
Walker	$58,717,431	$30,749,496	$20,087,971	$10,316,017	299
Waller	$20,279,660	$8,678,934	$5,181,516	$3,054,825	73
Ward	$4,111,860	$1,939,055	$1,216,255	$741,378	17
Washington	$46,999,978	$23,634,907	$15,426,233	$7,376,085	221
Webb	$285,529,785	$139,558,426	$89,037,343	$46,000,153	1,287

Table 9 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Wharton	$53,572,217	$25,724,874	$16,685,622	$8,496,829	241
Wheeler	$2,659,894	$1,312,383	$848,177	$499,225	13
Wichita	$366,330,577	$183,367,810	$118,613,973	$57,831,823	1,688
Wilbarger	$10,438,736	$4,937,757	$3,204,952	$1,659,701	46
Willacy	$10,664,050	$5,740,713	$3,684,866	$2,118,938	56
Williamson	$271,799,759	$142,580,009	$93,448,246	$45,107,042	1,304
Wilson	$16,538,590	$8,128,345	$5,249,818	$2,673,216	78
Winkler	$1,283,526	$592,459	$373,245	$214,417	5
Wise	$43,939,900	$20,811,499	$13,150,911	$7,127,784	181
Wood	$37,483,311	$17,774,944	$11,360,195	$5,465,292	163
Yoakum	$743,768	$329,941	$203,103	$126,324	3
Young	$15,389,990	$7,181,065	$4,522,882	$2,489,885	63
Zapata	$4,303,064	$2,062,266	$1,330,832	$788,274	20
Zavala	$6,912,436	$4,011,538	$2,784,969	$1,660,218	45
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 10
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas Metropolitan Statistical Area (MSA) Results

MSA	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Abilene	$510,526,711	$241,216,506	$152,677,568	$68,080,015	2,114
Amarillo	$734,539,845	$358,974,274	$230,058,953	$103,974,842	3,197
Austin-Round Rock	$2,789,387,971	$1,454,838,285	$937,773,820	$410,451,625	13,001
Beaumont-Port Arthur	$866,982,534	$424,668,651	$280,763,126	$131,784,498	3,954
Brownsville-Harlingen	$765,684,297	$392,581,436	$252,088,481	$120,997,340	3,703
College Station-Bryan	$388,714,015	$190,841,255	$122,445,293	$56,352,567	1,752
Corpus Christi	$1,283,996,436	$573,006,414	$363,772,100	$160,162,966	4,959
Dallas-Plano-Irving MD*	$12,348,536,802	$5,815,930,162	$3,631,200,419	$1,376,397,358	47,321
Fort Worth-Arlington MD*	$4,834,998,872	$2,315,114,433	$1,473,124,112	$625,301,943	20,129
El Paso	$1,502,359,998	$735,658,121	$462,278,310	$200,821,184	6,454
Houston-Sugar Land-Baytown	$14,194,917,845	$6,152,396,658	$3,853,558,270	$1,302,571,055	48,604
Killeen-Temple-Fort Hood	$558,315,223	$299,524,767	$197,209,142	$94,293,454	2,871
Laredo	$285,529,785	$139,558,426	$89,037,343	$46,000,153	1,287
Longview	$549,339,030	$268,236,722	$174,646,287	$79,540,742	2,422
Lubbock	$816,374,897	$422,991,944	$272,963,178	$122,707,941	3,866
McAllen-Edinburg-Mission	$1,272,116,038	$663,439,864	$434,277,534	$203,989,679	6,309
Midland	$183,702,202	$85,916,552	$53,799,622	$25,454,830	718
Odessa	$239,823,607	$110,547,127	$71,184,231	$33,071,954	979
San Angelo	$328,644,333	$154,301,703	$96,254,197	$45,595,038	1,381
San Antonio	$4,898,199,471	$2,436,060,841	$1,565,769,402	$675,543,461	21,821
Sherman-Denison	$273,003,181	$142,223,534	$93,613,955	$47,762,325	1,389
Texarkana	$322,975,095	$167,706,355	$110,166,064	$53,722,047	1,591
Tyler	$1,071,280,626	$497,017,998	$310,398,421	$143,651,005	4,345
Victoria	$306,957,403	$139,211,260	$89,341,259	$40,871,620	1,218
Waco	$541,904,013	$264,511,246	$167,295,152	$76,613,632	2,397
Wichita Falls	$380,534,850	$190,232,326	$123,106,636	$59,854,048	1,749
Rural Area	$3,033,271,430	$1,499,144,980	$971,277,498	$494,740,525	14,127
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

***Metropolitan Division**
SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 11
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Comptroller's Economic Region Results

Economic Region	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
High Plains	$1,693,446,682	$848,473,103	$545,272,756	$250,353,430	7,668
Northwest Texas	$1,089,078,009	$529,979,440	$339,355,868	$162,052,313	4,796
Metroplex	$17,682,015,162	$8,384,401,278	$5,270,132,212	$2,084,907,268	69,882
Upper East Texas	$2,639,403,831	$1,273,515,923	$816,437,967	$386,191,839	11,545
Southeast Texas	$1,337,515,536	$664,547,354	$438,005,468	$211,361,785	6,265
Gulf Coast	$14,355,333,260	$6,231,338,789	$3,904,776,364	$1,329,259,859	49,355
Capital	$2,908,552,413	$1,511,933,219	$973,887,795	$427,872,381	13,510
Central Texas	$1,698,384,256	$858,709,351	$554,437,276	$262,071,357	8,005
Alamo	$5,118,979,517	$2,544,254,451	$1,634,864,898	$710,161,745	22,832
Coastal Bend	$1,824,738,259	$827,393,237	$527,697,958	$239,255,558	7,261
South Texas Border	$2,529,520,527	$1,304,153,828	$846,614,813	$409,109,365	12,371
West Texas	$883,105,089	$410,563,873	$259,170,592	$123,281,506	3,609
Upper Rio Grande	$1,522,543,968	$746,587,992	$469,426,403	$204,429,443	6,559
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 12
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Council of Governments (COG) Results

COG	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Panhandle	$811,689,623	$393,223,122	$251,662,907	$115,669,854	3,498
South Plains	$881,757,059	$455,249,981	$293,609,849	$134,683,576	4,170
North Texas	$434,060,888	$215,665,209	$139,322,049	$68,411,462	1,981
North Central Texas	$17,353,167,608	$8,215,209,880	$5,159,054,902	$2,028,576,576	68,248
North East Texas	$568,597,615	$288,906,774	$189,258,145	$95,560,683	2,753
East Texas	$2,070,806,217	$984,609,149	$627,179,822	$290,631,156	8,792
West Central Texas	$655,017,121	$314,314,231	$200,033,819	$93,640,851	2,816
Upper Rio Grande	$1,522,543,968	$746,587,992	$469,426,403	$204,429,443	6,559
Permian Basin	$537,217,618	$247,907,787	$157,573,158	$74,933,624	2,151
Concho Valley	$345,887,470	$162,656,086	$101,597,434	$48,347,883	1,457
Heart of Texas	$651,892,543	$318,179,555	$202,064,365	$94,568,569	2,907
Capital	$2,908,552,413	$1,511,933,219	$973,887,795	$427,872,381	13,510
Brazos Valley	$459,267,500	$226,151,162	$145,374,095	$67,967,703	2,083
Deep East Texas	$470,533,002	$239,878,703	$157,242,342	$79,577,287	2,312
South East Texas	$866,982,534	$424,668,651	$280,763,126	$131,784,498	3,954
Gulf Coast	$14,355,333,260	$6,231,338,789	$3,904,776,364	$1,329,259,859	49,355
Golden Crescent	$369,318,190	$170,574,345	$109,868,405	$51,045,471	1,516
Alamo	$5,118,979,517	$2,544,254,451	$1,634,864,898	$710,161,745	22,832
South Texas	$334,371,331	$165,055,514	$106,047,325	$55,936,802	1,547
Coastal Bend	$1,455,420,069	$656,818,891	$417,829,553	$188,210,086	5,745
Lower Rio Grande Valley	$2,048,464,384	$1,061,762,013	$690,050,880	$327,105,958	10,067
Texoma	$328,847,554	$169,191,398	$111,077,310	$56,330,692	1,634
Central Texas	$587,224,213	$314,378,634	$206,998,816	$99,535,084	3,015
Middle Rio Grande	$146,684,812	$77,336,300	$50,516,608	$26,066,605	756
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 13
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Texas Senate District Results

Senate District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$1,878,143,545	$907,111,978	$583,476,183	$275,520,923	8,237
2	$2,072,024,562	$978,006,576	$612,071,695	$242,756,434	8,113
3	$1,237,063,356	$600,622,212	$387,098,042	$184,328,782	5,518
4	$1,480,438,625	$688,063,583	$445,153,349	$186,231,158	6,024
5	$846,467,391	$425,643,290	$275,898,724	$131,949,603	3,922
6	$2,346,877,015	$1,011,213,045	$632,203,790	$202,846,203	7,882
7	$2,470,396,858	$1,064,434,785	$665,477,674	$213,522,319	8,297
8	$2,196,267,238	$1,063,190,321	$672,559,219	$277,129,519	8,977
9	$2,262,932,856	$1,067,708,851	$669,644,233	$261,580,752	8,859
10	$2,258,228,981	$1,081,047,479	$687,758,165	$289,288,554	9,381
11	$1,518,417,514	$666,796,704	$419,324,882	$154,044,547	5,416
12	$1,961,518,850	$939,153,465	$597,036,439	$252,215,449	8,155
13	$2,213,447,874	$954,164,474	$596,396,368	$195,374,323	7,456
14	$1,999,025,431	$1,045,002,976	$672,398,023	$287,820,593	9,283
15	$2,470,396,858	$1,064,434,785	$665,477,674	$213,522,319	8,297
16	$2,997,648,827	$1,395,448,435	$865,543,632	$309,410,489	11,074
17	$1,958,631,652	$858,542,409	$540,536,723	$193,876,645	6,914
18	$897,411,001	$412,313,552	$262,883,542	$124,940,132	3,627
19	$1,385,630,087	$693,479,163	$445,795,136	$196,395,610	6,256
20	$2,008,143,700	$953,901,468	$613,271,956	$277,986,798	8,592
21	$936,106,267	$458,523,956	$294,808,788	$140,807,584	4,195
22	$947,410,956	$461,966,101	$294,472,183	$138,883,924	4,231
23	$3,097,570,454	$1,441,963,383	$894,395,086	$319,724,172	11,443
24	$1,468,778,259	$742,492,788	$480,093,676	$229,823,492	6,910
25	$1,647,199,693	$828,173,451	$531,646,472	$235,946,172	7,459
26	$2,104,181,258	$1,049,260,428	$675,000,738	$287,777,278	9,382
27	$1,395,671,424	$718,895,566	$465,336,499	$221,896,812	6,800
28	$1,311,643,437	$656,908,184	$420,037,023	$195,832,829	5,979
29	$1,412,218,398	$691,518,634	$434,541,612	$188,771,913	6,067
30	$1,220,583,611	$605,115,415	$389,778,179	$190,037,327	5,537
31	$1,282,140,528	$610,754,382	$389,964,669	$180,065,195	5,375
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 14
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$359,964,176	$185,544,305	$121,814,280	$59,903,007	1,760
2	$108,985,647	$56,026,872	$36,411,855	$19,818,553	540
3	$215,919,088	$106,935,024	$69,771,482	$36,887,613	1,028
4	$168,783,381	$81,830,174	$52,483,991	$25,520,846	763
5	$143,507,805	$65,205,458	$41,847,510	$18,943,303	576
6	$878,450,113	$407,554,758	$254,526,705	$117,793,824	3,563
7	$681,046,592	$329,367,694	$212,298,779	$96,673,478	2,953
8	$228,671,848	$114,352,420	$74,570,297	$35,967,390	1,068
9	$172,183,671	$89,742,936	$59,539,435	$31,119,850	896
10	$133,388,532	$62,260,604	$39,117,484	$20,576,619	562
11	$135,642,765	$65,291,958	$42,711,027	$19,523,297	600
12	$243,076,084	$123,153,262	$80,237,962	$40,308,241	1,174
13	$130,617,455	$66,120,350	$43,023,412	$21,149,414	620
14	$346,827,074	$170,267,238	$109,203,451	$49,730,418	1,561
15	$299,541,778	$134,982,291	$86,001,501	$34,898,698	1,151
16	$306,198,262	$137,981,898	$87,912,646	$35,674,224	1,177
17	$141,570,719	$68,714,171	$43,972,828	$21,476,955	629
18	$173,801,111	$82,405,435	$53,223,121	$24,172,831	734
19	$110,936,418	$53,026,335	$34,239,770	$18,124,777	487
20	$134,514,326	$70,054,842	$45,919,313	$22,301,339	641
21	$396,906,002	$195,345,051	$129,622,223	$59,750,860	1,823
22	$362,075,755	$178,067,594	$118,121,169	$54,619,560	1,662
23	$155,449,450	$71,469,188	$45,415,452	$21,277,059	636
24	$171,238,999	$79,655,153	$50,739,056	$23,893,045	716
25	$118,487,506	$53,906,403	$34,539,319	$17,575,070	480
26	$209,632,418	$91,142,718	$56,721,608	$25,611,810	744
27	$209,632,418	$91,142,718	$56,721,608	$25,611,810	744
28	$170,998,607	$76,640,677	$48,152,761	$23,420,541	659
29	$111,848,264	$50,351,078	$32,206,986	$16,782,911	448
30	$350,664,007	$162,095,031	$104,334,794	$48,397,832	1,438
31	$135,093,767	$67,625,322	$43,952,063	$23,572,704	650
32	$198,221,615	$87,628,022	$55,592,645	$25,702,081	764
33	$546,929,999	$244,261,192	$155,073,727	$67,700,142	2,110
34	$546,929,999	$244,261,192	$155,073,727	$67,700,142	2,110
35	$179,192,724	$85,923,931	$55,239,225	$27,929,974	790
36	$321,241,424	$167,535,319	$109,666,044	$51,512,545	1,593
37	$303,241,306	$155,477,797	$99,837,022	$47,919,739	1,466
38	$303,241,306	$155,477,797	$99,837,022	$47,919,739	1,466
39	$321,241,424	$167,535,319	$109,666,044	$51,512,545	1,593
40	$321,241,424	$167,535,319	$109,666,044	$51,512,545	1,593

Table 14 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
41	$308,391,767	$160,833,906	$105,279,402	$49,452,044	1,529
42	$199,870,850	$97,690,898	$62,326,140	$32,200,107	901
43	$225,274,358	$113,471,199	$72,847,548	$35,846,926	1,067
44	$82,764,976	$40,349,574	$25,828,967	$14,144,239	376
45	$168,936,134	$85,258,143	$54,881,925	$26,752,185	794
46	$395,156,190	$206,570,356	$132,915,888	$56,894,768	1,835
47	$395,156,190	$206,570,356	$132,915,888	$56,894,768	1,835
48	$371,911,708	$194,419,158	$125,097,307	$53,548,017	1,727
49	$395,156,190	$206,570,356	$132,915,888	$56,894,768	1,835
50	$371,911,708	$194,419,158	$125,097,307	$53,548,017	1,727
51	$395,156,190	$206,570,356	$132,915,888	$56,894,768	1,835
52	$149,489,867	$78,419,005	$51,396,535	$24,808,873	717
53	$174,540,483	$85,702,673	$54,541,918	$27,761,378	798
54	$266,602,059	$140,316,548	$91,683,161	$44,095,497	1,329
55	$317,222,610	$170,709,218	$112,533,745	$53,469,763	1,635
56	$346,818,568	$169,287,197	$107,068,897	$49,032,725	1,534
57	$231,030,980	$113,591,908	$72,132,674	$34,113,836	1,040
58	$124,068,079	$61,816,448	$40,363,530	$19,156,239	581
59	$99,863,752	$52,208,036	$34,418,155	$17,643,433	513
60	$149,556,119	$74,907,804	$48,460,088	$26,096,045	721
61	$117,197,891	$54,619,065	$34,105,940	$17,897,503	473
62	$298,836,101	$155,451,422	$102,287,700	$51,993,155	1,516
63	$281,958,092	$135,137,538	$85,479,730	$37,150,379	1,178
64	$290,502,276	$139,232,615	$88,070,025	$38,276,148	1,214
65	$281,958,092	$135,137,538	$85,479,730	$37,150,379	1,178
66	$340,488,414	$171,163,209	$110,232,379	$50,796,933	1,526
67	$340,488,414	$171,163,209	$110,232,379	$50,796,933	1,526
68	$102,977,464	$48,600,024	$31,191,360	$15,641,591	435
69	$368,150,948	$184,209,435	$119,134,416	$58,121,688	1,695
70	$340,488,414	$171,163,209	$110,232,379	$50,796,933	1,526
71	$512,999,883	$242,609,366	$153,514,430	$68,655,663	2,126
72	$336,015,881	$157,955,454	$98,549,684	$46,938,475	1,414
73	$248,028,791	$121,037,474	$77,064,119	$38,462,343	1,130
74	$113,567,341	$60,497,302	$39,565,182	$20,007,973	580
75	$300,472,000	$147,131,624	$92,455,662	$40,164,237	1,291
76	$300,472,000	$147,131,624	$92,455,662	$40,164,237	1,291
77	$300,472,000	$147,131,624	$92,455,662	$40,164,237	1,291
78	$300,472,000	$147,131,624	$92,455,662	$40,164,237	1,291
79	$300,472,000	$147,131,624	$92,455,662	$40,164,237	1,291
80	$101,347,049	$50,205,230	$32,174,365	$17,273,882	483

Table 14 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
81	$245,509,466	$113,166,835	$72,815,864	$33,919,280	1,001
82	$192,972,657	$90,159,561	$56,457,177	$26,771,555	754
83	$345,497,207	$177,783,319	$114,638,948	$52,085,648	1,623
84	$487,344,577	$252,548,710	$162,964,304	$73,320,156	2,308
85	$138,018,791	$65,203,969	$41,683,077	$21,571,117	597
86	$98,115,502	$48,914,416	$31,129,679	$15,215,856	439
87	$651,892,761	$316,858,684	$203,112,606	$91,137,180	2,815
88	$67,135,849	$30,032,130	$19,040,424	$10,208,392	266
89	$335,587,544	$169,392,827	$109,356,571	$50,907,982	1,530
90	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
91	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
92	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
93	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
94	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
95	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
96	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
97	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
98	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
99	$460,863,057	$220,621,934	$140,358,809	$59,038,480	1,915
100	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
101	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
102	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
103	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
104	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
105	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
106	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
107	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
108	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
109	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
110	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
111	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
112	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
113	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
114	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
115	$618,265,071	$287,811,240	$178,518,374	$63,815,913	2,284
116	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
117	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
118	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
119	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
120	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040

Table 14 (continued)
The Annual Impact of Recent (2003) Reforms Related to Non-Economic Damages in Medical Malpractice Litigation on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
121	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
122	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
123	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
124	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
125	$457,430,708	$228,100,093	$146,739,291	$62,560,278	2,040
126	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
127	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
128	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
129	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
130	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
131	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
132	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
133	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
134	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
135	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
136	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
137	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
138	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
139	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
140	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
141	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
142	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
143	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
144	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
145	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
146	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
147	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
148	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
149	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
150	$494,079,372	$212,886,957	$133,095,535	$42,704,464	1,659
TOTAL STATE IMPACT	**$55,282,616,509**	**$26,135,851,837**	**$16,580,080,370**	**$6,800,307,849**	**223,659**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Total Impact of Lawsuit Reform Since 1995

Table 15
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Detailed Industrial Category

Category	Total Expenditures	Gross Product	Personal Income	Employment (Permanent Jobs)
Agricultural Products & Services	$1,657,641,303	$454,264,710	$309,379,553	4,256
Forestry & Fishery Products	$68,860,648	$40,491,210	$15,017,452	163
Coal Mining	$223,957,314	$64,491,477	$67,958,898	406
Crude Petroleum & Natural Gas	$6,258,973,184	$1,371,626,572	$632,592,510	2,096
Miscellaneous Mining	$229,972,027	$91,409,066	$53,734,235	585
New Construction	$1,458,906,344	$638,242,839	$525,951,844	6,969
Maintenance & Repair Construction	$2,578,870,709	$1,382,536,578	$1,139,296,225	13,904
Food Products & Tobacco	$3,286,277,265	$839,710,595	$428,964,317	6,420
Textile Mill Products	$113,624,564	$26,912,483	$22,770,494	523
Apparel	$797,092,670	$441,492,194	$223,710,825	5,891
Paper & Allied Products	$730,064,411	$327,439,616	$148,033,049	2,092
Printing & Publishing	$928,310,098	$463,337,544	$302,430,922	4,536
Chemicals & Petroleum Refining	$15,470,168,558	$4,214,306,157	$1,978,861,438	15,313
Rubber & Leather Products	$1,467,117,251	$618,143,483	$361,363,810	7,411
Lumber Products & Furniture	$341,306,638	$118,763,636	$84,671,930	1,449
Stone, Clay, & Glass Products	$1,265,577,882	$649,715,569	$339,803,959	5,688
Primary Metal	$920,624,189	$257,415,616	$191,607,577	2,776
Fabricated Metal Products	$2,555,042,215	$1,005,941,351	$649,437,030	11,468
Machinery, Except Electrical	$2,471,553,281	$1,004,643,846	$717,721,719	7,985
Electric & Electronic Equipment	$2,211,257,364	$1,296,847,898	$775,299,767	6,782
Motor Vehicles & Equipment	$1,394,762,712	$350,050,625	$227,415,833	3,392
Transp. Equip., Exc. Motor Vehicles	$840,259,125	$427,175,496	$279,144,043	3,527
Instruments & Related Products	$435,678,539	$190,968,252	$145,153,318	1,949
Miscellaneous Manufacturing	$536,216,290	$209,312,035	$144,364,910	2,345
Transportation	$3,673,968,483	$2,408,465,421	$1,592,873,051	20,267
Communication	$2,334,144,557	$1,437,464,435	$613,699,734	4,930
Electric, Gas, Water, Sanitary Services	$6,050,218,849	$1,350,672,241	$589,397,356	2,171
Wholesale Trade	$4,216,376,493	$2,852,699,455	$1,644,891,922	16,686
Retail Trade	$8,560,099,742	$7,093,250,528	$4,241,536,990	102,974
Finance	$1,960,614,890	$1,082,338,534	$630,248,906	4,867
Insurance	$1,876,217,434	$1,179,588,502	$705,204,438	7,711
Real Estate	$12,084,660,843	$2,541,887,706	$409,553,278	2,939
Hotels, Lodging Places, Amusements	$1,102,376,979	$565,272,316	$370,838,210	7,990
Personal Services	$1,767,763,420	$1,084,983,166	$844,134,445	13,399
Business Services	$6,390,224,136	$4,237,481,232	$3,456,698,904	39,675
Eating & Drinking Places	$4,111,596,955	$2,407,772,602	$1,281,063,546	53,707
Health Services	$7,268,389,903	$5,113,458,655	$4,323,476,664	73,488
Miscellaneous Services	$2,734,614,356	$1,184,500,848	$1,026,863,528	22,018
Households	$126,190,402	$126,190,402	$123,520,217	8,096
Total	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**498,845**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 16
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Anderson	$135,027,099	$69,408,046	$44,989,869	$22,178,649	690
Andrews	$9,025,604	$4,323,685	$2,674,809	$1,381,321	44
Angelina	$292,302,860	$143,691,765	$92,531,926	$46,401,800	1,449
Aransas	$34,310,119	$14,487,092	$8,624,020	$4,670,816	141
Archer	$2,643,977	$1,244,608	$769,784	$462,625	13
Armstrong	$3,083,042	$1,463,060	$946,365	$381,077	15
Atascosa	$68,051,109	$30,082,893	$18,844,650	$8,809,914	276
Austin	$63,263,431	$27,814,062	$16,862,452	$6,550,615	276
Bailey	$2,773,744	$1,375,639	$850,548	$559,752	15
Bandera	$15,084,988	$6,958,109	$4,280,912	$2,705,464	79
Bastrop	$55,729,792	$26,953,520	$16,938,369	$9,467,641	301
Baylor	$7,523,519	$3,814,018	$2,466,462	$1,261,240	38
Bee	$42,609,800	$20,889,351	$13,481,121	$7,298,876	213
Bell	$735,794,696	$387,300,129	$251,874,116	$124,513,662	4,099
Bexar	$7,377,931,289	$3,601,884,124	$2,275,988,138	$1,023,399,723	36,667
Blanco	$9,999,951	$4,770,178	$2,946,200	$1,756,468	54
Borden	$109,313	$52,136	$31,571	$18,320	1
Bosque	$18,756,738	$9,346,733	$6,070,224	$2,705,649	94
Bowie	$381,885,872	$194,862,349	$126,959,215	$62,529,546	1,932
Brazoria	$479,303,612	$208,719,983	$128,601,160	$61,963,586	2,109
Brazos	$565,544,211	$272,299,161	$172,692,037	$82,269,951	2,837
Brewster	$20,665,842	$11,274,598	$7,313,879	$3,746,574	117
Briscoe	$592,860	$255,660	$152,453	$86,350	2
Brooks	$5,546,579	$2,761,007	$1,824,908	$1,086,059	30
Brown	$73,040,217	$39,104,539	$25,619,418	$14,291,735	412
Burleson	$9,852,308	$4,779,010	$3,062,297	$1,799,272	53
Burnet	$83,976,192	$39,589,272	$24,606,746	$12,608,940	405
Caldwell	$38,326,517	$17,967,224	$11,696,920	$5,776,081	178
Calhoun	$22,018,639	$8,255,337	$4,876,584	$2,109,447	76
Callahan	$4,695,004	$2,130,981	$1,328,877	$757,468	22
Cameron	$917,384,895	$464,645,913	$296,400,324	$143,216,125	4,621
Camp	$12,084,164	$5,865,859	$3,827,340	$1,880,212	61
Carson	$2,387,015	$917,012	$534,439	$192,037	9
Cass	$30,137,703	$14,631,422	$9,487,515	$5,398,189	149
Castro	$1,420,729	$641,033	$385,515	$231,624	7
Chambers	$55,350,806	$20,914,601	$12,156,045	$4,521,432	204
Cherokee	$62,237,001	$31,158,787	$20,370,210	$10,163,164	323
Childress	$5,448,010	$2,624,618	$1,679,386	$987,634	28
Clay	$16,001,507	$7,756,557	$5,091,763	$2,320,136	77
Cochran	$968,299	$427,711	$262,704	$121,220	4

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Coke	$447,528	$198,376	$122,852	$72,544	2
Coleman	$7,875,083	$3,749,366	$2,379,595	$1,282,397	39
Collin	$2,559,660,961	$1,246,001,383	$791,089,801	$373,940,465	13,187
Collingsworth	$3,496,880	$1,822,035	$1,174,423	$703,114	19
Colorado	$34,008,548	$16,879,631	$10,870,486	$5,905,219	174
Comal	$199,011,732	$96,707,595	$60,771,983	$30,964,520	1,006
Comanche	$14,544,438	$7,362,341	$4,740,694	$2,438,877	76
Concho	$1,630,326	$863,378	$588,472	$263,534	9
Cooke	$52,733,853	$23,515,118	$14,784,452	$7,153,477	235
Coryell	$51,966,716	$25,623,452	$16,277,897	$9,369,698	305
Cottle	$1,332,576	$714,848	$464,489	$227,753	7
Crane	$2,687,010	$1,304,869	$853,342	$384,645	13
Crockett	$1,179,466	$569,545	$350,971	$281,511	7
Crosby	$4,368,718	$2,196,581	$1,431,647	$545,108	21
Culberson	$1,317,805	$719,197	$464,468	$347,079	8
Dallam	$4,385,368	$2,288,208	$1,416,868	$667,217	25
Dallas	$23,555,936,511	$10,801,254,337	$6,585,094,526	$2,378,255,112	104,224
Dawson	$5,668,729	$2,646,177	$1,602,107	$1,008,647	27
Deaf Smith	$6,522,933	$3,068,935	$1,899,980	$888,555	31
Delta	$5,900,615	$3,023,801	$1,986,585	$686,436	31
Denton	$1,504,772,345	$693,598,906	$427,580,854	$181,676,129	6,680
DeWitt	$32,520,786	$16,002,159	$10,418,033	$5,296,882	164
Dickens	$498,743	$254,560	$163,354	$99,113	3
Dimmit	$4,736,938	$2,280,939	$1,489,877	$907,213	24
Donley	$2,404,768	$1,322,206	$869,015	$562,563	15
Duval	$4,916,162	$2,230,886	$1,425,916	$647,198	21
Eastland	$24,175,172	$11,022,890	$7,026,773	$3,991,994	111
Ector	$341,683,811	$154,417,518	$97,305,519	$45,222,318	1,467
Edwards	$735,606	$355,433	$210,768	$139,770	4
El Paso	$2,015,597,083	$970,189,218	$604,319,963	$264,091,670	9,251
Ellis	$173,069,841	$76,897,979	$47,074,097	$22,668,657	741
Erath	$61,613,453	$32,097,243	$21,040,134	$11,368,069	352
Falls	$14,182,843	$7,424,361	$4,880,958	$2,340,412	75
Fannin	$33,070,240	$16,772,487	$10,891,032	$5,402,128	172
Fayette	$56,334,704	$26,666,188	$16,807,152	$7,786,679	261
Fisher	$2,634,804	$1,379,912	$881,656	$521,621	15
Floyd	$2,244,076	$1,051,301	$648,998	$290,843	10
Foard	$753,478	$411,765	$276,869	$136,549	5
Fort Bend	$1,154,496,274	$495,358,204	$301,557,581	$131,580,776	4,782
Franklin	$28,701,784	$13,471,855	$8,517,203	$4,573,338	132

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Freestone	$15,710,023	$7,240,419	$4,499,619	$2,799,974	72
Frio	$20,628,507	$9,347,809	$5,795,034	$2,968,731	87
Gaines	$4,140,963	$1,779,959	$1,070,815	$611,467	18
Galveston	$596,675,946	$265,446,874	$163,469,823	$77,775,897	2,639
Garza	$3,475,859	$1,565,624	$967,892	$610,383	16
Gillespie	$79,225,216	$39,078,766	$25,137,833	$12,833,315	393
Glasscock	$45,474	$18,795	$11,022	$4,078	0
Goliad	$3,763,782	$1,834,532	$1,202,894	$793,476	20
Gonzales	$13,556,092	$6,675,844	$4,334,029	$2,317,450	71
Gray	$39,582,228	$16,880,381	$10,551,524	$5,501,395	158
Grayson	$331,465,777	$170,123,432	$111,045,915	$56,564,151	1,746
Gregg	$638,313,805	$310,373,185	$200,513,903	$90,771,369	3,039
Grimes	$17,487,014	$8,321,410	$5,401,234	$2,894,857	91
Guadalupe	$84,761,763	$40,550,233	$25,521,526	$14,082,892	418
Hale	$36,035,984	$18,910,324	$12,258,946	$7,606,706	203
Hall	$2,355,547	$1,158,596	$720,595	$419,166	12
Hamilton	$10,825,389	$5,347,958	$3,472,261	$1,977,963	56
Hansford	$1,610,239	$615,216	$348,143	$163,566	6
Hardeman	$2,382,395	$1,262,124	$803,461	$565,490	14
Hardin	$73,448,279	$34,167,371	$21,360,977	$11,794,104	333
Harris	$35,317,663,575	$14,669,760,672	$8,850,600,959	$2,857,986,230	136,384
Harrison	$137,680,784	$57,845,636	$36,132,294	$14,652,529	548
Hartley	$494,757	$238,705	$150,412	$84,764	3
Haskell	$5,143,041	$2,496,033	$1,639,314	$791,884	25
Hays	$222,499,348	$111,757,406	$70,896,601	$35,282,338	1,189
Hemphill	$2,069,164	$863,498	$518,303	$271,600	8
Henderson	$123,184,972	$58,543,397	$36,952,117	$18,354,328	585
Hidalgo	$1,532,781,571	$790,058,325	$513,305,302	$246,080,594	7,993
Hill	$39,168,928	$18,627,874	$11,725,735	$6,534,671	192
Hockley	$21,064,880	$9,744,832	$6,217,480	$3,457,085	98
Hood	$56,091,675	$26,545,734	$16,815,052	$9,045,485	275
Hopkins	$39,054,612	$19,398,479	$12,337,172	$7,114,991	209
Houston	$44,120,083	$20,222,639	$12,728,241	$4,852,660	191
Howard	$94,345,668	$42,094,630	$26,518,444	$12,865,805	388
Hudspeth	$43,449	$22,253	$13,086	$13,174	0
Hunt	$101,683,437	$50,090,249	$31,736,640	$17,772,184	522
Hutchinson	$14,878,493	$6,058,770	$3,669,746	$2,232,653	58
Irion	$526,700	$200,164	$112,562	$60,550	2
Jack	$5,500,010	$2,502,730	$1,571,115	$911,916	25
Jackson	$6,916,053	$3,227,998	$1,998,329	$1,276,698	36

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Jasper	$50,008,378	$25,398,706	$16,492,762	$9,203,767	273
Jeff Davis	$3,754,797	$1,854,111	$1,190,712	$665,906	20
Jefferson	$1,569,012,766	$725,401,561	$460,019,222	$214,044,249	7,489
Jim Hogg	$4,083,209	$1,864,371	$1,127,489	$777,442	16
Jim Wells	$85,508,559	$43,437,859	$27,928,683	$15,389,128	439
Johnson	$180,288,884	$85,570,194	$54,373,139	$25,364,885	875
Jones	$11,394,012	$5,434,026	$3,472,350	$1,687,100	54
Karnes	$13,095,758	$5,561,182	$3,410,646	$1,712,849	51
Kaufman	$102,755,557	$49,173,653	$31,464,377	$15,867,134	515
Kendall	$85,593,470	$36,685,613	$22,118,845	$11,293,015	380
Kenedy	$191,238	$78,280	$48,634	$38,835	1
Kent	$130,012	$58,324	$35,450	$20,881	1
Kerr	$158,621,579	$78,186,450	$49,465,793	$26,280,599	801
Kimble	$3,008,084	$1,249,332	$730,164	$413,463	12
King	$98,986	$50,465	$31,857	$13,119	1
Kinney	$688,644	$304,476	$180,708	$103,363	3
Kleberg	$53,757,511	$25,150,233	$16,025,094	$8,164,406	244
Knox	$2,120,746	$1,003,008	$637,639	$274,233	9
La Salle	$1,967,966	$984,617	$631,634	$404,244	11
Lamar	$132,809,355	$66,026,577	$43,075,777	$22,595,860	667
Lamb	$5,579,642	$2,551,150	$1,587,665	$852,499	24
Lampasas	$16,684,274	$8,583,531	$5,519,303	$3,044,612	91
Lavaca	$25,019,527	$13,041,344	$8,533,467	$4,255,178	131
Lee	$16,229,591	$7,529,186	$4,768,236	$2,510,898	80
Leon	$3,879,660	$1,965,782	$1,227,531	$846,124	22
Liberty	$107,420,676	$52,049,812	$33,824,936	$15,916,028	508
Limestone	$42,014,391	$20,196,417	$13,270,951	$7,107,022	201
Lipscomb	$252,255	$110,891	$66,034	$32,374	1
Live Oak	$7,999,385	$3,401,737	$2,062,504	$1,187,655	34
Llano	$16,880,823	$8,296,540	$5,219,437	$2,887,388	86
Loving	$80,246	$26,096	$16,398	$8,188	0
Lubbock	$1,010,992,575	$518,489,223	$332,405,761	$152,683,960	5,082
Lynn	$1,130,315	$539,088	$331,071	$128,955	5
Madison	$14,477,910	$7,339,065	$4,648,111	$3,012,298	80
Marion	$9,171,825	$4,489,397	$2,904,449	$1,634,435	48
Martin	$3,785,996	$1,633,481	$1,016,754	$455,375	15
Mason	$7,479,616	$3,512,621	$2,163,117	$1,221,731	38
Matagorda	$34,086,816	$14,363,455	$8,885,291	$5,073,863	138
Maverick	$65,449,810	$32,827,983	$20,879,308	$11,749,511	345
McCulloch	$10,385,365	$5,057,957	$3,218,484	$1,701,616	53

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
McLennan	$744,693,310	$355,942,739	$222,862,678	$102,649,559	3,523
McMullen	$260,748	$113,116	$68,342	$33,862	1
Medina	$25,055,400	$11,925,088	$7,404,786	$4,169,647	125
Menard	$684,389	$333,720	$204,802	$141,081	4
Midland	$337,738,331	$159,245,136	$98,846,585	$51,376,946	1,624
Milam	$19,097,933	$9,152,985	$5,933,946	$3,219,129	99
Mills	$6,678,852	$3,953,519	$2,649,879	$1,479,394	44
Mitchell	$5,507,349	$2,715,216	$1,731,245	$1,021,396	31
Montague	$19,531,105	$9,093,130	$5,690,166	$3,076,204	94
Montgomery	$1,319,859,322	$579,341,559	$361,029,146	$151,562,324	5,792
Moore	$17,205,539	$6,771,919	$3,988,426	$1,950,628	60
Morris	$18,832,997	$7,578,412	$4,604,943	$1,574,159	73
Motley	$347,132	$157,197	$94,653	$53,141	1
Nacogdoches	$146,672,147	$76,047,770	$50,023,449	$26,911,267	837
Navarro	$81,736,046	$39,603,727	$25,549,944	$11,729,778	395
Newton	$4,073,652	$2,463,887	$1,681,482	$1,063,196	28
Nolan	$21,618,032	$10,614,315	$6,641,781	$3,694,237	111
Nueces	$1,879,168,597	$819,506,212	$507,864,655	$226,534,378	7,690
Ochiltree	$5,632,485	$2,400,858	$1,468,194	$773,107	24
Oldham	$2,211,518	$1,145,093	$745,241	$620,752	12
Orange	$104,782,138	$48,163,365	$30,595,041	$15,292,266	486
Palo Pinto	$27,498,044	$12,470,151	$7,662,706	$4,052,753	124
Panola	$25,769,717	$12,051,727	$7,792,706	$3,943,449	121
Parker	$133,417,412	$60,131,583	$36,842,460	$18,678,927	611
Parmer	$1,818,156	$780,548	$491,079	$150,350	7
Pecos	$10,757,040	$4,967,027	$3,090,374	$2,034,541	55
Polk	$37,208,713	$17,979,541	$11,336,551	$6,535,096	183
Potter	$851,165,629	$413,378,512	$263,148,396	$124,674,449	4,090
Presidio	$1,668,576	$780,840	$478,514	$342,243	10
Rains	$6,099,510	$2,690,606	$1,628,228	$1,091,630	28
Randall	$133,487,997	$65,500,599	$41,229,719	$20,554,746	662
Reagan	$378,824	$179,009	$107,325	$77,997	2
Real	$3,702,615	$1,598,689	$978,968	$510,555	15
Red River	$14,230,303	$6,848,303	$4,368,358	$2,178,827	66
Reeves	$7,032,774	$3,266,514	$2,033,786	$1,426,934	36
Refugio	$2,944,531	$1,326,001	$794,537	$657,565	13
Roberts	$97,969	$38,622	$22,269	$18,307	0
Robertson	$12,565,431	$6,187,591	$3,984,612	$2,356,987	63
Rockwall	$168,913,122	$83,942,779	$53,380,682	$26,001,511	889
Runnels	$10,783,210	$4,403,676	$2,614,048	$1,306,063	42

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Rusk	$62,219,222	$27,961,703	$17,911,373	$8,335,179	284
Sabine	$8,417,966	$3,807,190	$2,400,675	$1,281,446	41
San Augustine	$11,939,126	$5,575,817	$3,543,074	$1,728,094	52
San Jacinto	$8,213,759	$3,997,343	$2,533,925	$1,527,683	46
San Patricio	$58,805,792	$25,339,546	$15,778,640	$8,422,734	255
San Saba	$4,156,867	$2,203,152	$1,399,043	$871,419	25
Schleicher	$1,470,964	$695,751	$449,449	$166,630	7
Scurry	$7,785,258	$3,954,637	$2,423,279	$1,624,791	43
Shackelford	$1,488,427	$684,078	$422,685	$262,610	8
Shelby	$18,253,930	$9,663,180	$6,455,097	$3,584,734	113
Sherman	$151,033	$66,899	$40,441	$18,793	1
Smith	$1,344,137,442	$617,507,144	$383,302,041	$180,558,435	5,830
Somervell	$9,793,336	$4,557,886	$2,995,532	$1,049,674	47
Starr	$44,508,057	$23,731,449	$15,927,250	$9,462,226	256
Stephens	$9,648,497	$4,827,450	$3,061,701	$2,024,145	52
Sterling	$231,298	$123,610	$79,013	$64,757	2
Stonewall	$318,312	$164,962	$106,876	$70,491	2
Sutton	$2,413,218	$1,168,546	$718,438	$497,084	13
Swisher	$1,520,758	$692,045	$424,646	$221,834	7
Tarrant	$8,129,221,661	$3,770,567,022	$2,349,728,902	$972,260,875	36,895
Taylor	$617,357,706	$288,847,351	$181,516,196	$81,412,479	2,707
Terrell	$678,444	$358,336	$234,795	$121,960	4
Terry	$9,245,667	$4,251,930	$2,520,952	$1,801,238	41
Throckmorton	$535,535	$250,968	$153,806	$86,834	2
Titus	$40,160,165	$19,163,828	$12,514,407	$7,414,897	198
Tom Green	$387,661,890	$181,347,421	$112,592,721	$55,010,492	1,737
Travis	$5,901,601,343	$2,979,935,413	$1,873,950,359	$842,365,971	31,546
Trinity	$6,743,701	$3,559,691	$2,303,101	$1,258,916	37
Tyler	$11,602,557	$5,926,554	$3,831,318	$2,126,334	65
Upshur	$32,259,962	$15,535,499	$9,727,007	$5,269,573	158
Upton	$767,819	$355,105	$218,021	$115,705	3
Uvalde	$37,009,435	$18,851,570	$12,154,862	$6,229,593	197
Val Verde	$55,744,618	$31,199,634	$20,549,088	$10,288,344	319
Van Zandt	$46,112,205	$24,482,157	$16,010,327	$8,710,719	260
Victoria	$370,935,556	$166,588,138	$105,263,746	$48,520,596	1,531
Walker	$71,243,796	$36,832,697	$23,859,635	$12,581,772	379
Waller	$38,953,189	$16,283,848	$9,665,389	$5,350,874	164
Ward	$7,846,359	$3,779,422	$2,348,971	$1,631,160	43
Washington	$68,409,340	$33,815,203	$21,797,494	$10,657,721	352
Webb	$373,872,891	$181,212,652	$114,525,768	$62,141,486	1,834

Table 16 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
County Results

County	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Wharton	$67,511,418	$32,341,606	$20,810,138	$11,046,899	330
Wheeler	$10,835,000	$5,544,510	$3,469,271	$2,501,405	73
Wichita	$448,935,630	$224,262,884	$144,324,147	$71,096,060	2,212
Wilbarger	$14,609,438	$6,717,085	$4,246,112	$2,226,906	67
Willacy	$11,623,729	$6,261,548	$4,006,773	$2,370,847	63
Williamson	$508,409,699	$259,736,079	$166,665,284	$78,371,855	2,730
Wilson	$22,542,916	$10,957,849	$7,025,777	$3,752,028	117
Winkler	$2,519,472	$1,199,832	$747,500	$482,517	13
Wise	$69,730,718	$33,179,459	$20,837,455	$11,236,755	336
Wood	$54,877,210	$25,817,722	$16,299,793	$8,342,929	267
Yoakum	$2,070,127	$925,410	$570,414	$367,860	11
Young	$24,195,123	$11,373,911	$7,107,256	$3,908,701	115
Zapata	$5,115,203	$2,469,622	$1,584,766	$1,000,338	26
Zavala	$7,233,199	$4,185,637	$2,898,622	$1,748,939	48
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 17
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Metropolitan Statistical Area (MSA) Results

MSA	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Abilene	$633,446,722	$296,412,359	$186,317,423	$83,857,046	2,784
Amarillo	$990,123,683	$481,259,184	$305,858,919	$145,802,308	4,776
Austin-Round Rock	$6,726,566,699	$3,396,349,642	$2,140,147,532	$971,263,886	35,943
Beaumont-Port Arthur	$1,747,243,184	$807,732,297	$511,975,240	$241,130,619	8,308
Brownsville-Harlingen	$917,384,895	$464,645,913	$296,400,324	$143,216,125	4,621
College Station-Bryan	$587,961,950	$283,265,762	$179,738,946	$86,426,210	2,953
Corpus Christi	$1,972,284,509	$859,332,849	$532,267,316	$239,627,928	8,085
Dallas-Plano-Irving MD*	$28,172,692,389	$13,003,983,087	$7,969,407,562	$3,016,867,628	126,789
Fort Worth-Arlington MD*	$8,512,658,674	$3,949,448,257	$2,461,781,956	$1,027,541,442	38,718
El Paso	$2,015,597,083	$970,189,218	$604,319,963	$264,091,670	9,251
Houston-Sugar Land-Baytown	$39,141,200,590	$16,339,686,959	$9,880,301,418	$3,314,735,445	152,905
Killeen-Temple-Fort Hood	$804,445,686	$421,507,111	$273,671,317	$136,927,972	4,495
Laredo	$373,872,891	$181,212,652	$114,525,768	$62,141,486	1,834
Longview	$732,792,989	$353,870,387	$228,152,284	$104,376,122	3,481
Lubbock	$1,015,361,292	$520,685,804	$333,837,408	$153,229,068	5,103
McAllen-Edinburg-Mission	$1,532,781,571	$790,058,325	$513,305,302	$246,080,594	7,993
Midland	$337,738,331	$159,245,136	$98,846,585	$51,376,946	1,624
Odessa	$341,683,811	$154,417,518	$97,305,519	$45,222,318	1,467
San Angelo	$388,188,590	$181,547,584	$112,705,284	$55,071,042	1,738
San Antonio	$7,878,032,666	$3,835,751,504	$2,421,956,616	$1,099,177,204	39,068
Sherman-Denison	$331,465,777	$170,123,432	$111,045,915	$56,564,151	1,746
Texarkana	$381,885,872	$194,862,349	$126,959,215	$62,529,546	1,932
Tyler	$1,344,137,442	$617,507,144	$383,302,041	$180,558,435	5,830
Victoria	$396,717,976	$176,678,007	$111,343,224	$51,423,519	1,627
Waco	$744,693,310	$355,942,739	$222,862,678	$102,649,559	3,523
Wichita Falls	$467,581,114	$233,264,049	$150,185,694	$73,878,821	2,301
Rural Area	$4,011,032,330	$1,952,285,624	$1,250,165,400	$655,929,607	19,950
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

***Metropolitan Division**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 18
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Comptroller's Economic Region Results

Economic Region	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
High Plains	$2,216,005,117	$1,099,139,462	$700,454,824	$334,081,040	10,867
Northwest Texas	$1,364,203,612	$659,357,733	$419,245,007	$203,754,813	6,426
Metroplex	$37,333,452,872	$17,276,093,323	$10,639,987,700	$4,150,088,149	168,823
Upper East Texas	$3,380,888,323	$1,608,735,890	$1,022,212,833	$489,952,843	15,698
Southeast Texas	$2,386,800,055	$1,126,066,380	$717,836,841	$347,605,613	11,624
Gulf Coast	$39,339,837,409	$16,436,107,005	$9,942,193,043	$3,347,815,515	153,881
Capital	$6,909,987,960	$3,483,201,006	$2,194,495,305	$998,814,259	36,829
Central Texas	$2,411,946,835	$1,195,650,489	$763,249,925	$372,450,375	12,374
Alamo	$8,149,603,727	$3,967,925,710	$2,505,765,923	$1,142,972,698	40,399
Coastal Bend	$2,650,749,455	$1,174,346,672	$732,554,136	$338,701,240	11,111
South Texas Border	$3,066,638,385	$1,562,832,857	$1,006,851,506	$497,130,590	15,774
West Texas	$1,246,410,723	$576,968,149	$360,059,184	$179,122,917	5,635
Upper Rio Grande	$2,043,047,551	$984,840,216	$613,780,621	$269,206,646	9,405
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 19
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Council of Governments (COG) Results

COG	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
Panhandle	$1,115,110,371	$536,648,428	$340,110,884	$164,890,059	5,333
South Plains	$1,100,894,746	$562,491,033	$360,343,940	$169,190,980	5,534
North Texas	$543,408,758	$269,153,659	$172,811,624	$86,193,580	2,665
North Central Texas	$36,916,183,002	$17,065,682,285	$10,503,266,301	$4,080,968,393	166,669
North East Texas	$691,713,405	$345,005,026	$223,851,176	$114,066,241	3,456
East Texas	$2,689,174,919	$1,263,730,864	$798,361,658	$375,886,602	12,242
West Central Texas	$820,794,854	$390,204,074	$246,433,382	$117,561,233	3,761
Upper Rio Grande	$2,043,047,551	$984,840,216	$613,780,621	$269,206,646	9,405
Permian Basin	$828,913,054	$381,468,719	$238,620,812	$119,149,926	3,749
Concho Valley	$417,497,670	$195,499,430	$121,438,372	$59,972,990	1,886
Heart of Texas	$874,526,233	$418,778,544	$263,310,164	$124,137,288	4,157
Capital	$6,909,987,960	$3,483,201,006	$2,194,495,305	$998,814,259	36,829
Brazos Valley	$692,215,875	$334,707,221	$212,813,315	$103,837,209	3,499
Deep East Texas	$639,556,871	$318,334,083	$205,861,601	$106,474,994	3,315
South East Texas	$1,747,243,184	$807,732,297	$511,975,240	$241,130,619	8,308
Gulf Coast	$39,339,837,409	$16,436,107,005	$9,942,193,043	$3,347,815,515	153,881
Golden Crescent	$474,730,435	$215,625,352	$136,627,081	$64,569,728	2,029
Alamo	$8,149,603,727	$3,967,925,710	$2,505,765,923	$1,142,972,698	40,399
South Texas	$427,579,358	$209,278,094	$133,165,273	$73,381,491	2,132
Coastal Bend	$2,176,019,021	$958,721,320	$595,927,055	$274,131,513	9,082
Lower Rio Grande Valley	$2,461,790,195	$1,260,965,787	$813,712,399	$391,667,566	12,677
Texoma	$417,269,870	$210,411,037	$136,721,399	$69,119,757	2,153
Central Texas	$845,204,727	$442,164,724	$287,126,445	$144,475,877	4,718
Middle Rio Grande	$177,268,832	$92,588,977	$59,973,834	$32,081,533	965
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 20
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas Senate District Results

Senate District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$2,417,632,358	$1,149,359,400	$732,340,467	$348,356,928	11,205
2	$4,378,761,293	$2,026,748,339	$1,244,463,241	$484,105,685	19,745
3	$1,802,877,788	$852,790,418	$541,667,510	$261,719,817	8,607
4	$3,274,344,578	$1,444,211,073	$898,485,174	$371,158,286	14,299
5	$1,347,375,753	$665,362,132	$425,044,836	$205,881,714	6,936
6	$6,710,356,079	$2,787,254,528	$1,681,614,182	$543,017,384	25,913
7	$7,063,532,715	$2,933,952,134	$1,770,120,192	$571,597,246	27,277
8	$4,844,231,315	$2,284,160,574	$1,419,925,296	$589,578,773	23,053
9	$4,730,694,513	$2,176,985,797	$1,336,669,941	$513,411,173	21,072
10	$3,983,318,614	$1,847,577,841	$1,151,367,162	$476,407,829	18,079
11	$4,002,104,660	$1,683,663,492	$1,020,380,201	$364,224,240	15,910
12	$3,459,243,718	$1,603,189,470	$997,673,950	$414,239,362	15,655
13	$6,257,991,988	$2,602,838,119	$1,570,944,831	$514,805,430	24,237
14	$5,075,377,155	$2,562,744,455	$1,611,597,309	$724,434,735	27,129
15	$7,063,532,715	$2,933,952,134	$1,770,120,192	$571,597,246	27,277
16	$7,138,162,579	$3,273,107,375	$1,995,483,190	$720,683,367	31,583
17	$5,267,075,844	$2,216,324,418	$1,344,682,133	$472,291,608	20,923
18	$1,453,497,275	$652,573,627	$407,033,514	$192,777,628	6,366
19	$2,155,067,937	$1,056,670,840	$668,137,642	$308,956,552	10,766
20	$2,813,253,599	$1,300,237,157	$819,936,162	$378,353,892	12,555
21	$1,344,441,455	$648,823,226	$410,916,968	$203,381,711	6,571
22	$1,369,748,316	$650,140,679	$408,625,255	$193,458,467	6,523
23	$7,376,101,332	$3,382,210,954	$2,061,999,296	$744,706,146	32,636
24	$1,947,702,367	$971,777,836	$622,258,867	$307,274,670	9,879
25	$2,967,456,071	$1,459,287,471	$919,619,513	$424,467,942	15,109
26	$3,393,848,393	$1,656,866,697	$1,046,954,544	$470,763,872	16,867
27	$1,672,709,080	$851,662,221	$547,468,211	$264,526,480	8,525
28	$1,639,006,027	$814,357,401	$517,200,460	$248,732,012	7,998
29	$1,894,661,258	$911,977,865	$568,060,765	$248,246,169	8,696
30	$1,814,216,688	$879,583,113	$558,711,638	$272,087,687	8,872
31	$1,841,248,563	$870,874,107	$549,184,205	$266,452,648	8,585
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Table 21
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
1	$440,028,397	$221,561,579	$143,956,123	$71,136,329	2,201
2	$153,895,152	$77,263,012	$49,375,194	$27,574,534	810
3	$260,856,833	$127,932,844	$82,799,502	$44,564,347	1,302
4	$225,940,529	$107,717,050	$68,416,494	$34,221,462	1,100
5	$236,902,120	$105,064,714	$65,986,435	$30,145,243	1,034
6	$1,102,192,702	$506,355,858	$314,307,673	$148,057,917	4,781
7	$880,258,544	$421,524,471	$269,508,270	$123,271,887	4,088
8	$274,487,560	$136,448,609	$88,310,383	$43,815,424	1,359
9	$235,291,547	$120,492,663	$78,915,057	$42,709,308	1,316
10	$212,238,768	$95,525,853	$58,799,831	$29,203,328	933
11	$194,346,022	$91,394,856	$58,802,530	$27,294,453	919
12	$318,862,877	$157,175,353	$101,200,270	$51,314,734	1,598
13	$220,403,581	$106,783,371	$67,920,815	$32,684,965	1,098
14	$525,956,117	$253,238,219	$160,603,594	$76,511,054	2,638
15	$593,936,695	$260,703,701	$162,463,116	$68,203,046	2,607
16	$607,135,288	$266,497,117	$166,073,407	$69,718,669	2,665
17	$211,743,038	$101,868,477	$64,534,983	$33,228,606	1,067
18	$263,416,728	$122,170,093	$77,654,111	$36,091,733	1,212
19	$165,538,927	$77,088,485	$48,742,293	$25,702,804	770
20	$247,882,298	$126,034,220	$80,933,324	$38,486,463	1,328
21	$831,576,766	$384,462,827	$243,810,188	$113,443,452	3,969
22	$754,201,142	$348,644,872	$221,104,241	$103,047,559	3,598
23	$329,821,741	$143,020,163	$87,352,163	$40,298,344	1,418
24	$322,205,011	$143,341,312	$88,273,704	$41,998,984	1,425
25	$273,203,059	$118,970,390	$73,302,661	$35,319,244	1,202
26	$468,656,903	$201,086,004	$122,414,464	$53,413,978	1,941
27	$468,656,903	$201,086,004	$122,414,464	$53,413,978	1,941
28	$323,647,075	$141,811,651	$87,204,181	$41,150,593	1,394
29	$240,187,369	$104,113,047	$64,183,790	$31,718,205	1,045
30	$438,336,453	$200,185,640	$127,008,112	$60,006,920	1,875
31	$166,701,288	$82,795,753	$53,295,662	$29,752,207	853
32	$323,931,061	$139,138,220	$85,708,650	$40,373,484	1,325
33	$835,186,043	$364,224,983	$225,717,625	$100,681,946	3,418
34	$835,186,043	$364,224,983	$225,717,625	$100,681,946	3,418
35	$221,289,140	$105,320,670	$66,998,840	$35,225,761	1,035
36	$387,066,053	$199,509,678	$129,622,551	$62,141,564	2,018
37	$363,320,750	$184,018,183	$117,386,267	$56,719,257	1,830
38	$363,320,750	$184,018,183	$117,386,267	$56,719,257	1,830
39	$387,066,053	$199,509,678	$129,622,551	$62,141,564	2,018
40	$387,066,053	$199,509,678	$129,622,551	$62,141,564	2,018

Table 21 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
41	$371,583,411	$191,529,291	$124,437,649	$59,655,901	1,938
42	$261,711,023	$126,848,856	$80,168,038	$43,499,040	1,284
43	$265,945,660	$132,724,986	$84,660,688	$42,215,199	1,314
44	$120,860,771	$58,183,926	$36,881,332	$20,152,369	606
45	$270,825,816	$134,494,808	$85,539,721	$42,814,887	1,421
46	$1,003,272,228	$506,589,020	$318,571,561	$143,202,215	5,363
47	$1,003,272,228	$506,589,020	$318,571,561	$143,202,215	5,363
48	$944,256,215	$476,789,666	$299,832,057	$134,778,555	5,047
49	$1,003,272,228	$506,589,020	$318,571,561	$143,202,215	5,363
50	$944,256,215	$476,789,666	$299,832,057	$134,778,555	5,047
51	$1,003,272,228	$506,589,020	$318,571,561	$143,202,215	5,363
52	$279,625,335	$142,854,843	$91,665,906	$43,104,520	1,501
53	$234,966,611	$114,019,704	$71,809,658	$38,582,539	1,172
54	$387,620,398	$199,219,854	$128,356,955	$64,213,881	2,095
55	$448,834,765	$236,253,078	$153,643,211	$75,953,334	2,500
56	$476,603,719	$227,803,353	$142,632,114	$65,695,718	2,255
57	$313,195,437	$151,056,185	$94,971,776	$45,509,661	1,509
58	$199,045,621	$94,916,927	$60,443,363	$28,070,534	969
59	$155,422,182	$78,942,398	$51,176,398	$27,683,675	880
60	$191,942,033	$94,654,844	$60,608,335	$33,668,721	982
61	$203,148,130	$93,311,042	$57,679,915	$29,915,682	947
62	$364,536,017	$186,895,920	$121,936,946	$61,966,280	1,918
63	$496,574,874	$228,887,639	$141,101,682	$59,953,123	2,204
64	$511,622,597	$235,823,628	$145,377,490	$61,769,884	2,271
65	$496,574,874	$228,887,639	$141,101,682	$59,953,123	2,204
66	$691,108,459	$336,420,373	$213,594,246	$100,963,926	3,560
67	$691,108,459	$336,420,373	$213,594,246	$100,963,926	3,560
68	$153,307,187	$71,373,515	$45,222,768	$23,106,697	718
69	$451,579,607	$225,507,492	$145,093,931	$71,558,685	2,224
70	$691,108,459	$336,420,373	$213,594,246	$100,963,926	3,560
71	$638,975,739	$299,461,666	$188,157,977	$85,106,716	2,818
72	$401,402,024	$188,215,650	$116,870,098	$57,729,222	1,812
73	$378,915,406	$179,430,083	$112,309,573	$57,796,315	1,858
74	$147,334,990	$77,455,030	$50,099,700	$26,995,466	812
75	$403,119,417	$194,037,844	$120,863,993	$52,818,334	1,850
76	$403,119,417	$194,037,844	$120,863,993	$52,818,334	1,850
77	$403,119,417	$194,037,844	$120,863,993	$52,818,334	1,850
78	$403,119,417	$194,037,844	$120,863,993	$52,818,334	1,850
79	$403,119,417	$194,037,844	$120,863,993	$52,818,334	1,850
80	$125,760,465	$61,856,547	$39,279,968	$22,051,649	642

Table 21 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
81	$353,228,887	$159,941,036	$100,727,828	$47,086,156	1,524
82	$350,647,886	$165,184,767	$102,536,809	$53,341,318	1,682
83	$432,641,299	$220,273,601	$141,083,716	$65,631,215	2,163
84	$606,595,545	$311,093,534	$199,443,457	$91,610,376	3,049
85	$166,615,036	$78,220,416	$49,515,775	$26,374,832	760
86	$147,102,573	$72,241,539	$45,442,219	$22,816,035	732
87	$870,909,216	$421,134,342	$267,711,702	$126,835,905	4,160
88	$105,451,967	$47,199,337	$29,395,175	$16,650,370	480
89	$655,248,705	$320,683,042	$203,687,744	$97,050,199	3,394
90	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
91	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
92	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
93	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
94	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
95	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
96	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
97	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
98	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
99	$812,922,166	$377,056,702	$234,972,890	$97,226,087	3,689
100	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
101	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
102	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
103	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
104	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
105	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
106	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
107	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
108	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
109	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
110	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
111	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
112	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
113	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
114	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
115	$1,472,246,032	$675,078,396	$411,568,408	$148,640,944	6,514
116	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
117	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
118	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
119	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
120	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667

Table 21 (continued)
The Total Annual Impact of Lawsuit Reforms Enacted Since 1995 (Including More Recent Reforms Limiting Non-Economic Damages in Medical Malpractice Litigation) on Business Activity in Texas
Texas House District Results

House District	Total Expenditures	Gross Product	Personal Income	Retail Sales	Employment (Permanent Jobs)
121	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
122	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
123	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
124	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
125	$737,793,129	$360,188,412	$227,598,814	$102,339,972	3,667
126	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
127	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
128	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
129	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
130	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
131	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
132	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
133	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
134	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
135	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
136	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
137	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
138	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
139	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
140	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
141	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
142	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
143	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
144	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
145	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
146	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
147	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
148	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
149	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
150	$1,412,706,543	$586,790,427	$354,024,038	$114,319,449	5,455
TOTAL STATE IMPACT	**$112,499,572,025**	**$51,151,264,892**	**$31,618,686,848**	**$12,671,696,697**	**498,845**

Note: In all cases in which a county was a part of more than one district, allocations were based on a percentage of population. Information is not available to permit allocations based on economic activity at the sub-county level. Thus, the values in this table should be interpreted as impacts by place of residence rather than place of work.

SOURCE: US Multi-Regional Impact Assessment System, The Perryman Group

Appendix B:

Methodology

Methodology

The empirical assessment of this analysis involves two essential steps. The first is the quantification of the direct benefits accruing from the civil justice reforms. The second step involves defining the "multiplier" effects within the context of the Texas Multi-Regional Impact Assessment System, a large scale input-output model that will be described in more detail subsequently. This Appendix describes the overall process in detail and comments on critiques that have been offered regarding some of the approaches and underlying studies.

The initial task in this analysis was to measure the various categories of direct effects. This process involves at the outset the **quantification of the combined cost** of the tort system within the state, as such data are not regularly maintained. To provide reliable estimates of this measure, TPG developed a regression model relating US litigation costs as reported over time in the Tillinghast-Tower Perrin studies to other variables which are both (1) highly correlated with the costs of US litigation and (2) available at both the national and state levels. These series included various relevant categories of income, employment, and gross product. The result of this effort was a model exhibiting excellent correlation (over 96%), strong statistical properties, and stability in estimation and predictive environments over multiple time periods. This system was then implemented for Texas, thus producing estimates of litigation costs within the state that should be highly reliable.

These values are then projected forward to 2008 by performing simulations using (1) actual and projected outlays and (2) the values that would have been anticipated if the pattern prevalent in 1995 had been allowed to continue. The differential between the two scenarios provides a measure of the direct costs

savings for 2008 somewhat comparable to that provided at the national level by Tillinghast-Towers Perrin.

It should be noted that several critiques of the Tillinghast-Towers Perrin methods have been offered in recent years. The objections have centered on (1) the fact that much of the underlying data is from the insurance industry, and (2) some of the claims information may include amounts that are paid outside of the civil justice process. The first of these concerns is largely misplaced in that the information is compiled by highly reputable ratings agencies, is well regarded and routinely relied upon by the financial and investment communities, and is subject to extensive audit and review by regulatory authorities. Moreover, as noted above, the correlations found in the current study suggest that this information is highly consistent with other data compiled independently by federal agencies.

With regards to the second issue, it does not apply to the present analysis even if it is a shortcoming in the Tillinghast-Towers Perrin methodology. In the current study, the relevant variable is the difference between the tort costs with and without the reforms. To the extent there are any assessments in the underlying data that are not attributable to the civil justice system, they would be reflected equally in both scenarios and would be eliminated in the incremental calculation.

Using various reliable academic and professional studies, this estimate then permits the calculation of efficiency losses, administrative costs, and several other categories of direct tort costs which have been avoided through judicial reforms. All of the relevant input variables are independently forecasted on a regular basis within the context of the Texas Econometric Model, thus making it a straightforward process to determine reliable estimates of future costs under current conditions. The Texas Econometric Model, which was developed and is maintained by TPG, revolves around the simultaneous projection of income,

output (gross product), wages, and employment on a detailed sectoral basis. This system is continuously updated and expanded as new information becomes available, and contains numerous extensions of the basic structure. It has been in use for more than 20 years and is relied on by hundreds of corporations and governmental entities. The expression for estimating litigation costs was also tested to determine its viability for out-of-sample forecasting and found to exhibit excellent statistical properties.

Specifically, each of the components of this calculation is estimated using the approach outlined by the Pacific Research Institute. They include the efficiency losses associated with the "tort tax" generated by excessive civil justice costs, the "rent seeking" and "rent avoidance" costs, and various administrative expenses. While there has been some criticism of these calculations, they are entirely consistent with economic theory and established methods. The approach to measuring the efficiency or "deadweight" losses is based on recent estimates by Professor Dale W. Jorgenson of Harvard University and adopted by the President's Council of Economic Advisors.[24] The underlying concept of a "welfare triangle" has been a part of standard economic theory for more than a century. The assumption regarding the costs associated with avoiding and seeking the "rents" generated by an unbalanced civil justice system also reflects standard economic postulates and reasonable outcomes based on available empirical evidence. In the present study, the amount measured is the reduction in these costs achieved as a result of the reforms (approximately $3.355 billion).

The direct savings associated with enhanced safety was determined based on the methods used by the Pacific Research Institute, but were (1) limited to the net lives that were saved in Texas directly as a result of civil justice reforms enacted since 1995 and (2) reduced to reflect the labor force participation rate within the state. This latter adjustment, which was not incorporated in the

analysis by Pacific Research Institute, reduced the reported benefits by approximately 33%. The original (2006) study which allowed these estimates was conducted by Paul H. Rubin and Joanna M. Shepherd in *Emory Law and Economic Research Papers.* It implicitly assumes that output is a suitable proxy for social costs, which is a typical and reasonable approach.[25] It was assumed that workers were employed in a manner consistent with the overall workforce and exhibited average characteristics in terms of payroll and productivity. The results indicated a direct gain of 1,968 workers or $468.9 million in annual direct expenditures (based on expenditures to employment ratios by industry for more than 500 detailed sectors within the Texas Multi-Regional Impact Assessment System.

The effects from enhanced innovation were modeled based on academic studies which illustrate the net responsiveness to civil justice reforms in selected industries. These percentages were applied to the incremental gains occurring in the relevant sectors since 1995. The results indicated that about 3.9% of current output in the relevant sectors (2.5% of all manufacturing) is a direct consequence of tort reforms stimulating innovation within the state. When converted to expenditures, this gain is approximately $15.156 billion per annum. The results are based on a seminal study by W. Kip Viscusi and Michael J. Moore in the *Journal of Political Economy*.[26] The article provides a basis to calculate the effects on output, which are translated into spending based on the appropriate industrial coefficients from the impact model. It should be noted that, despite some critiques to the contrary, both of the above calculations represent only the net costs to the economy from excessive tort costs. Within the present study, these amounts are determined as the incremental gains associated with the civil justice reforms within Texas.

The Perryman Group was further asked to quantify and estimate of the benefits associated with recent reforms enacted by the Texas Legislature with regard to asbestos/silica litigation. While these changes are relatively new, they are having a notable effect. Assuming that the net benefits are comparable to those associated with other reforms and based on the economic effects of asbestos/silica litigation as estimated by Nobel Laureate Joseph E. Stiglitz and others,[27] the direct gains to date (in terms of administrative efficiency and related benefits) are estimated to be $169.7 million per annum.

With respect to the direct benefits associated with limits on non-economic damages regarding medical malpractice, TPG initially calculated the cost based on continuing the trends relevant to the nation as they existed prior to 2003 using the econometric modeling and simulation process described above. The savings were then determined based on information regarding typical rate reductions provided by various public and private health care providers and professional associations. The methodology for translating the resulting gains into various components (efficiency, unproductive resource allocation, etc.) is identical to that used for the prior calculations for other types of reforms. The total direct cost savings is found to be $1.760 billion.

Reductions in the costs of defensive medicine were based on a lower bound of the estimates from recent academic research examining the responses of medical practitioners to the civil justice environment. In particular, a study by Daniel Kessler and Mark McClellan in the *Quarterly Journal of Economics* estimates the losses associated with defensive medicine in a rigorous manner.[28] In the present study, this approach is implemented to determine the direct benefits associated with reduced levels of defensive procedures performed as a result of malpractice reforms. This amount is estimated at $5.349 billion per annum. Because the lower bound estimate is used, this amount is approximately

44% lower than would be determined in the Pacific Research Institute approach. Critiques of the Pacific Research Institute study have alleged that some of those costs also yield benefits, but that interpretation is inconsistent with the Kessler and McClellan approach as implemented in the current analysis (as it measures net cost effects).

Studies have also shown a relationship between health care costs and the number of uninsured individuals. These findings are derived from studies by the University of Michigan and the Kaiser Commission on Medicaid and the Uninsured.[29] Adapting these findings to Texas and making appropriate demographic adjustments, it was possible to determine the number of additional persons with medical coverage as a result of these reforms. Based on further academic analyses of the uninsured, it is possible to evaluate (1) the number of individual lives saved, (2) the resulting increase in the workforce, and (3) the productivity improvements associated with the segment of the workforce that has insurance. These factors combine to provide a conservative estimate of the resulting direct benefits from these phenomena. The medical malpractice reforms have resulted in almost 430,000 persons receiving health insurance than would have otherwise, approximately 1,136 lives saved, and an increment to the workforce of about 768 persons. The gains in productivity from the additional insured workers (through reduced absenteeism, higher levels of output, and similar phenomena) total approximately $7.700 billion per annum. Note that these improvements in output per worker do not contribute incremental jobs to the economy, but do generate notable gains in expenditures, output, and income. The incremental workers bring a net addition of $180.5 million in annual spending. Moreover, an adjustment is incorporated for labor force participation, which results in benefits almost 33% lower than would have been determined by the methodology in the Pacific Research Institute study.

The final direct benefit incorporated in the analysis is the incremental benefits of added health care delivery stemming from a greater number of physicians in the state. The incremental gains since 2003 relative to prior years were adjusted to reflect other factors which could account for a portion of the increase (such as population growth). The results revealed that approximately 11.2% of the enhanced health care delivery in the state since 2003 is a consequence of tort reform, which translates into $4.482 billion in direct annual expenditures. This segment of benefits is understated in that it does not include the positive effects of additional relatively high-risk procedures being performed.

As a final note regarding the various categories of direct benefits, both the Tillinghast-Tower Perrin and Pacific Research Institute studies have been criticized for measuring only the costs of the civil justice system, without consideration of the offsetting benefits associated with a well functioning litigation process. Irrespective of the merits of this assertion, it is not applicable to the present investigation. This project quantifies the net benefits from the savings associated with various reforms enacted in Texas in recent years. The magnitude of the measured impacts is well below even the most conservative estimates of the portion of tort system costs that are excessive. Moreover, only the net gains were incorporated in each stage of the derivation process. Thus, it is, in essence, a quantification of the incremental benefits of reform, which fully recognizes the essential nature of a fair and equitable system.

Once the aggregate direct benefits resulting from the reforms are identified, it is necessary to **allocate** them across industrial sectors. For the direct costs associated with administration, this process is accomplished using the state-level legal services coefficients for Texas derived from the Texas Multi-Regional Impact Assessment System (TXMRIAS) that was developed and is maintained by TPG. This model permits evaluation across more than 500 detailed

production sectors, as well as all categories of consumer spending. The sectors achieving the greatest benefits from the reforms were found to be highly correlated with those identified independently in a prior study by the National Bureau of Economic Research. One of the advantages of the TXMRIAS structure is that, unlike other impact models, it permits the calculation of direct effects relative to expenditures, output, income, employment, and prices. Thus, it allows reliable estimation of direct gains relative to inflation, productivity, jobs, and income. It further permits determination of the benefits flowing both directly and indirectly to consumers.

A similar process is used to allocate the various gains from a larger workforce and higher individual productivity across all sectors of the economy. In this instance, the gains were distributed based on the composition of the workforce, essentially assuming that the added activity is typical of current patterns. Note that the gains in productivity impact the monetary aggregates such as expenditures and gross product, but do not affect direct employment. With regard to innovation, allocations were based on current levels of activity in each of the affected sectors. The additional benefits from limits on non-economic damages in medical malpractice litigation were allocated across the relevant sectors based on current levels of activity, with the direct health care gains from incremental physicians being distributed over specific relevant components of the medical sector in proportion to existing magnitudes of direct activity.

Given this information regarding the direct impacts, it becomes possible to measure the **total economic benefits** derived from the cost savings. This aspect of the analysis goes beyond the scope of the prior studies, but is necessary to fully capture the aggregate effects as they work their way through the economy. The basic technique employed in this process is known as input-output analysis. This methodology essentially uses extensive survey data, industry information, and a variety of corroborative source materials to create a

matrix describing the various goods and services (known as resources or inputs) required to produce one unit of output for a given sector. Once the base information is compiled, it can be mathematically simulated to generate evaluations of the magnitude of successive rounds of activity involved in the overall production process.

There are two essential steps in conducting an input-output analysis once the system is operational. The first major endeavor is to accurately define the levels of economic activity to be evaluated. This process was described in the preceding paragraphs. The second step is the simulation of the input-output system to measure overall economic effects.

The model used in the allocation phase was also employed in quantifying total economic effects of the various civil justice reforms. This system has been the basis for hundreds of diverse applications and has an excellent reputation for accuracy and credibility. In particular, the Texas Multi-Regional Impact Assessment System has been in operation and continually updated for more than two decades. The submodels used in the current simulations reflect the unique industrial structure of the state economy and each of its counties, regions, metropolitan areas, and legislative districts.

The TXMRIAS is somewhat similar in format to the Input-Output Model of the United States and the Regional Input-Output Modeling System, both of which are maintained by the US Department of Commerce. The models developed by The Perryman Group, however, incorporate several important enhancements and refinements. Specifically, the expanded system includes (1) comprehensive 500-sector coverage for any county, multi-county, or urban region; (2) calculation of both total expenditures and value-added (real gross area product) by industry and region; (3) direct estimation expenditures for multiple input choices; (4)

extensive parameter localization; (5) price adjustments for real and nominal assessments by sector and area; (6) measurement of the induced impacts associated with payrolls and consumer spending; (7) embedded modules to estimate multi-sectoral direct spending effects (such as tourism); (8) estimation of retail spending activity by consumers; and (9) comprehensive linkage and integration capabilities with a wide variety of econometric, real estate, occupational, and fiscal impact models (including the Texas Econometric Model previously described). The geographic structure used for the present investigation was thoroughly tested for reasonableness and historical reliability.

As noted earlier, the impact assessment (input-output) process essentially estimates the amounts of all types of goods and services required to produce a dollar's worth of a specific type of output. For purposes of illustrating the nature of the system, it is useful to think of inputs and outputs in dollar (rather than physical) terms. As an example, the construction of a new building will require specific dollar amounts of lumber, glass, concrete, hand tools, architectural services, interior design services, paint, plumbing, and numerous other elements. Each of these suppliers must, in turn, purchase additional dollar amounts of inputs. This process continues through multiple rounds of production, thus generating subsequent increments to business activity. The initial process of building the facility is known as the *direct effect.* The ensuing transactions in the output chain constitute the *indirect effect.*

Another pattern that arises in response to any direct economic activity comes from the payroll dollars that are received by employees at each stage of the production cycle. As workers are compensated, they use some of their income for taxes, savings, and purchases from external markets. A substantial portion, however, is spent locally on food, clothing, healthcare services, utilities, housing, recreation, and other items. Typical purchasing patterns in the relevant areas

are obtained from the *Inter-City Cost of Living Index* of the American Chamber of Commerce Researchers Association (ACCRA) and the *Consumer Expenditure Survey* of the US Department of Labor. These initial outlays by area residents generate further secondary activity as local providers acquire inputs to meet this consumer demand. These consumer spending impacts are known as *induced effects.* The TXMRIAS is designed to provide realistic, yet conservative, estimates of these phenomena.

The information used in the localization process is obtained from the Bureau of the Census, the Bureau of Labor Statistics, the Regional Economic Information System of the US Department of Commerce, and other public and private sources. The pricing data are compiled from the US Department of Labor and the US Department of Commerce. The verification and testing procedures make use of extensive public and private sources.

All results are presented in current dollars. Whenever assumptions are required, they are structured to modestly understate the positive impacts.

The TXMRIAS generates estimates of the effect on several measures of business activity. The most comprehensive measure of economic activity used in this study is **Total Expenditures**. This measure incorporates every dollar that changes hands in any transaction. For example, suppose a farmer sells wheat to a miller for $0.50; the miller then sells flour to a baker for $0.75; the baker, in turn, sells bread to a customer for $1.25. The Total Expenditures recorded in this instance would be $2.50, that is, $0.50 + $0.75 + $1.25. This measure is quite broad, but is useful in that (1) it reflects the overall interplay of all industries in the economy, and (2) some key fiscal variables such as sales taxes are linked to aggregate spending.

A second measure of business activity frequently employed in this analysis is that of **Gross Product**. This indicator represents the regional equivalent of Gross Domestic Product, the most commonly reported statistic regarding national economic performance. In other words, the Gross Product of, say, Amarillo is the amount of US output that is produced in that area. It is defined as the value of all final goods produced in a given region for a specific period of time. Stated differently, it captures the amount of value-added (gross area product) over intermediate goods and services at each stage of the production process, that is, it eliminates the double counting in the Total Expenditures concept. Using the example above, the Gross Product is $1.25 (the value of the bread) rather than $2.50. Alternatively, it may be viewed as the sum of the value-added by the farmer, $0.50; the miller, $0.25 ($0.75 - $0.50); and the baker, $0.50 ($1.25 - $0.75). The total value-added is, therefore, $1.25, which is equivalent to the final value of the bread. In many industries, the primary component of value-added is the wage and salary payments to employees.

The third gauge of economic activity used in this evaluation is **Personal Income**. As the name implies, Personal Income is simply the income received by individuals, whether in the form of wages, salaries, interest, dividends, proprietors' profits, or other sources. It may thus be viewed as the segment of overall impacts which flows directly to the citizenry.

The fourth measure, **Retail Sales**, represents the component of Total Expenditures which occurs in retail outlets (general merchandise stores, automobile dealers and service stations, building materials stores, food stores, drugstores, restaurants, and so forth). Retail Sales is a commonly used measure of consumer activity.

The final aggregates used are **Permanent Jobs** and **Person-Years of Employment**. The Person-Years of Employment measure reveals the full-time equivalent jobs generated by an activity. It should be noted that, unlike the dollar values described above, Permanent Jobs is a "stock" rather than a "flow." In other words, if an area produces $1 million in output in 1999 and $1 million in 2000, it is appropriate to say that $2 million was achieved in the 1999-2000 period. If the same area has 100 people working in 1999 and 100 in 2000, it only has 100 Permanent Jobs. When a flow of jobs is measured, such as in a construction project or a cumulative assessment over multiple years, it is appropriate to measure employment in Person-Years (a person working for a year). This concept is distinct from Permanent Jobs, which anticipates that the relevant positions will be maintained on a continuing basis.

Appendix C:

Endnotes

Endnotes

[1] Tillinghast-Towers Perrin, *US Tort Costs and Cross-Border Perspectives: 2005 Update*, 2006.
[2] Pacific Research Institute, *Jackpot, The True Cost of America's Tort System Justice*, March 2007.
[3] Pacific Research Institute, *US Tort Liability Index, 2006 Report*, May 2006.
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Texas Turnaround

THE IMPACT OF LAWSUIT REFORM ON ECONOMIC ACTIVITY IN THE LONE STAR STATE

April 2008

A recently completed study by The Perryman Group found that the enactment of a series of lawsuit reforms, beginning in 1995, have transformed the state's civil justice environment from one that previously hindered economic activity and deterred job growth to one that promotes productivity, enhances efficiency, creates jobs and boosts the competitiveness of the state's businesses and industries in a global economy.

The goal of civil justice reform in Texas has been to create an honest and predictable civil justice system that ensures timely compensation for legitimately injured parties and a fair determination of liability for those who are alleged to have caused harm to others.

The Perryman Group's analysis shows that lawsuit reform has the additional benefit of nurturing the state's economic growth in a variety of ways, each producing a ripple effect throughout the Texas economy. Business owners and taxpayers save millions of dollars by eliminating non-productive expenditures related to unnecessary litigation, including administrative costs, court costs and the waste of the time of executives and workers.

Perryman concludes that approximately 8.5% of Texas' economic growth since 1995 is the result of lawsuit reforms. The economic gains attributable to these reforms include:

$112.5 BILLION increase in annual spending

$51.2 BILLION increase in annual output – goods and services produced in Texas

$2.6 BILLION increase in annual state tax revenue

$468.9 MILLION in annual benefits from safer products

$15.2 MILLION in annual net benefits of enhanced innovation

499,000 permanent jobs

430,000 additional Texans have health insurance today as a result of the medical liability reforms

CHRONOLOGY OF LAWSUIT REFORMS IN TEXAS

The Perryman Group notes that wide ranging lawsuit reforms passed in Texas, beginning in 1995, have markedly contributed to the economic competitiveness and job growth in the state. Those reforms include:

1995	The Texas Legislature limited punitive damages, reformed joint and several liability, and restricted venue shopping. The Deceptive Trade Practices Act was restored to its original purpose of protecting consumers in ordinary consumer transactions. The Legislature enacted a half dozen other reforms to curtail specific lawsuit abuses.
1995-2003	A variety of reforms were enacted, including restrictions on lawsuits filed by residents of other states and countries and the imposition of reasonable standards to prevent the abuses that led to the scandals surrounding the tobacco settlement.
2003	The Texas Legislature enacted comprehensive reforms governing medical liability litigation, including a $750,000 limit on non-economic damages; initiated product liability reforms; made the burden of proving punitive damages similar to criminal law, requiring a unanimous jury verdict; comprehensively reformed the statutes governing joint and several liability and class action lawsuits; imposed limits on appeal bonds, enabling defendants to appeal their lawsuits and not be forced into settlements; further limited the filing of lawsuits that should have been brought in other states or countries; as well as enacting other targeted reforms.
2003	Voters approved a constitutional amendment to eliminate potential court challenges to the law capping non-economic damages in medical cases at $750,000.
2005	The Texas Legislature curtailed abusive asbestos/silica lawsuits.
2007	The Texas Legislature closed a loophole in state venue law that had created an avalanche of lawsuits against the dredging industry and threatened Texas' critical maritime industry.

THE TURNAROUND IN MEDICAL LIABILITY

Perhaps the most visible economic impact of lawsuit reforms are the benefits experienced by Texans who have better access to high-quality healthcare. Doctors and hospitals are using their liability insurance savings to expand services and initiate innovative programs; those savings have allowed Texas hospitals to expand charity care by 24%.

This dramatic reversal would have been hard to imagine just a few years ago. Between 1999 and 2003, medical insurance premiums for many Texas doctors doubled, due to abusive litigation and excessive jury awards. As a result, Texas went from 50 insurance carriers in the late 1990's to only four in 2003. Orthopedic surgeons, neurosurgeons, obstetricians, and other high-risk specialists were leaving the state – adding to the already critical shortage of doctors and nurses in rural areas, the border region, and many other parts of Texas.

In 2001, according to the American Medical Association, Texas' ranking in physicians per capita was a dismal 48th out of 50.

The 2003 medical liability reforms set in motion a domino effect of immediate, positive developments across the state.

- First, in August 2004, the Texas Hospital Association reported a 70% reduction in the number of lawsuits filed against the state's hospitals.
- Second, medical liability insurance rates declined. Many doctors saw average rate reductions of over 21%, with some doctors seeing almost 50% decreases. (Recent information provided to The Perryman Group during the course of this study suggests that premiums are declining even further in 2008.)
- Third, beginning in 2003, physicians started returning to Texas. The Texas Medical Board reports licensing 10,878 new physicians since 2003, up from 8,391 in the prior four years. Perryman has determined that at least 1,887 of those physicians are specifically the result of lawsuit reform.
- Finally, in May 2006, the American Medical Association removed Texas from its list of states experiencing a liability crisis, marking the first time it has removed any state from the list. A recent survey by the Texas Medical Association also found a dramatic increase in physicians' willingness to resume certain procedures they had stopped performing, including obstetrics, neurosurgical, radiation and oncological procedures.

COMPREHENSIVE LAWSUIT REFORMS HAVE BOOSTED EVERY REGION OF THE STATE

While medical liability reform has attracted the most public notice, it is only one of 23 important reforms passed since 1995. These reforms have comprehensively improved the law to eliminate or deter abuses and unfair practices. As a result, enhancement of business activity spans the entire state and permeates the entire economy. The Houston-Sugar Land-Baytown area has gained $39.1 billion in annual spending from lawsuit reform and 152,905 permanent jobs, while rural Texas has gained $4.01 billion in annual spending and almost 20,000 jobs. The border region has experienced broad and visible benefits from lawsuit reform. Brownsville-Harlingen gained 4,621 permanent jobs, McAllen-Edinburg-Mission gained 7,993 jobs and Laredo gained 1,834 jobs. Annual economic spending increases in those three metropolitan areas totaled almost $3 billion.

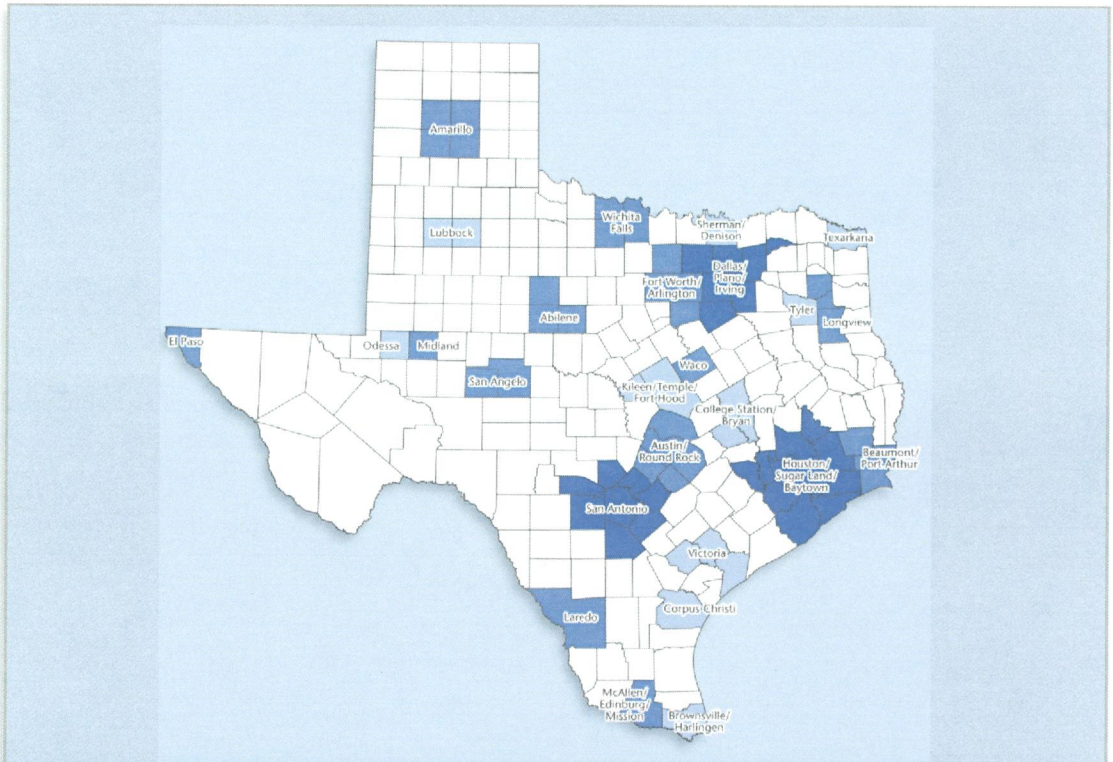
Today, objective studies rank Texas near the top among all states in terms of the overall lawsuit climate. For example, the most recent US Tort Liability Index, calculated by the Pacific Research Institute, ranks Texas second among all states for "inputs" (cost factors) and eighteenth in terms of outputs (such as jury verdicts). The state also ranks extremely well in terms of jury awards per capita, but continues to be hampered by the risk of large, unreasonable verdicts in some areas.

The Perryman Group's new study presents fresh data that validates the measured lawsuit reforms enacted in Texas thus far, but it does not signal that further improvements are not needed. Continued attention to remaining problem areas will further enhance the benefits of a more fair, efficient and effective system of civil justice in Texas.

TEXANS *for* LAWSUIT REFORM
FOUNDATION

1701 Brun Street, Suite 100 | Houston, Texas 77019 | *tel* 713.963.9363 | *fax* 713.963.9787

REGIONAL IMPACTS OF LAWSUIT REFORM: ECONOMIC GROWTH & PERMANENT JOBS



Texas Metropolitan Area	Annual Economic Spending (in billions)	Permanent Jobs Created	Texas Metropolitan Area	Annual Economic Spending (in billions)	Permanent Jobs Created
ABILENE	$0.63	2,784	LUBBOCK	$1.02	5,103
AMARILLO	$0.99	4,776	MCALLEN/ EDINBURG/ MISSION	$1.53	7,993
AUSTIN/ ROUND ROCK	$6.72	35,943	MIDLAND	$0.34	1,624
BEAUMONT/ PORT ARTHUR	$1.75	8,308	ODESSA	$0.34	1,467
BROWNSVILLE/ HARLINGEN	$0.92	4,621	SAN ANGELO	$0.39	1,738
COLLEGE STATION/ BRYAN	$0.59	2,953	SAN ANTONIO	$7.88	39,068
CORPUS CHRISTI	$1.97	8,085	SHERMAN/ DENISON	$0.33	1,746
DALLAS/PLANO/ IRVING	$28.17	126,789	TEXARKANA	$0.38	1,932
FORT WORTH/ ARLINGTON	$8.51	38,718	TYLER	$1.34	5,830
EL PASO	$2.02	9,251	VICTORIA	$0.40	1,627
HOUSTON/ SUGARLAND/ BAYTOWN	$39.14	152,905	WACO	$0.74	3,523
KILEEN/TEMPLE	$0.80	4,495	WICHITA FALLS	$0.47	2,301
LAREDO	$0.37	1,834	RURAL TEXAS	$4.01	19,950
LONGVIEW	$0.73	3,481	**TOTAL**	**$112.48**	**498,845**

TEXAS MEDICAL PROFESSIONAL LIABILITY
PHYSICIANS, SURGEONS AND OSTEOPATHS
(Excludes Risk Retention Groups and Surplus Lines Companies)

	(1)	(2)	(3)	(4)
	Company Name	**Purch Group**	**Estd 2007 Market Share In Number of Physicians**	**Cumulative Physician Rate Change Since Sept. 2003**
	Texas Medical Liability Trust	*	48.9%	-31.3% [1]
	The Medical Protective	Yes	16.8%	-19.7%
	American Physicians Insurance Company	Yes	14.7%	-17.4%
n	Advocate MD Insurance of the Southwest	No	6.9%	-29.5%
	The Doctors Company, An Interinsurance Exchange	Yes	4.9%	-30.7%
	Preferred Professional Insurance Company[2]	No	2.1%	-5.9%
	Everest National Insurance Company	Yes	1.3%	0.0%
	Texas Medical Liability Ins. Underwriting Association (TxJUA)	No	1.3%	-16.7%
n	Medicus Insurance Company	No	0.7%	0.0%
	The Medical Assurance Company	Yes	0.6%	33.5%
n	Medical Liability Insurance Company of America	No	0.6%	0.0%
	Texas Medical Insurance Company	Yes	0.5%	-31.3%
	Nation Union Fire Insurance Company of Pittsburg, PA	Yes	0.5%	0.0%
	Anesthesiologists' Professional Assurance Company	No	0.1%	-30.6%
n	Physicians Insurance Company	No	0.0%	-21.5%
	Texas Hospital Insurance Exchange	No	0.0%	0.0%
r	First Professionals Insurance Company	No	0.0%	0.0%
	Total All Companies Listed		100.0%	-25.1%

*Under the provisions of Chapter 2212, Insurance Code, the TMLT is unregulated but the TMLT signed a memorandum of understanding with the Department to give TDI the ability to review their rates.

n - Indicates new (i.e., since September 01, 2003) entrant to the physicians market.

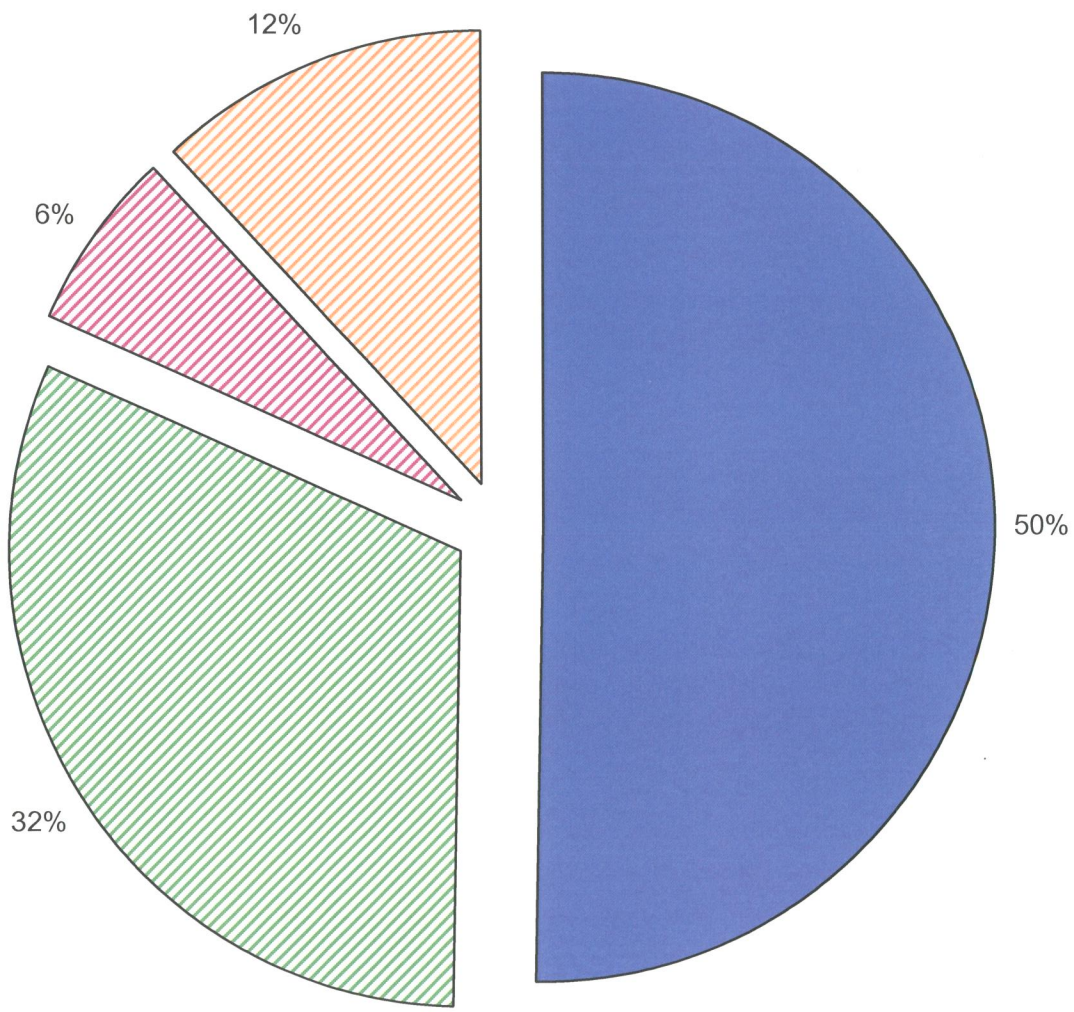
r - Indicates a carrier that has returned to the Texas physicians market.

[1]Does NOT include the effect of the 22% renewal premium dividend effective January 1, 2008. Were this to be included, TMLT's cumulative reduction would be -46.4% for the year 2008.

[2]PPIC is owned by various Catholic affiliated charities. It provides medical liability coverage for physicians affiliated with its shareholders (Best's Reports, 2003).

Produced by the Texas Department of Insurance
Updated April 22, 2008

TEXAS MEDICAL MALPRACTICE - ALL HEALTH CARE PROVIDER TYPES
ESTIMATED 2007 MARKET SHARE (IN PREMIUMS)
REGULATED VS. UNREGULATED



Produced by the Texas Department of Insurance

New Medmal Programs Since 2003

Texas Licensed and Admitted Insurers – 10 Total

3 New companies licensed since 2003

7 Companies licensed prior to 2003 that began offering new programs since 2003

Surplus Lines Insurers

5 Companies known to be writing. Staff is currently working to update this information.

Risk Retention Groups (RRGs)

31 Registrations Completed Since 2003

3 Registrations pending, April 2008

Note: New entities and programs are counted upon receipt of a formal filing at TDI. Three filing insurers were removed since the list began in early 2003 for lack of required follow-up, not entering the medmal insurance market, or withdrawing from it.

New Medmal Programs Since 2003

Recent Entries – New Professional Liability Programs for Physicians and Other Medical Professional Liability Insurance (cumulative since 2003)*

Texas Licensed and Admitted Insurers (10)

New Companies Licensed Since 2003 (3)

Advocate, MD Insurance of the Southwest (Texas)
Licensed 5/28/2004
Began writing physicians and other health care providers, June 2004

Medicus Insurance Company (Texas)
Licensed 9/28/06.
Began writing physicians and other health care providers September 29, 2006.

Physicians Insurance Company (Florida)
Licensed 8/31/05.
Began writing physicians and other health care providers September 2005.

Companies Licensed Prior to 2003 That Began Offering New Programs Since 2003 (7):

Anesthesiologists' Professional Assurance Company (Florida)
Licensed prior to 2003, but filed new medmal insurance program for physicians, 2005

Catlin Insurance Company, Inc. Purchased and changed name from American Indemnity Insurance Company (7/21/2006). (Texas). Catlin Group began writing physicians med mal, errors and omissions, and inland marine coverages in 2006

First Physicians Insurance Company (Florida), Withdrew in 2003. Approved to resume writing medmal May 18, 2007; forms approved August 1, 2007. Writes physicians

Medical Protective Company (Indiana)
Licensed prior to 2003, but began a new hospital liability insurance program in 2007.

Professional Solutions Insurance Company (Iowa)
Licensed prior to 2003, but began new program of dental professional liability approved and rates accepted, April 2005.

Professional Liability Insurance Company of America (PLICA) (MO)
DBA in Texas as Medical Liability Insurance Company of America (MLICA)
Licensed prior to 2003, began writing physicians and other health care providers December 2004.

State Farm Fire and Casualty (Illinois)
Licensed prior to 2003, but began new program of dental professional liability approved and rates accepted, Oct 2004.

New Medmal Programs Since 2003

Surplus Lines Insurers (5) – Staff is currently updating.

Capitol Specialty Insurance Corporation

HCC Specialty Insurance Company

Hudson Specialty

Landmark American Insurance Company

Red Mountain Casualty Insurance Company

Risk Retention Groups (RRGs) (31 Registered, 3 Pending)

Registrations Completed Since 2003 (31)

Advanced Physicians Insurance Risk Retention Group, Inc.,
Registered on 3/30/2006 - Active

American Association of Orthodontists Insurance Company, a Risk Retention Group,
Registered on 11/6/2006 - Active - Dentists

Allied Professionals Insurance Company, RRG Registered on 2/23/04 – Active – Writing Acupuncturists, Chiropractors, Massage Therapists

Applied Medico – Legal Solutions, RRG
Registered on 10/7/03 – Active – Writing emergency medical physicians

CARE RRG
Registered on 2/23/04 – Active – Open to all physician specialties

Caring Communities, RRG (former Diapason Casualty, RRG)
Registered 03/27/2006 – Active – Writing mostly assisted living facilities with some skilled nursing facilities

Centurion Medical Liability Protective RRG, Inc,
Registered on 7/27/04 - Active - Writing physicians

Clinical Trials Reciprocal Insurance Company, RRG
Registered 11/14/2005 – Active -- Medical area

Communities of Faith RRG (formerly Non Profit LTC Alliance)
Registered on 10/15/03- Writing Texas Non-Profit Nursing Homes Med malpractice

New Medmal Programs Since 2003

Risk Retention Groups (RRGs), con't.

Community Blood Centers' Exchange Risk Retention Group,
Registered on 9/9/2005 – Active

Continuing Care Risk Retention Group, Inc.,
Registered on 8/22/2005 - Active

Eldercare Mutual Insurance Company RRG
Registered on 2/13/04 – Active – Writing long-term care facilities

Emergency Medicine RRG, Inc,
Registered on 6/9/04 – Active – Writing emergency medical physicians

Emergency Medicine Professional Assurance Company, RRG
Registered on 2/08/2005- Plans to write emergency medical physicians

Emergency Physicians Insurance Co, RRG,
Registered on 10/7/03 – Active – Writing emergency medical physicians

Green Hills Insurance Company, RRG
Registered on 05/03/2004 - Active – Will write physicians

Health Network Providers Mutual Insurance Company, RRG
Registered on 12/31/03 – Active – Writing Memorial Herman Health Network Providers

Lake Street Risk Retention Group, Inc.
Registered on 12/31/03 – Active – Writing hospitals and physicians

National Assisted Living Risk Retention Group
Registered on 08/04/06 – Plans to write professional liability and commercial general liability for assisted living facilities

National Medical Professional Risk Retention Group, Inc.
Registered on 10/19/2006

Novus Insurance Company, RRG
Registered on 8/25/05- Plans to write bariatric & general surgeons

Oceanus Insurance Company, a Risk Retention Group
Registered on 02/09/05 – Plans to write various physician specialties

OMS National Insurance Company, Risk Retention Group,
Registered on 9/9/2005 – Oral and Maxillofacial surgeons

Ophthalmic Mutual Insurance Company Risk Retention Group.
Registered on 11/14/2005 – Ophthalmologists

New Medmal Programs Since 2003

Risk Retention Groups (RRGs), con't.

Pediatricians Insurance Risk Retention Group of America, Inc.,
Registered on 12/14/2005 – Pediatricians

Physhield Insurance Exchange, A Risk Retention Group,
Registered on 12/15/2005 - Physicians

Physicians Compliance Liability Insurance Company, A Risk Retention Group,
Registered on 5/10/2006

Physicians Professional Liability RRG
Registered on 2/6/2003- Writing physician's med malpractice

Physicians Specialty Ltd., RRG
Registered on 1/26/04 –.

Southwest Physicians Risk Retention Group, Inc.,
Registered on 6/22/2007 – Physicians

USON Risk Retention Group, Inc.,
Registered 3/28/2008 - Writing Med Mal for Oncology Specialists

Registrations pending, April 2008* (3)

MedAmerica Mutual Risk Retention Group, Inc.

Shoreline Physicians Liability RRG

Heartland Healthcare Reciprocal RRG

* New entities and programs are counted upon receipt of a formal filing at TDI. Three filing insurers were removed since the list began in early 2003 for lack of required follow-up, not entering the medmal insurance market, or withdrawing from it.

IMPACT OF RECENT CIVIL JUSTICE REFORMS

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*Affiliations provided solely for purposes of identification. Neither author represents the University of Texas at Austin or any of its academic programs. The views expressed herein belong solely to the authors.

OUR RESEARCH GROUP

- Black, Hyman, Sage, Silver and Zeiler
- University professors
  - 2 JD/MDs
  - 1 JD/PhD (Economics)
  - 2 JD/MAs (Physics and Political Science)
- Mixed political views
  - 2 Democrats
  - 2 Republicans
  - 1 Libertarian
- No financial support from interest groups

MED MAL STUDIES USING TDI DATA*

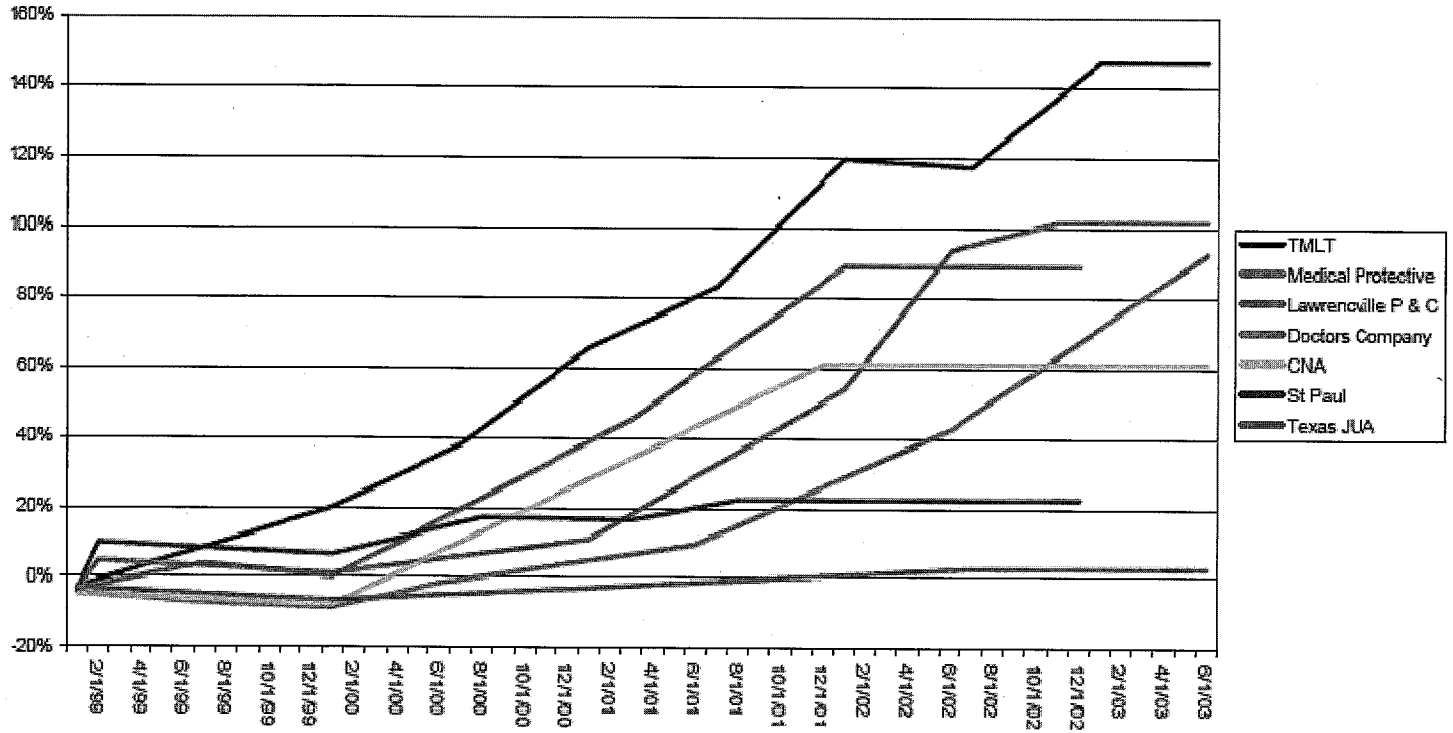
- Stability, Not Crisis, *J. Empirical Legal Studies* (*JELS*) (2005)
- Do Defendants Pay What Juries Award?, *JELS* (2007)
- Physicians' Insurance Limits and Malpractice Payments, *J. Legal Studies* (2007)
- Malpractice Payouts and Malpractice Insurance, *Geneva Papers on Risk and Insurance: Issues and Practice* (2008)
- Estimating the Effect of Damage Caps …, *J. Legal Analysis* (forthcoming 2008)
- Defense Costs and Insurer Reserves …, *Amer. Law & Econ. Rev.* (forthcoming 2008)

*All journals peer-reviewed. Papers available at www.ssrn.com

Three Crises (or were they?)

- Malpractice insurance premia
- Malpractice litigation
- Medical error

Malpractice insurance premia: A crisis that was, but why?



1999-2003: 110% weighted average rise

2004-2008: **estimated ~45% decline**

(inflation adjusted)

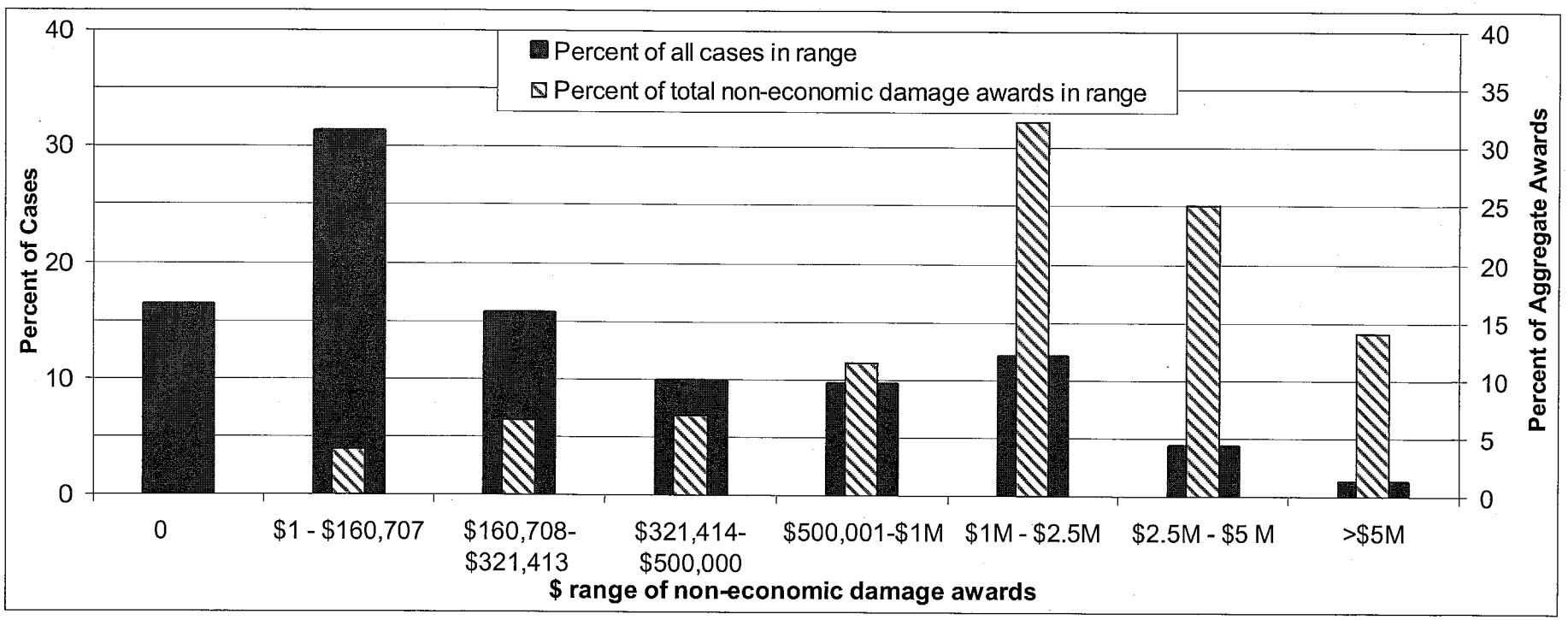
Effect of non-econ caps

- We examine all 326 pro-plaintiff jury verdicts in the TDI dataset, 1988-2004
  - Simulate what effect the non-econ cap would have had, if it had been in effect
  - This assumes same cases would be brought
- But some cases won't be worth bringing
    - Defense costs are rising
    - Plaintiff costs likely rising as well
    - Expert witness rules raise costs

Distribution of Awarded Non-Economic Damages in Jury Trials

Over half of cases (53%) below the cap

Big awards (17% of cases) = 72% of non-econ damages



Cap effect: Tried Cases

The Texas cap on non-econ damages

- Reduces:
  - mean non-econ award by **73%**
    (70-77% depending on assumptions)
  - mean allowed verdict by **38%**, from $1.28M to $800k
  - predicted mean payout by **26%**, from $696k to $512k.
- Overall:
  - reduces total allowed verdict by $156M
  - reduces payout by $60M

Smaller effect on payout because large verdicts are often unpaid even without the cap

Cap effect: settled cases

- Assume:
  - same proportion of non-econ/total damages
  - plaintiff chance of success at trial = 75%

➔cap reduces settlements by 24%

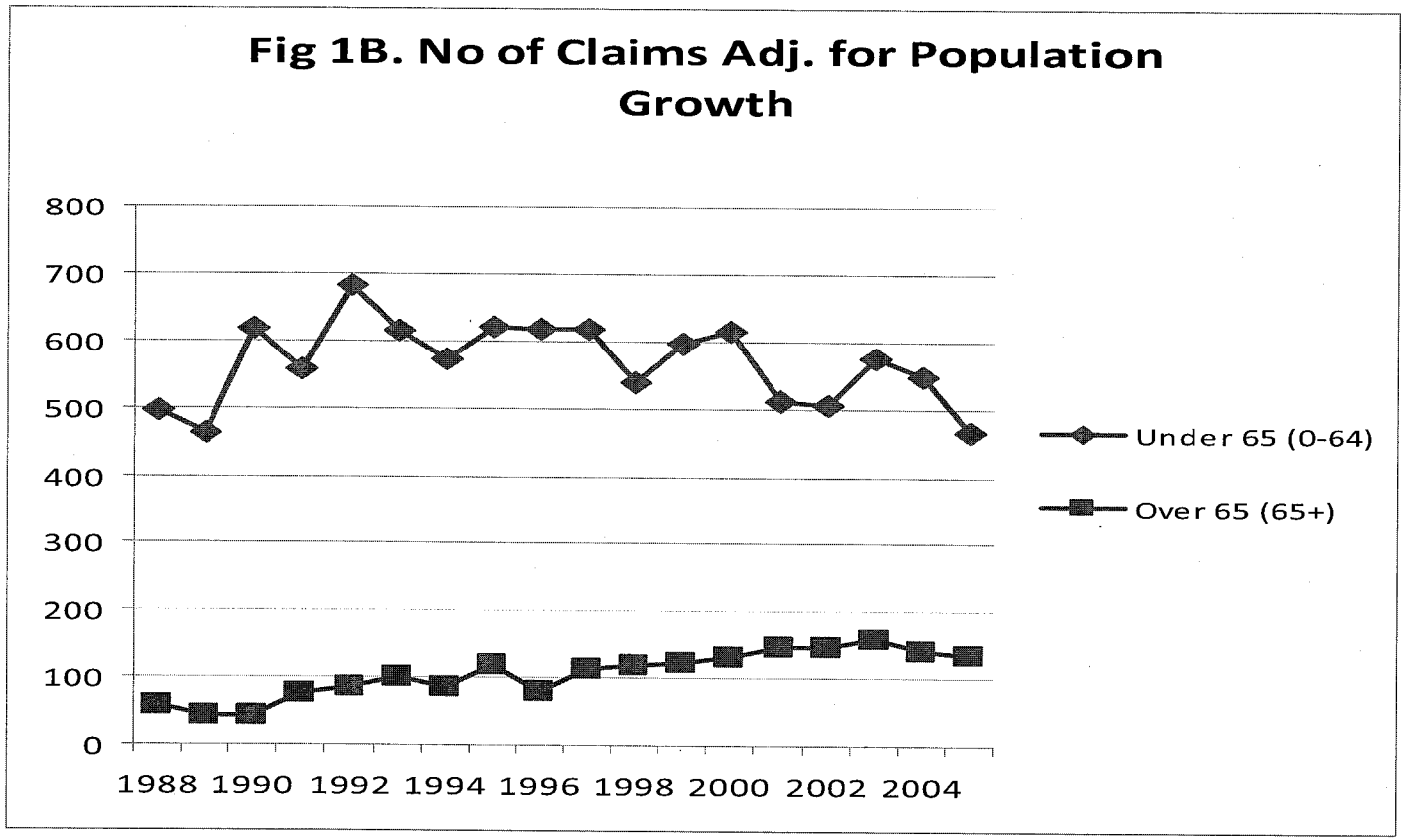
Note: Cap effect increases over time, due to no adjustment for inflation

Differential Impact

- Larger impact if deceased, unemployed, or elderly
- Many of these cases may no longer be viable.

	Decrease in Payout (Tried Cases)		
Status	*Aggregate*	*Per Claim*	*T-test*
Death	*38%*	*24%*	***3.78****
Non-Death	*24%*	*12%*	
Unemployed (non-baby)	*36%*	*19%*	***2.60****
Employed	*17%*	*11%*	
Elderly	*37%*	*19%*	*1.52*
Adult non-elderly	*22%*	*13%*	

Malpractice litigation: a crisis that *wasn't*



No crisis in number of large paid claims (pop. adjusted)

These are pre-cap cases. We expect a post-cap decline.

Medical error: the hidden crisis

- What health policy analysts know
  - But physicians and insurers won't tell you
- We have an epidemic of medical error
  - 100,000+ lives lost per year
  - most errors do NOT lead to lawsuits

Example: central line catheter infections

- 80,000 infections per year
- 20,000 deaths
- Almost all are preventable

Pronovost, NEJM (2006)

Table 3. Rates of Catheter-Related Bloodstream Infection from Baseline (before Implementation of the Study Intervention) to 18 Months of Follow-up.*

Study Period	No. of ICUs	No. of Bloodstream Infections per 1000 Catheter-Days				
		Overall	Teaching Hospital	Nonteaching Hospital	<200 Beds	≥200 Beds
		median (interquartile range)				
Baseline	55	2.7 (0.6–4.8)	2.7 (1.3–4.7)	2.6 (0–4.9)	2.1 (0–3.0)	2.7 (1.3–4.8)
During implementation	96	1.6 (0–4.4)†	1.7 (0–4.5)	0 (0–3.5)	0 (0–5.8)	1.7 (0–4.3)†
After implementation						
0–3 mo	96	0 (0–3.0)‡	1.3 (0–3.1)†	0 (0–1.6)†	0 (0–2.7)	1.1 (0–3.1)‡
4–6 mo	96	0 (0–2.7)‡	1.1 (0–3.6)†	0 (0–0)‡	0 (0–0)†	0 (0–3.2)‡
7–9 mo	95	0 (0–2.1)‡	0.8 (0–2.4)‡	0 (0–0)‡	0 (0–0)†	0 (0–2.2)‡
10–12 mo	90	0 (0–1.9)‡	0 (0–2.3)‡	0 (0–1.5)‡	0 (0–0)†	0.2 (0–2.3)‡
13–15 mo	85	0 (0–1.6)‡	0 (0–2.2)‡	0 (0–0)‡	0 (0–0)†	0 (0–2.0)‡
16–18 mo	70	0 (0–2.4)‡	0 (0–2.7)‡	0 (0–1.2)†	0 (0–0)†	0 (0–2.6)‡

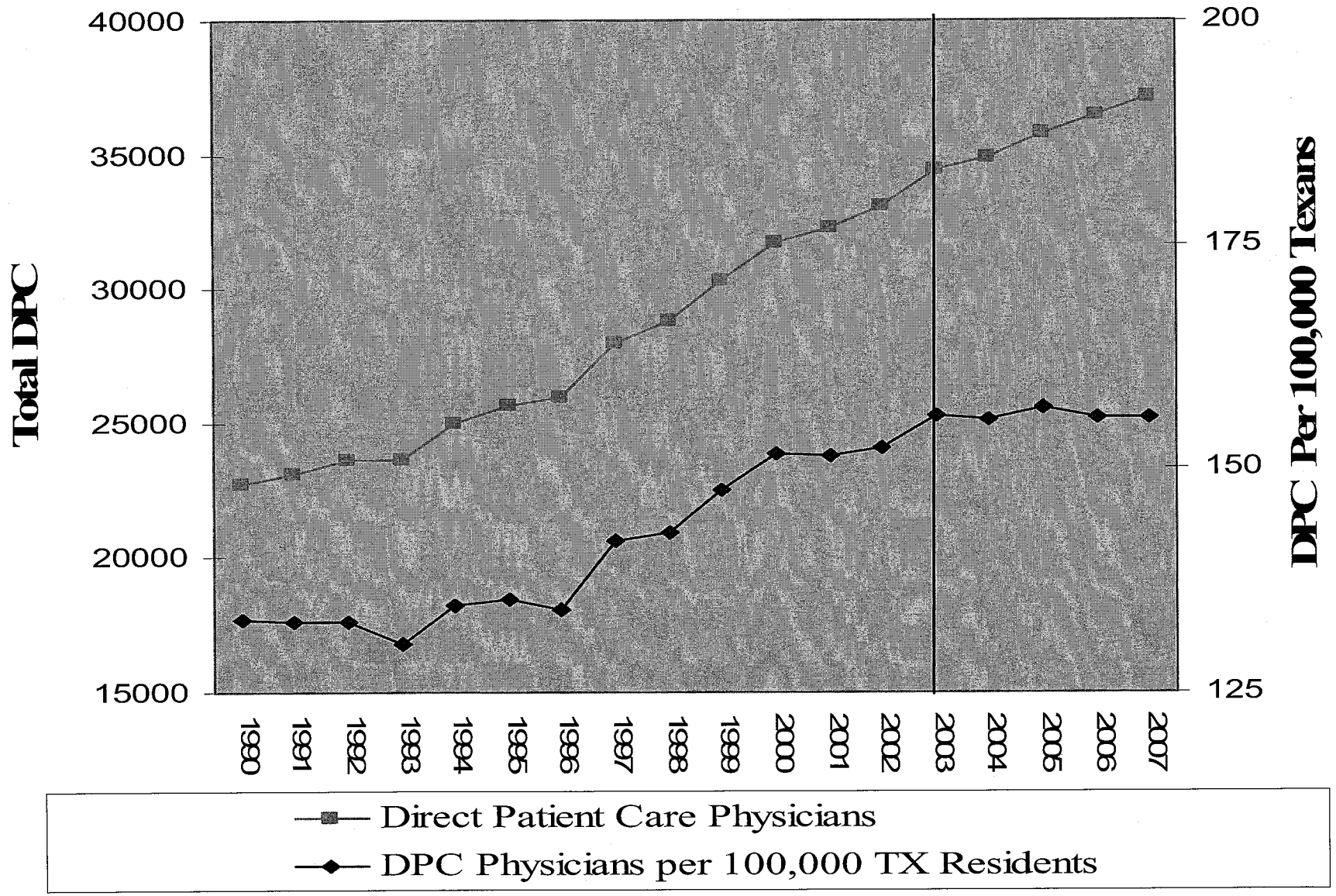
Challenge for Texas

- Med mal insurance crisis: solved
  - By addressing a litigation crisis that wasn't
- What about the medical error crisis?
  - Which you didn't touch
  - Weaker malpractice rules might make it worse
- Lots could be done:
  - But that's another talk
- Warning:
  - Docs and hospitals are all for malpractice reform
  - Don't expect them to support on patient safety reform

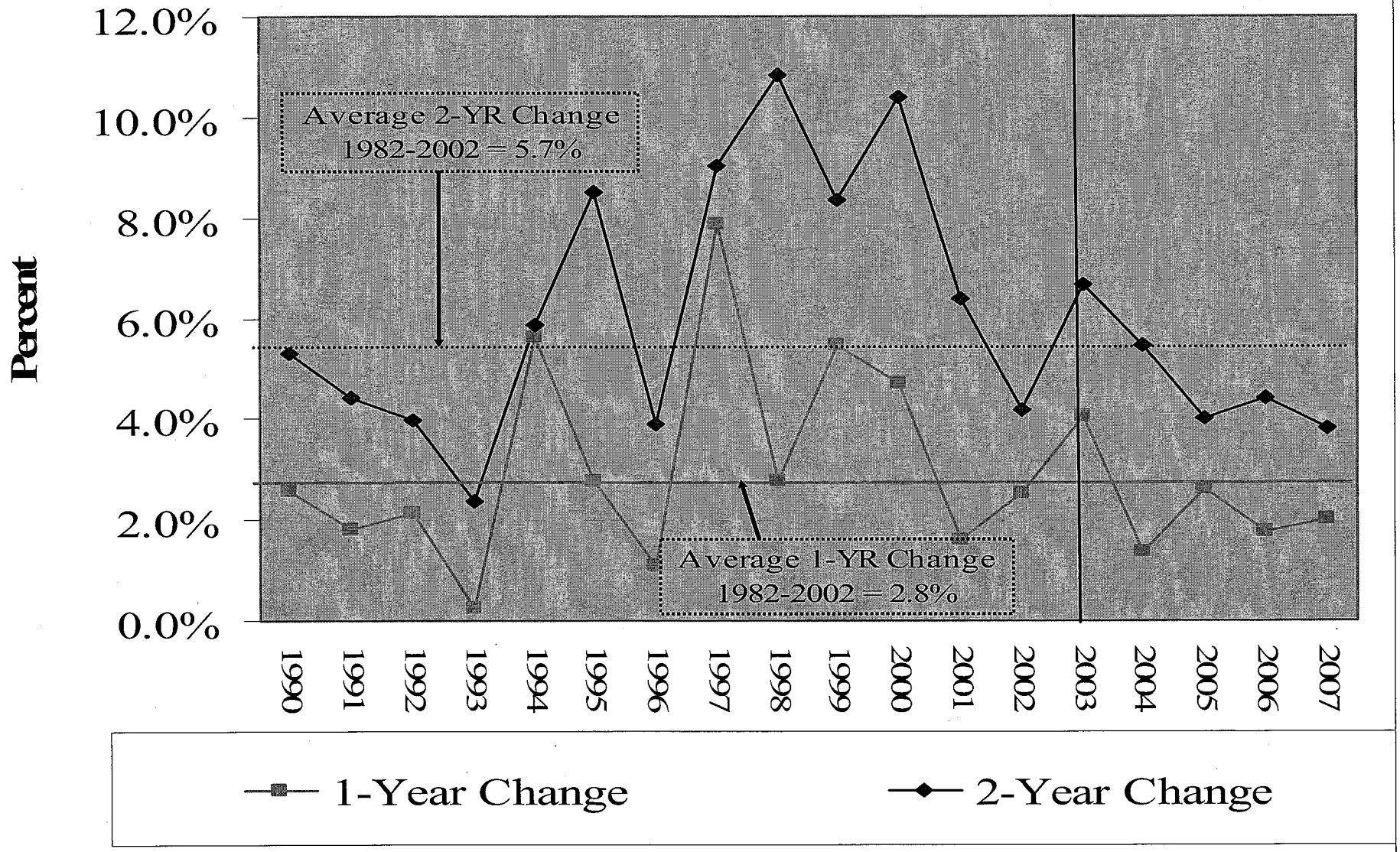
DATA SOURCE— DIRECT PATIENT CARE (DPC) PHYSICIANS 1981-2007

- Texas Department of State Health Services
  - Starts with data on licensed physicians from TX Medical Board
  - Excludes administrators, researchers, military, retired and others who do not treat the general population
  - Values for 1982, 1986 & 1989 interpolated

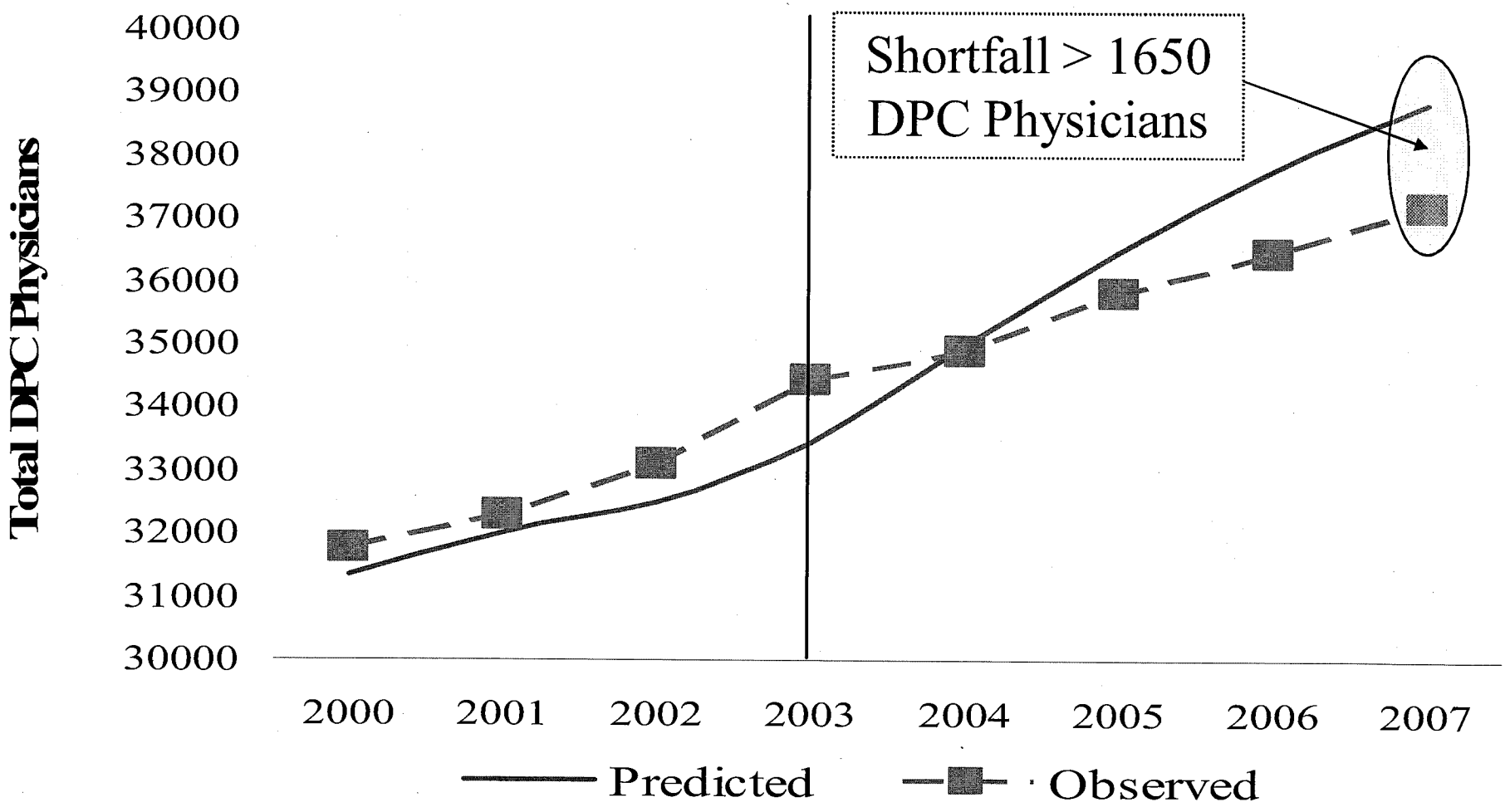
Total DPC Physicians and DPC Physicians per 100,000 Texans, 1990-2007



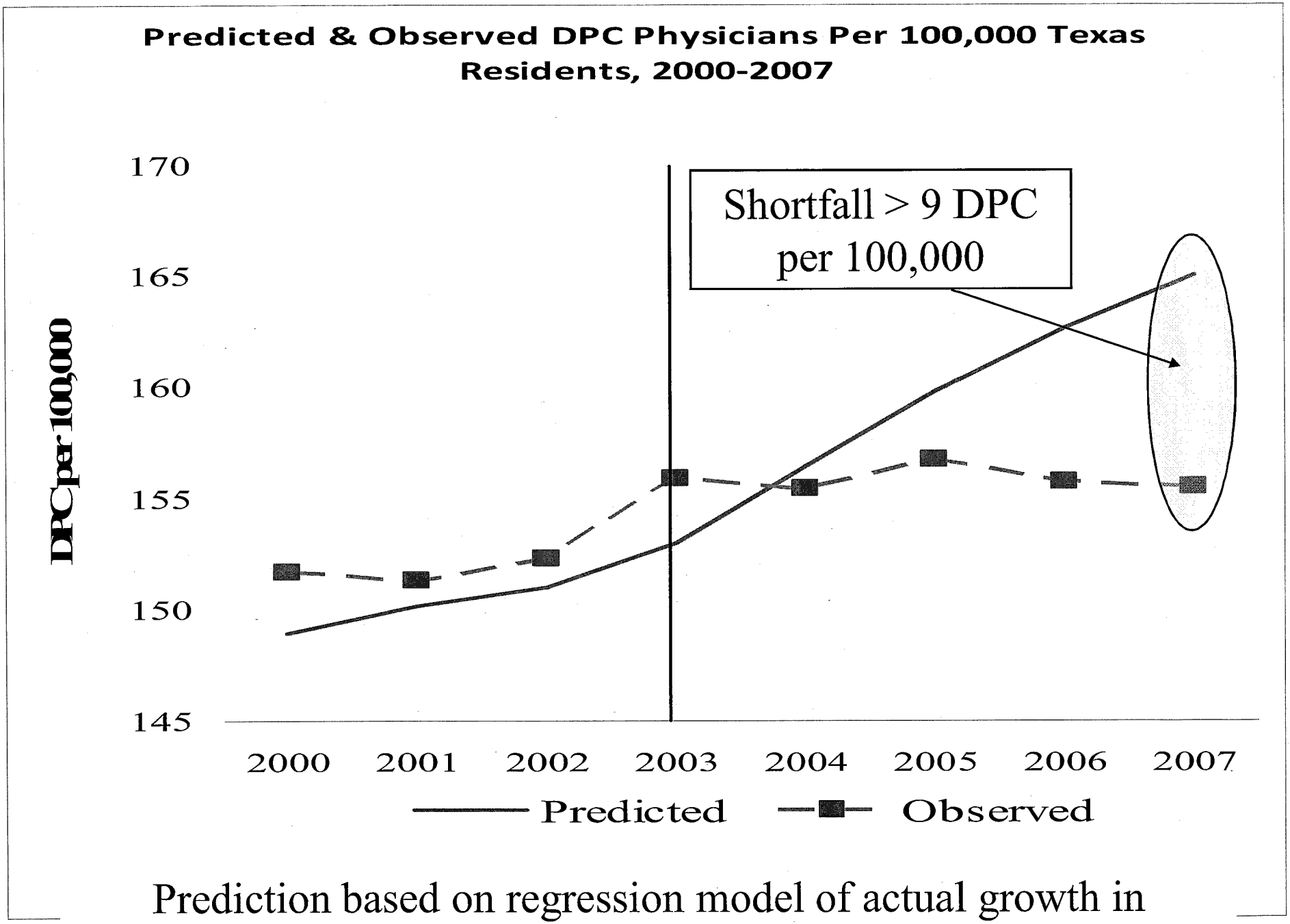
1- and 2-Year Change in Supply of DPC Physicians in Texas, 1990-2007



Predicted & Observed DPC Physicians, 2000-2007

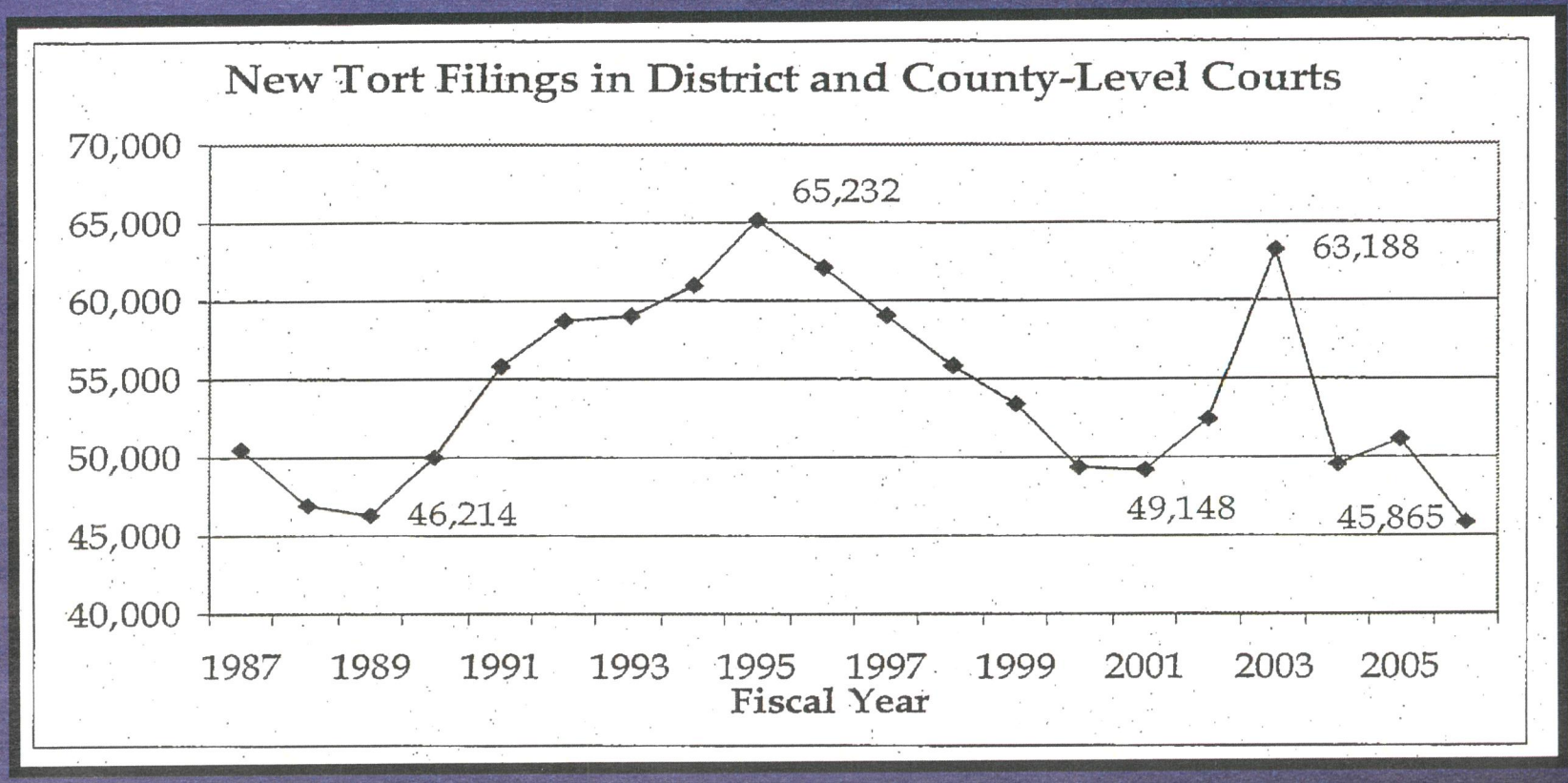


Prediction based on regression model of actual growth in physician supply 1981-2002.



Prediction based on regression model of actual growth in physician supply 1981-2002.

New Tort Filings in TX District & County Courts



Source: TX Office of Court Administration, Fiscal Years 1987-2006

TEXAS CIVIL JUSTICE LEAGUE

SENATE STATE AFFAIRS COMMITTEE

APRIL 28, 2008

Written Testimony of Lisa Kaufman
Texas Civil Justice League
Senate State Affairs Committee
Charge No. 6
April 28, 2008

Mr. Chairman and Members, thank you for the opportunity to provide testimony today on charge no. 6 regarding the economic impact of civil justice reforms in Texas.

Civil justice reform in Texas began more than twenty years ago, primarily in response to a series of court decisions substantially expanding tort liability and the negative impact of those decisions on Texas businesses and health care providers.

Then-Lieutenant Governor William P. Hobby Jr. and House Speaker Gibson D. "Gib" Lewis appointed a Joint Committee on Liability Insurance and Tort Law Procedure to study and make recommendations as a result of that crisis. The joint committee's report, issued in January 1987, recommended a comprehensive package of tort law and other reforms aimed at restoring predictability to the Texas civil justice system. According to the report, one of the primary goals of tort reform was to create "a business climate that attracts new business and encourages growth and expansion of existing enterprises." (page 7, *Report of the Joint Committee on Liability Insurance and Tort Law Procedure*)

With these goals in mind, beginning in 1987 and continuing through the 2007 legislative session, many of you and your predecessors have enacted legislation that has contributed substantially to the fulfillment of the Legislature's 1987 objective. Thanks to your efforts, the Texas civil justice system has returned to the national mainstream and the state enjoys one of the healthiest and dynamic economies in the nation, and for that matter, in the world.

You have heard from others about asbestos reform (2005) and HB 4 (2003), but we would be remiss if we didn't mention the numerous other measures: Deceptive Trade Practices Act, charitable immunity, venue, joint and several liability, proportionate responsibility, and punitive damages. These changes were made in a bi-partisan manner with leadership from both political parties. With broad support from the business and legal communities, you were thoughtful in your deliberations and, consequently, these changes have led to a well-balanced and predictable system that is enjoyed by all the citizens of Texas.

Because you rarely hear about the "success" stories, we, at the Texas Civil Justice League wanted to provide you a few examples of the positive effects your efforts have made to some of our members: one each from the health care, chemical industry, oil and gas industry, and manufacturing sectors.

First from the health care sector, I would like to read you a statement from Ken Cunningham, vice president of Good Shepherd Health System, in Longview. Mr. Cunningham says:

> "Without reservation, tort reform in Texas has greatly enhanced Good Shepherd Medical Center's ability to fulfill its commitment to our community. Tort reform has resulted in a significant reduction of frivolous lawsuits and claims and has allowed our organization to realize a substantial reduction in defense costs and indemnity payments. In addition, our steadily increasing premium for professional liability insurance coverage, which was in excess of $1 million, was reduced by half as a result of tort reform in Texas. These substantial savings have been imperative to maintaining a financially sound organization and improving our services to our community. It has allowed Good Shepherd to expand its neonatal intensive care unit, obtain and maintain a Level II Trauma designation, and recruit physician specialists essential to meet our community needs. Each year our cost to provide care to our uninsured and under insured population continues to grow at an exponential rate with charity and unreimbursed care reaching $130 million last year. Our hospital's financial viability is essential to being able to continue to meets these needs."

A second example is from a large chemical company. Since 2004, this company has invested $1.7 billion in new plants, expansions of existing plants, and small capital projects. They have added fifty-two new jobs and retained 156 jobs directly affecting the economies of those communities and the livelihood of Texas families.

Growth can also be seen in the oil and gas industry. Most important to the citizens of Texas is a significant increase in jobs. One company, located in the Houston area, has increased its headcount from 4,864 in 2003 to nearly double that in 2007. This job growth represents a payroll increase from $421 million to $823 million during the same period.

Finally, we would like to highlight a number of initiatives at a large manufacturing company. A number of years ago, this company purchased a then-defunct plant in the San Antonio area. The recent savings realized, in part from tort reform, have enabled the company to move forward with plans to upgrade and reopen this facility. This year, because of the health of its business, the company has expanded its community involvement to include $200,000 worth of local community grants as well as six $6,000 scholarships for children of its employees.

In conclusion, as we look back over the past two decades, the Legislature has achieved the objectives set forth by the Joint Committee more than twenty years ago. You have made Texas a competitive state, which attracts new business and cultivates existing business without "compromising the fundamental rights of persons injured through the actions of others to obtain relief from those injuries through the court system." (page 248, *Report of the Joint Committee on Liability Insurance and Tort Law Procedure*)

We appreciate your efforts and thank you for a job well done.

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WRITTEN TESTIMONY BY EVELYN TOBIAS-MERRILL, M.D.
TEXANS AGAINST LAWSUIT ABUSE
TEXAS SENATE STATE AFFAIRS COMMITTEE
APRIL 28, 2008

My name is Dr. Evelyn Tobias-Merrill and I am a board member of Texans Against Lawsuit Abuse (TALA) and the spokesperson for the national Sick of Lawsuits campaign. For the past several years, I've helped TALA educate the public on the cost and consequences of lawsuit abuse and I applaud the State Affairs Committee for studying the economic impact of recent civil justice reform in Texas.

As we approach the fifth anniversary of Proposition 12, the Texas constitutional amendment to help curb health care lawsuit abuse in Texas, access to health care has improved dramatically and a record number of new physicians are now treating Texans. Since the passage of Prop 12, Texas has experienced record growth in the number of new physicians in the state -- licensing 10,800 physicians since 2003 and a record 3,324 new doctors in 2007, according to the Texas Alliance for Patient Access (TAPA). And after years of decline, the ranks of medical specialists in Texas are growing, including obstetricians, orthopedic surgeons, and neurosurgeons. Prop 12 is serving Texas well by ensuring that patients who have been injured receive the justice they deserve without having to wait in line behind a slew of questionable lawsuits. At the same time, reforms are balancing justice with our need to continue pursuing medical innovations and treatments that can benefit millions.

Despite such tremendous progress, Texas is continually dogged by lawsuit abuse perpetuated by a few who are intent on abusing the system. Just last week, Texas was again ranked as one of the ten worst legal climates in the country, according to the U.S. Chamber's Institute for Legal Reform.

The ILR survey of more than 900 practicing attorneys showed that despite real progress in Texas, we are still at the mercy of a handful of rogue jurisdictions where uneven justice and unfair legal practices are commonplace.

According to the U.S. Chamber, the Rio Grande Valley and the Gulf Coast are still regarded as unfair legal environments due to the higher number of lawsuits, large awards and unfair day-to-day practices in terms of class certification, discovery, evidentiary rulings and jury instructions.

The ILR report comes on the heels of a March article in the national *Forbes Magazine* that also listed the Texas Gulf Coast and Rio Grande Valley as one of the "worst places to get sued" in America. Both echo the most recent annual report from the American Tort Reform Association (ATRA), which dubbed south Texas a "judicial hellhole" for the sixth year in a row.

The fact that parts of our state routinely earned the distinction as judicial hellholes adds to the very real impression that you can't get a fair trial in Texas. The antics of these rogue jurisdictions affect our entire state and can ultimately impact our ability to attract jobs and businesses to Texas. A large majority (63 %) of the legal professionals surveyed in the ILR study said the litigation environment in a state is likely to impact important business decisions at their company, such as where to locate or do business.

Furthering contributing to our already questionable legal climate, reform opponents continue to engage in an ongoing and aggressive effort to rollback reforms in Texas and create new and innovative ways to sue. In the last legislative session alone, 394 pieces of legislation were introduced that would have "created new causes of legal action, created new places to sue and expanded liability increasing the opportunity for Texas businesses, both large and small, to be sued." (*Southeast Texas Record*, "OP-ED: Lawsuit abuse hampers businesses, state economy, Richard Weekley, June 29, 2007)

As members may recall, one such proposal (HB 3281) easily passed in the House and Senate. HB 3281 would have allowed personal injury lawyers to sue for reimbursement of medical expenses that their client never actually paid nor would pay. This misguided legislation would have forced Texas families to pay the price for personal injury lawyer greed. Ultimately,

Governor Rick Perry vetoed the bill in a move supported by many civil justice and business groups.

Another proposal with unintended lawsuit creation consequences surfaced during the legislative session and gave legal watchdogs pause: The False Claims Act. (SB 1309). Should the False Claims Act become law it could potentially undo progress of civil justice reforms designed to make our justice system fair and balanced. SB 1309 introduced yet another "new way to sue." In fact enterprising lawyers could seize the opportunity afforded by SB 1309 to sue anyone – whether an individual, business, school district or local government – without notice or knowledge of the defendant. The problem with a state level so-called "qui tam" statute is that the requirements to file a "false claims" lawsuit are so broad that simple mistakes can be cast as acts of "fraud" and open a floodgate of unnecessary lawsuits. In a state where some lawyers already specialize in exploiting loopholes and looking for the next litigation target, the state of Texas doesn't need to embrace new, and often baseless, reasons to sue. In fact, the vast majority of qui tam suits are never pursued because they are without merit. Lawsuits that go nowhere are a drain on limited resources and a waste of the court's time.

We expect to see more of the same in 2009. Indeed, at the end of last session, a statement from a representative of the Texas Trial Lawyer Association clearly showed they believe their work here is not done. Their spokesman stated, "I think the legislation that did pass were the early steps to reverse some of these reforms, and we think they will continue into the next session." (*Texas Lawyer*, Brief: Tort and Jury Reform," June 12, 2007).

Personal injury lawyers are waging a two-pronged effort to create more lawsuits: On one front they are working aggressively at the Capitol to create new ways to sue and fight against balanced reforms; and on another they continue to search for new and innovative ways to use existing laws, and loopholes, to exploit our civil justice system for their own financial benefit.

The antics of a handful of personal injury trial lawyers who bragged about their abilities to exploit juries in a handful South Texas jurisdictions did get noticed in the 2007 legislative session. The lawyers, who specialized in Jones Act cases, boasted about their ability to win cases

in South Texas, claiming that a case is worth 60 to 70 percent more if it's filed in one of four counties, all known as judicial hellholes. At least one of these lawyers claimed his biggest mistake in a Valley case was not asking for enough money from the jury. Lawmakers ultimately closed the loophole in Texas' venue laws that allowed these Jones Act lawsuits against maritime companies to be filed where a worker lived vs. where the defendant was located or where the accident occurred. Yet while lawmakers addressed this problem, some very inventive and ambitious personal injury lawyers continue to look for new ways to sue and line their pockets.

Specifically, we are seeing a growing effort by personal injury lawyers to turn the issue of global warming into their next cash cow. A Rutgers law professor predicts that global warming will make for "one of the biggest legal practices in the next 20 years." (*The Newark Star-Ledger*, July 8, 2007). The opinion is shared by the president of the World Resources Institute: "Companies that generate significant carbon emissions," he warns, "face the threat of lawsuits similar to those common in the tobacco, pharmaceutical and asbestos industries." (*The Toronto Star*, April 29, 2007).

The weather also is contributing to a new wave of lawsuits against gas stations nationwide. As temperatures outside increase, liquid gasoline expands and the amount of energy per gallon decreases. Since gas is priced at 60-degree standard and gas pumps don't adjust for outside temperature, lawyers are suing gas stations for using physics to take advantage of consumers. (*Associated Press*, "California among those suing over allegations of 'hot fuel'," June 18, 2007)

And, while Texas has rightly reformed its medical liability laws, we clearly still suffer from lawsuits nationally against companies that manufacture medicines and medical devices. We can expect that trend to continue. At their annual meeting in July, a national personal injury lawyer organization has scheduled 26 separate "litigation group" meetings that target specific aspects of our health care system. These sessions encourage litigation by sharing "best practices" for filing lawsuits against various elements of our health care system.

In closing, even with existing civil justice reforms on the books, Texas remains fertile ground for lawsuit abuse. Many flock to our borders to take advantage of legal loopholes and

rogue jurisdictions. Continued and constant vigilance is necessary to stave off abuses that will sap our legal system and deny or delay justice for the truly injured.

Thank you for your time and for your attention to this important issue.

###

GROWTH IN PHYSICIAN WORKFORCE BY COUNTY

(May 2003 – May 2007)

Harris

Harris County has added 1,537 physicians since passage of the 2003 medical lawsuit reforms. This represents a 36% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 88%. **The greater growth rate has produced the opportunity for 2,439,000 more patient visits per year and a direct economic impact of $379,400,000.** New additions to the Harris County healthcare community include 153 family practice or family medicine physicians, 152 pediatricians, 134 internists and 127 anesthesiologists. Also new to the county are 89 emergency medicine physicians, 61 cardiologists, 58 pediatric specialists and 47 psychiatrists. Other notable gains include 45 oncologists, 41 hematologists, 40 gastroenterologists, 29 neurologists, 29 obstetricians and 22 orthopedic surgeons.

Dallas

Dallas County has added 966 physicians since passage of the 2003 medical lawsuit reforms. That represents a 23% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 721%. **The greater growth rate has produced the opportunity for 1,084,500 more patient visits per year and a direct economic impact of $168,700,000.** New additions to the Dallas County healthcare community include 160 anesthesiologists, 86 internists, 86 pediatric specialists, 81 pediatricians and 56 emergency medicine physicians. Also, new to the community are 37 psychiatrists, 35 oncologists, 29 kidney specialists, and 19 orthopedic surgeons. Dallas County has also added 16 diabetes specialists, 16 allergists, 15 rheumatologists, 12 cardiologists, and 12 plastic surgeons. Other notable gains include 10 infectious disease specialists, 8 geriatricians, and 6 transplant surgeons.

Bexar

Bexar County has added 680 physicians since passage of the 2003 medical lawsuit reforms. This represents a 55% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 72%. **The greater growth rate has**

produced the opportunity for 1,300,500 more patient visits per year and a direct economic impact of $202,300,000. New additions to the Bexar County healthcare community include 86 internists, 72 anesthesiologists, 69 family medicine and family practice doctors and 39 emergency medicine physicians. Bexar County has added 27 pediatricians, 25 cardiologists, 21 oncologists, 21 neonatologists, 15 orthopedic surgeons and 15 gastroenterologists.

Tarrant

Tarrant County has added 403 physicians since passage of the 2003 medical lawsuit reforms. This represents a 6% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 205%. **The greater growth rate has produced the opportunity for 319,500 more patient visits per year and a direct economic impact of $49,700,000.** New additions to the Tarrant County healthcare community include 61 family medicine and family practice doctors, 41 emergency medicine physicians, 35 internists and 24 pediatricians. Tarrant County has also added 20 cardiologists, 19 orthopedic surgeons, 17 gastroenterologists, 16 oncologists, 16 psychiatrists and 15 obstetricians.

Rio Grande Valley

Since the passage of reforms, the Rio Grande Valley has added 189 physicians. The growth rate of the physician workforce in both Cameron and Hidalgo County have exceeded the state average.

Hidalgo

Hidalgo County has added 117 physicians since passage of the 2003 medical lawsuit reforms. During the past four years the growth in the physician workforce has outpaced population growth by 28%. **The 117 new physicians have produced the opportunity for 526,500 more patient visits per year and a direct economic impact of $81,900,000.** New additions to the Hidalgo County healthcare community include 21 family practice and family medicine physicians, 20 pediatricians, 9 internists and 9 obstetricians. Other additions include 8 gastroenterologists, 7 emergency medicine physicians, 6 oncologists, 5 general surgeons, 5 cardiologists, 4 kidney specialists and a neurosurgeon.

Cameron

Cameron County has added 72 physicians since passage of the 2003 medical lawsuit reforms. During the past four years the growth in the physician workforce has outpaced population growth by 110%. **The 72 new physicians have produced the opportunity for 324,000 more patient**

visits per year and a direct economic impact of $50,400,000. New additions to the Cameron County healthcare community include 15 family practioners, 10 pediatricians, 9 internists and 8 anesthesiologists. Other additions to the Brownsville/Harlingen area include 4 cardiologists, 4 emergency medicine physicians, 3 obstetricians, 2 oncologists, 2 pediatric critical care specialists and 2 child neurologists.

El Paso

El Paso County has added 130 physicians since the passage of the 2003 reforms. This represents a 76% greater growth rate than pre-reform. The physician growth rate has far outpaced population growth which reverses the trend from four years earlier when the area's physician growth rate was half the state average. **The greater growth rate has produced the opportunity for 279,000 more patient visits per year and a direct economic impact of $43,400,000.** New additions to the El Paso healthcare community include 22 pediatricians, 14 family practioners, 12 emergency medicine specialists, 11 internists and 11 anesthesiologists. Other additions include 7 cardiologists, 6 oncologists, 6 diabetes specialists, 4 orthopedic surgeons, 3 gastroenterologists, and 2 ear, nose and throat specialists.

Bell

Bell County has added 130 physicians since passage of the 2003 medical lawsuit reforms. This represents a 69% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 382%. **The greater growth rate has produced the opportunity for 274,500 more patient visits per year and a direct economic impact of $42,700,000.** New additions to the Bell County healthcare community include 29 emergency medicine physicians, 17 pediatricians and 12 radiologists. Bell County has also added 9 cardiologists, 9 general surgeons, 8 anesthesiologists and 7 orthopedic surgeons.

Denton

Denton County has added 111 physicians since passage of the 2003 medical lawsuit reforms. The growth rate in the physician workforce has actually slowed from the previous four years and lags behind the counties explosive population growth by 19%. **The 111 new physicians have produced the opportunity for 499,500 more patient visits per year and a direct economic impact of $77,700,000.** The Denton County healthcare community has added 24 family medicine and family practice doctors, 13 emergency medicine specialists, 9 radiologists and 9 orthopedic surgeons. New additions to Denton County also include 8 cardiologists, 7 ophthalmologists, 6 psychiatrists and 5 internists.

Lubbock

Lubbock County has added 62 physicians since passage of the 2003 medical lawsuit reforms. The growth rate in the physician workforce has actually slowed from the previous four years but has still managed to outpace population growth by 241%. **The 62 new physicians have produced the opportunity for 279,000 more patient visits per year and a direct economic impact of $43,400,000.** The Lubbock County healthcare community has added several hard-to-recruit specialists including 3 neurological surgeons, 3 orthopedic surgeons, 3 kidney specialists and 3 diabetic specialists. New additions also include 13 anesthesiologists, 12 family practioners, 6 emergency medicine specialists, six gastroenterologists and six radiologists.

Brazoria

Brazoria County has added 41 physicians since passage of the 2003 medical lawsuit reforms. That represents a 34% greater growth rate than pre-reform. During the past four years the growth in the physician workforce has outpaced population growth by 139%. **The greater growth rate has produced the opportunity for 67,500 more patient visits per year and a direct economic impact of $10,500,000.** New additions to the Brazoria County healthcare community include 12 family practioners, 8 pediatricians, 7 internists and two cardiologists. Other additions include 2 emergency medicine physicians, a general surgeon, a neurologist and a gastroenterologist.

Galveston

Galveston County has added 34 physicians since passage of the 2003 medical lawsuit reforms. The growth rate in the physician workforce has actually slowed from the previous four years and has been slightly eclipsed by population growth. **The 34 new physicians have produced the opportunity for 153,000 more patient visits per year and a direct economic impact of $23,800,000.** The Galveston County healthcare community has added 10 obstetricians, 7 family medicine and family practice physicians and 6 emergency medicine physicians. Other additions to Galveston County include 2 neurosurgeons, 2 geriatricians, 2 general surgeons and 2 general practioners.

Jefferson

Jefferson County has rebounded from a net loss of 5 physicians in the four years before reform to the addition of 27 physicians since passage of the 2003 medical lawsuit reforms. The growth rate in the physician workforce has outpaced population growth by 360%. **The 27 new physicians have produced the opportunity for 121,500 more patient visits per year and a direct**

economic impact of $18,900,000. The Jefferson County healthcare community has added 15 emergency medicine specialists, 4 kidney specialists and three orthopedic surgeons. Other additions to Jefferson County include 3 neonatologists, a neurosurgeon and a critical care surgeon.

Taylor

Taylor County suffered a net loss of 18 physicians in the run-up to reform. They have since regained the 18 physicians that were lost. The growth in physician manpower has exceeded population growth by 62%. **The 18 physicians new to the Abilene area have produced the opportunity for 81,000 patient visits and a direct economic impact of $12,600,000.** The Taylor County healthcare community has added 4 emergency medicine specialists, 3 obstetricians, 2 cardiologists, 2 kidney specialists and 2 infectious disease specialists. Other additions include a hand surgeon, a general practioner and a family medicine physician.

Tom Green

Tom Green County has added 14 physicians since passage of the 2003 medical lawsuit reforms. While the gains have been modest they have far outpaced population growth which has been stagnant. **The 14 new physicians have produced the opportunity for 63,000 patient visits and a direct economic impact of $9,800,000.** The San Angelo area has added 2 child and adolescent psychiatrists, 2 gastroenterologists, a thoracic surgeon, a plastic surgeon, an oral surgeon and a neurosurgeon. Other additions include a family practioner, a neurologist, a cardiologist, an opthalmalogist, an ear, nose and throat specialist and an emergency medicine specialist.

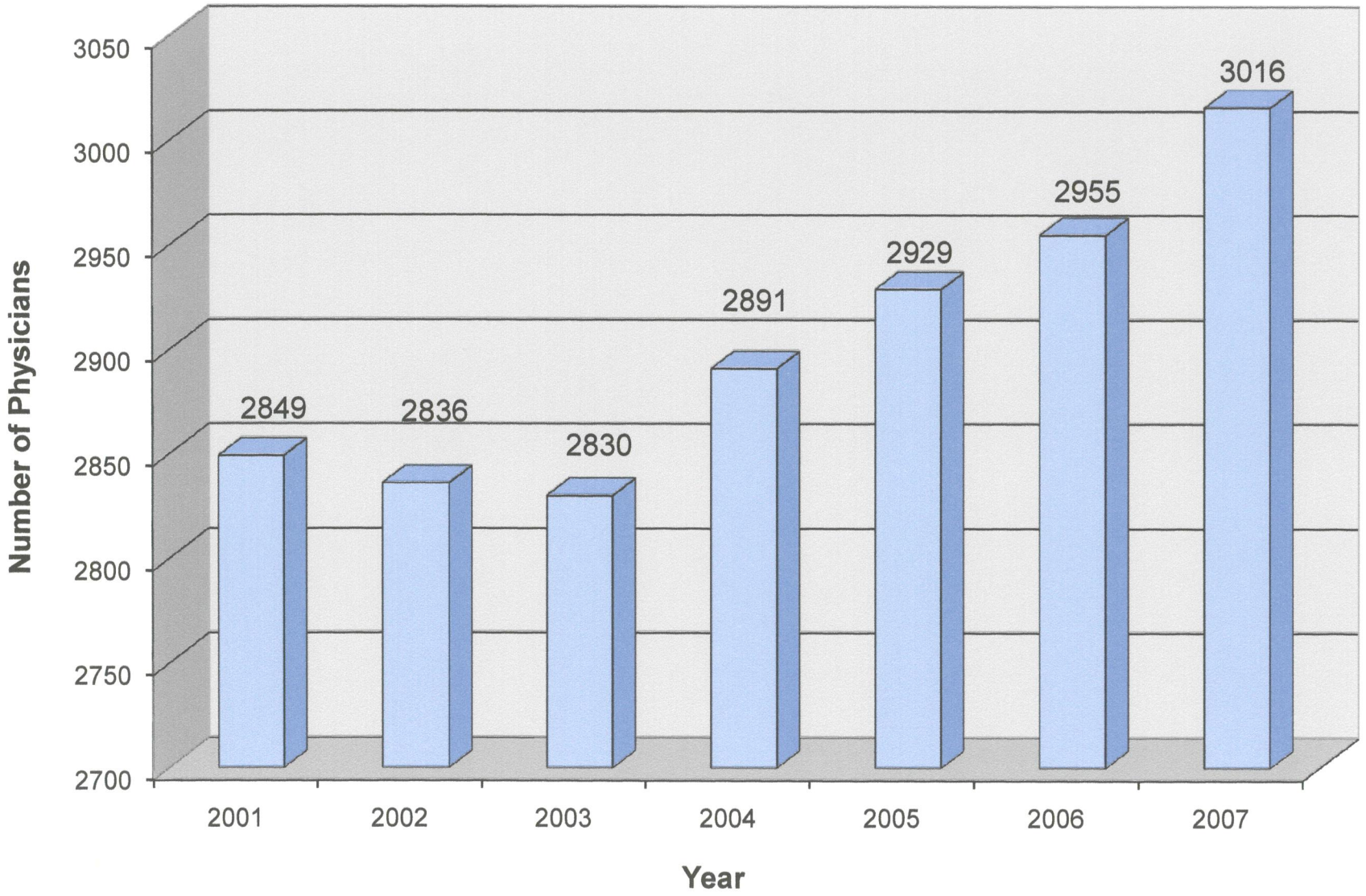
Burnet

Burnet County has added 12 physicians since passage of the 2003 medical lawsuit reforms. The growth rate in the physician workforce has actually slowed from the previous four years but has still managed to outpace population growth by 230%. **The greater growth rate has produced the opportunity for 9,000 more patient visits per year and a direct economic impact of $1,400,000.** The Burnet County healthcare community has added 3 obstetricians, 3 internists and two emergency medicine specialists. Other additions include a cardiologist, a urologist, an urgent care specialist and a family practioner.

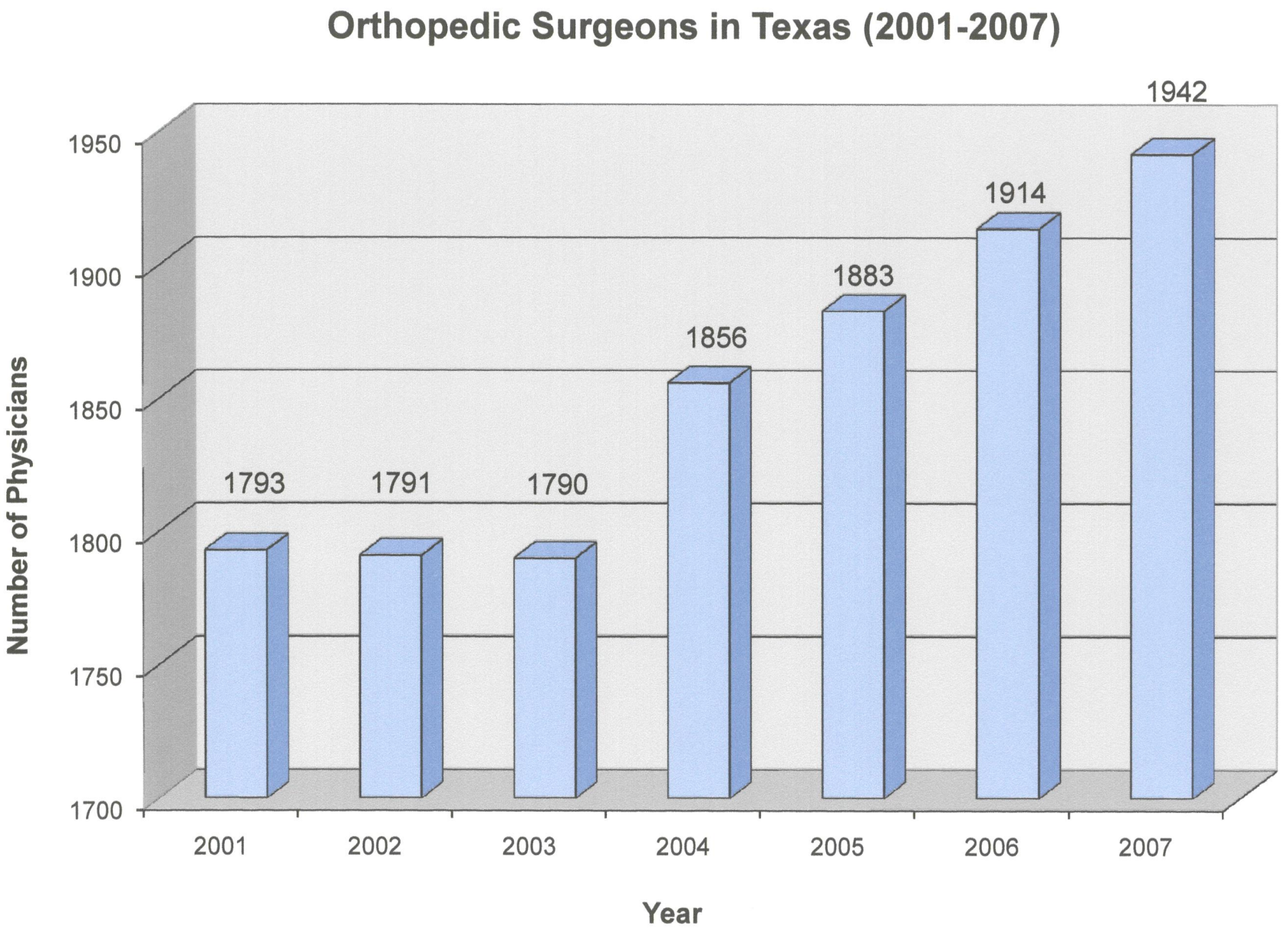
Source: Texas Medical Board, May Reports
Texas Department of State Health Services
Texas Medical Association

OB/GYN's in Texas (2001-2007)

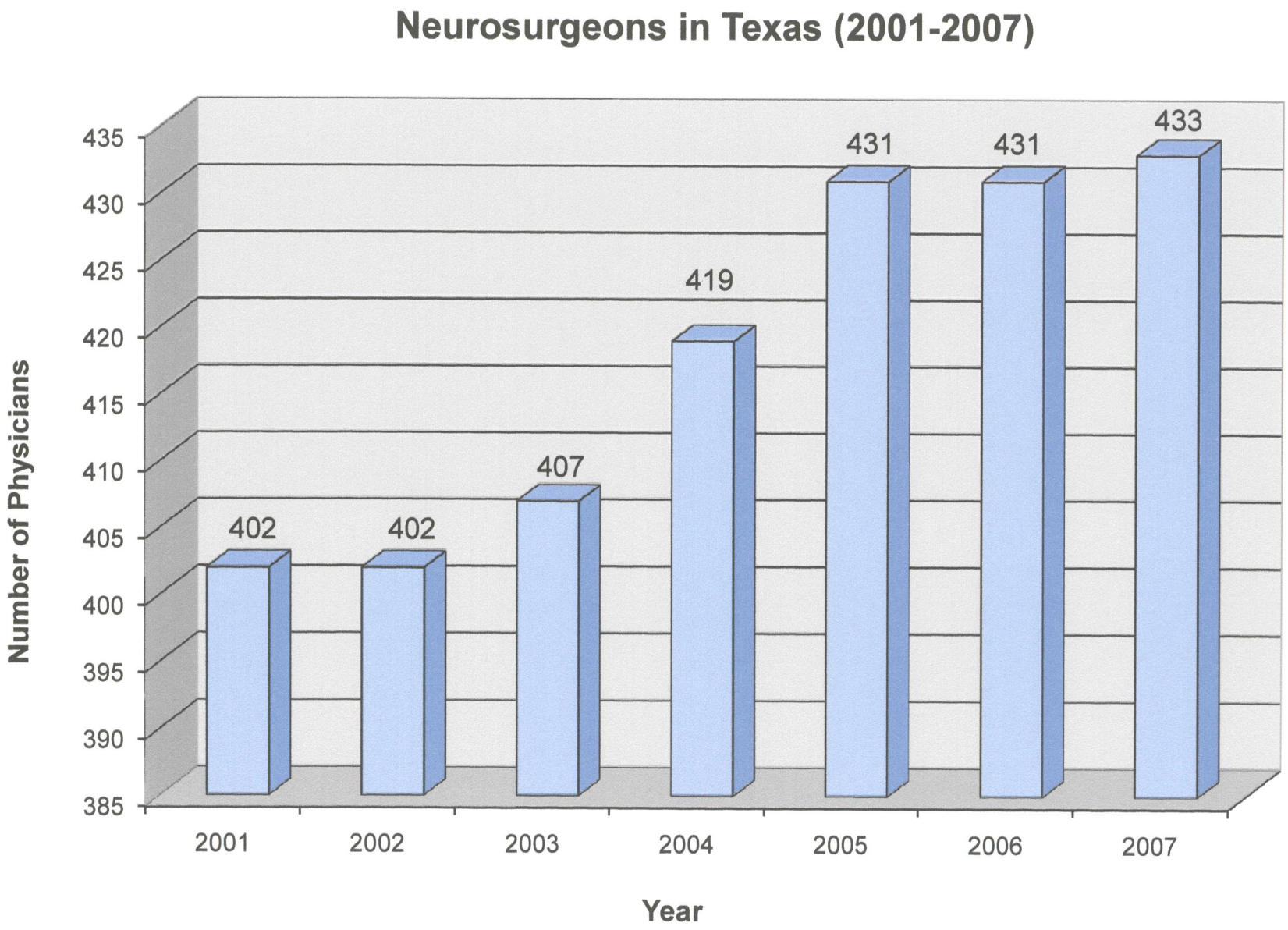
(Numbers include those self-described as obstetricians, as well as OB/GYN's)



Source: Texas Medical Board - May Reports



Source: Texas Medical Board - May Reports



Source: Texas Medical Board - May Reports

TEXAS MEDICAL ASSOCIATION

Physicians Caring for Texans

April 28, 2008

Texas Senate
State Affairs Committee
Honorable Chairman Robert Duncan
Capitol Station, SHB 380
Austin, Texas 78701

Dear Chairman Duncan:

On behalf of the 43,000 plus physician members of the Texas Medical Association (TMA), we urge you to consider these comments concerning the status of the Texas workers' compensation system for physicians and our patients.

We believe that injured workers in Texas deserve clinically appropriate and cost-effective health care. We also believe health care should be accessible to injured workers in a timely manner within a reasonable geographic proximity. Workers' compensation should be clearly defined, fair, simple to understand, accountable, and easily accessible to all parties involved.

Since the implementation of House Bill 7, there have been substantial changes in workers' compensation in Texas. The areas of focus for our comments include improvement of stakeholder input, concerns about access to care, normalizing the healthcare delivery system and the proliferation of discount markets in the workers' compensation network system.

Stakeholder input

TMA has seen a drastic shift in a positive direction in the regulatory agency's willingness to work with stakeholders. The Division of Workers' Compensation (DWC) actively engages the medical community with rulemaking and policy decisions made by the Division. The Division should be commended for their efforts, especially in light of the implementation of major reform changes for the system.

Access to care

Access to care in the non-network workers' compensation system continues to be a major problem. While reliable trending data about access is not readily available, TMA does receive complaints from our members about how difficult it is to assist patients with finding a specialist to treat them. TMA forwards many of the requests we receive from members to the Office of Injured Employee Council and DWC's Medical Advisor. To date, there are no published studies available to determine whether abolishing the Approved Doctor List had an impact on access to care for injured workers.

To address access to care problems, DWC revised the non-network medical fee guideline to increase reimbursement rates for physicians. We are encouraged by the new medical fee guideline and are hopeful that an increase in reimbursements will attract more quality physicians to provide medical

services in the non-network workers' compensation system. The Division should be commended for addressing this important issue for injured workers in Texas.

Normalizing the healthcare delivery system

TMA is also encouraged by the implementation of electronic billing in workers' compensation and looks forward to working with the Division to align workers' compensation more completely with mainstream healthcare delivery systems. With treatment and return-to-work guidelines as a requirement and ultimate backstop on overutilization by providers, we are hopeful that the front-end administrative hassles for physicians will be eliminated. This allows physicians to focus on injured workers' more and less on paperwork and administrative issues that plague the current workers' compensation system. Like Medicare and other mainstream group health delivery systems, research has proven that provider behavior is better managed by identifying outliers post-treatment. The ability to concentrate on non-compliant behavior post-treatment, rather than requiring enormous burdens and administrative costs on every provider, should be considered by the Legislature and Division to improve healthcare delivery in workers' compensation.

Texas physicians who participate in workers' compensation are challenged with managing care. Often these physicians have to deal with employers who are unwilling to cooperate with return to work suggestions. Returning workers to their jobs when their health has improved is a shared responsibility between the patient, physician and employer. Currently, the patient-physician relationship is compromised by employers who refuse to accept workers at less than 100 percent. As the payers of enormous health insurance premiums, physicians understand employer arguments regarding accepting workers' who can not perform at an optimum level. TMA would like to see more accountability for employers in the workers' compensation system. Perhaps discounts would be appropriate for employers who participate in a return-to work-program. Ultimately, the effectiveness of our state's reforms will be measured by how effective all components of our workers' compensation system are in addressing the health and return-to-work of its occupationally injured population.

Proliferation of discount markets

In 2005, House Bill 7 introduced managed care networks to workers' compensation in Texas. The intent of networks was to improve access to care and introduce "market based" concepts to the workers' compensation system. TMA never supported the notion that networks were the silver bullet to cure the access problems in workers' compensation. The number of certified networks continues to grow and more than 213 counties in Texas have at least one certified network. The network concept is growing, but has not expanded at the pace expected by most stakeholders. The substantial growth of the unregulated secondary discount market is a very significant factor contributing to physicians' apprehension and reluctance to join networks.

The majority of these workers' compensation networks are based on a few very large Preferred Provider Organization (PPO) networks that are "rented" or "leased" to insurance carriers. The perception is that there are 31 or so separate networks, when in reality there are really four or five large PPO networks "leasing" their contracted providers and discounts to insurance carriers. These groups become partners and seek certification under business agreements that involve terms and conditions not transparent to most employers, physicians and injured workers. As a result of these agreements, there has been a substantial growth of the unregulated secondary discount market, which is an extremely lucrative unregulated market. Due to this unregulated market going unchecked, it has quickly proliferated, spawning a vast array of entities and activities that have enriched a small group of consolidated entities at the expense of the entire health care market, specifically the workers' compensation system. Because it thrives in a health care market that lacks transparency, this black

market in provider discounts has grown so stealthily that states legislatures and regulatory agencies are just beginning to recognize the need to regulate it.

Within this secondary market, discounting entities organize and/or access existing health care provider panels and then lease the panels and associated provider discounts to various payers. The discounting entities that sell the provider panel and discount information are called "rental network PPOs" or "lease network PPOs." These entities generate revenue by charging their clients a fee to access their physician networks. Rental network PPOs may "sell" or "rent" their networks and associated discounts to discounting entities called "repricers," whose sole purpose is finding and applying the lowest discounted rate for clients, often without authorization from the physician, and profiting off of the margins.

There are a wide variety of activities within this unregulated market. There are valid agreements between physicians and rental network PPOs that provide a service and benefit to all involved parties. However, many of the activities in the unregulated market involve selling discount information to entities for which the physicians did not agree to the discount, or where there is actually a prevailing contracted payment rate that is higher than the discounted rate that is inappropriately applied. In some cases, a discount is applied even after a physician terminates an underlying contract. Sometimes, discounts granted for one market are applied in entirely separate markets for physician services (e.g., workers compensation).

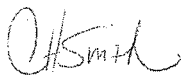
TMA urges the Legislature to protect physicians and patients from predatory behavior of these unregulated entities. States have longstanding vested interests in protecting freedom of contract and in fostering fair business practices, especially in a regulated industry like workers' compensation. This market "black hole" creates the optimal environment for these entities to make enormous profits by doing nothing more than capitalizing from the complexity of the system that very few people understand. It is more often the case than not that neither the physician nor the patient has any way of determining the basis for the non-negotiated discount, because the explanation of benefits (EOB), or communication from the payer, fails to state this information. In many cases, information regarding the physician's discounted rates is sold and resold without authorization from the physician. Then, the discounted rates are applied as payment for services provided to patients whom the physician has not agreed to treat for that discounted rate. In effect, the lowest discount that a physician agrees to in any single PPO agreement becomes the ceiling for payment, notwithstanding prevailing contracts or other appropriate payment methodologies. In other words, a workers' compensation network may agree to contract with a physician at a "market" based rate while behind the scenes have already purchased access to a larger discount that will be used to reduce the physician's payment after services are provided at a later date. These practices, which eliminate a physician's right to freely contract, would never be tolerated in a transparent, open market for services.

Because companies attempt to use contract rates to which they are not entitled, costs increase. Physicians and other providers, in addition to losing reimbursement to unauthorized discounting, must invest in management techniques and billing systems, at substantial cost, to track claims, audit their reimbursement as compared with their agreements with payers, and contest improper payment. Networks in workers' compensation promised to reduce administrative hassles and burdens, not add to the complexity. Physicians spend an exorbitant amount of time and resources dealing with these administrative complexities. When viewed cumulatively, there are significant financial losses for physician practices as well as the diversion of a huge slice of the health care dollar to these intermediary entities. Simply, to have notice of the parties who may access a contracted rate entering into an arrangement and mandating notice when permitting new companies to access the contract

would answer many of the problems physicians must address when dealing with "free standing" PPOs. Also, as these PPO entities seem to operate without any direct regulation, perhaps it is time to provide oversight of their activities as some participants are disrupting the marketplace.

TMA appreciates the opportunity to testify before you today on these important issues. TMA will continue to monitor the implementation of system reforms and work to address problems. Our expectation is that any reform to workers' compensation should improve the system for our patients - injured workers. Reforms should improve access to quality physicians who have left the system altogether, reduce hassle factors for participating physicians, and improve stakeholder involvement. We stand ready to assist you to improve the workers' compensation system for your constituents and our patients.

Sincerely,



Charlotte Smith, MD, Chair
Ad Hoc Committee on Workers' Compensation

CC:
Honorable Speaker of the House of Representatives Tom Craddick
Honorable Lieutenant Governor David Dewhurst
Division of Workers' Compensation Commissioner Albert Betts
Texas Department of Insurance Commissioner Mike Geeslin

PATIENT JUSTICE

Patients Are Better Off in States Without Barriers to Justice

January 2008

Executive Summary

In state after state, patients continue to be told that the silver bullet for improving healthcare is to enact severe and arbitrary limits on patient access to the legal system. The argument made by insurance and medical industry lobbyists is that, in essence, allowing the epidemic of medical errors to go unchecked by legal accountability will improve the quality of healthcare.[1]

We set out to test this theory and determine if so-called tort "reform" corresponds to improvements in the healthcare system. Our investigation shows the opposite to be the case. Using data collected for a comprehensive state-by-state evaluation of healthcare by the non-profit, nonpartisan Commonwealth Fund,[2] we have determined that states without caps on medical malpractice lawsuits tend to have *better* healthcare than those with these arbitrary limits.[3]

According to our analysis, states with limits on patient access to the legal system have worse overall healthcare on the Commonwealth Fund's composite measurement than those without arbitrary legal restrictions. In a ranking of all 50 states plus the District of Columbia, the average rank of overall state health system performance for those states without caps on medical liability damages is higher at 21.3 than those with arbitrary limits, which have an average rank of 28.9. This demonstrates that patients in states without limits on their access to the legal system are better off than those with such barriers.

Moreover, states with caps more often rank among the worst in the Commonwealth Fund's healthcare measures. For instance, 69% of states with the poorest overall health system performance (bottom quarter), 79% of states with the worst access to care, and 84% of states with

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[1] This claim has been made by numerous special interests that advocate for severe and arbitrary limits on patient access to the courts, including the American Tort Reform Association (http://www.atra.org/wrap/files.cgi/7964_howworks.html), Pacific Research Institute (http://www.pacificresearch.org/publications/id.2932/pub_detail.asp), and Texans for Lawsuit Reform (http://www.tortreform.com/node/1).

[2] The Commonwealth Fund, "Aiming Higher: Results from a State Scorecard on Health System Performance," June 2007. See http://www.commonwealthfund.org/usr_doc/StateScorecard.pdf?section=4039.

[3] The 20 states (plus the District of Columbia) without caps are: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Iowa, Kentucky, Maine, Minnesota, New Hampshire, New Jersey, New York , North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, and Wyoming.
The 30 states with caps are: Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

the poorest quality of care have limits on patient access to the courts. Evidence from this study shows that the proposition that so-called tort "reform" is achieving its touted goal of improving patient care is highly dubious. Patients fare worse in states with limits on access to their legal accountability system.

This data demonstrates the falsity of a major component used by special interests who desire to immunize wrongdoers from accountability by stripping patients of their legal rights. According to this analysis, Americans are much more likely to obtain better quality and access to healthcare and are significantly more likely to have health insurance in states that do not restrict the ability of injured patients to hold negligent doctors and hospitals accountable.

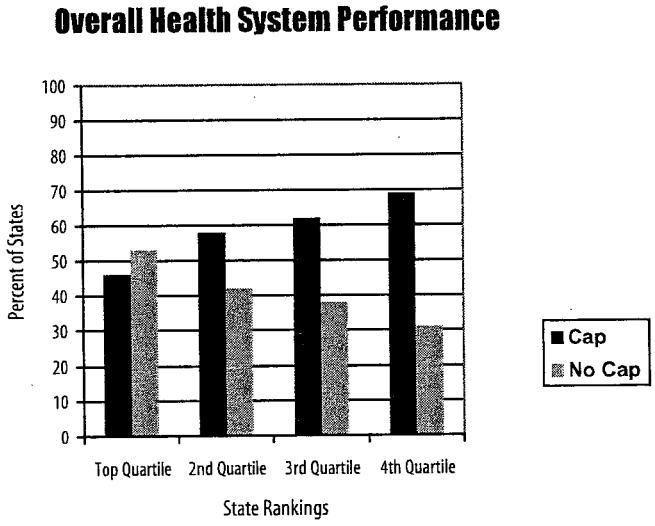
Methodology

Using healthcare rankings developed by The Commonwealth Fund, a non-profit healthcare research foundation, this report compares states that have imposed limitations on patient access to the civil justice system through arbitrary limits on medical malpractice cases with those that have not. The Commonwealth Fund rankings measure overall health system performance, access to healthcare, and quality of healthcare by dividing all 50 states plus the District of Columbia into quartiles based on each state's performance. According to the Commonwealth Fund, performance is measured in "access, quality, avoidable hospital use and costs, equity, and healthy lives."[4] Texas Watch utilized the Commonwealth Fund's measures as a benchmark to compare states with caps on medical liability damages with those that do not impose these arbitrary limitations.

Results

Overall Health System Performance

When the Commonwealth Fund rankings of states are combined with information about which states have limits on physician and hospital accountability, it becomes clear that states without limits typically ranked higher. The difference is particularly clear among states that provide the poorest healthcare (those in the bottom quartile), where 69% of the states have caps on medical liability damages. This trend continues across the states in the overall health system performance rankings, as states with caps comprise an increasing percentage as the overall performance worsens, while states without caps comprise a decreasing percentage.

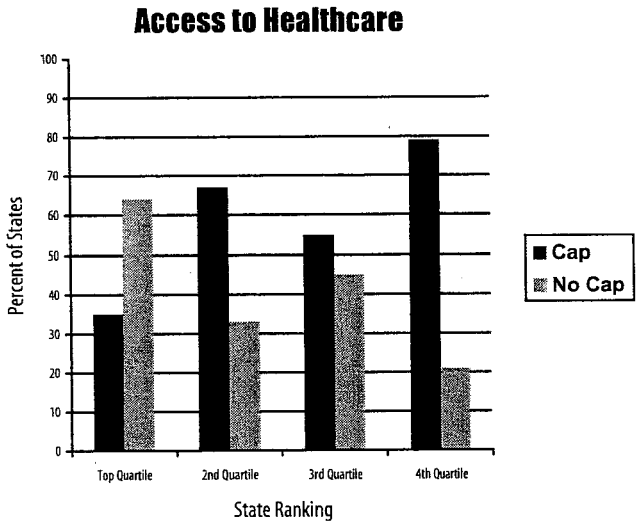


Texas, which has been applauded by special interests pushing a corporate immunity agenda across the country, is ranked 49th among states in overall health system performance.

[4] See Footnote 2 at pg. 3.

Access to Healthcare

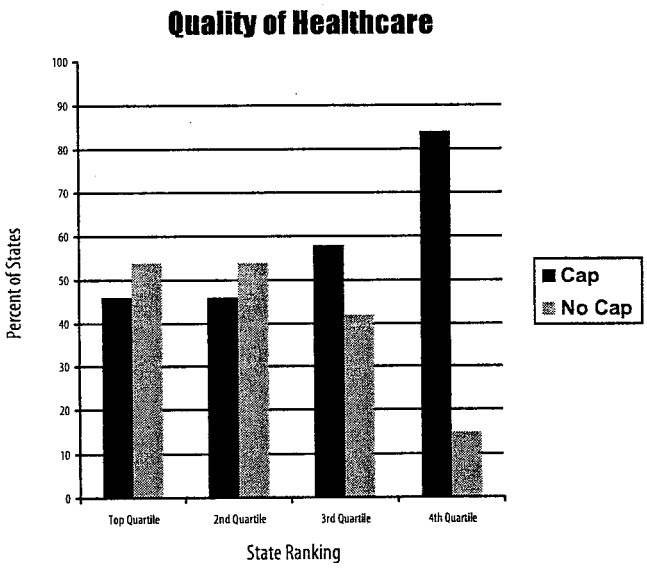
The Commonwealth Fund report also ranks states according to access to healthcare. The report concludes that "access to health care is the foundation and hallmark of a high performance health system, [and] the foremost factor in determining whether people have access to care…is having insurance."[5] For numerous years, Texas has ranked at or near the bottom of states for percent of residents covered by health insurance,[6] and in the Commonwealth's assessment of access, Texas ranks dead last yet again.



In the access rankings, states with caps comprise a mere 36% in the top quartile while they represent a whopping 79% of states in the bottom quartile. The report further subdivides the access rankings to indicate which states have the highest percentages of insured adults and insured children. In both of these categories, states with caps comprise an astounding 85% in the bottom quartile – meaning that states with caps are significantly more likely than states without caps to have high percentages of uninsured adults and children.

Quality of Healthcare

The Commonwealth Fund uses numerous factors to measure health care quality, including adult preventative care, child mental health care, and hospital quality. Of states with the highest quality of healthcare (those in the 1st tier), only 46% have caps, while of states with the poorest quality of healthcare (those in the 4th tier), 84% - nearly twice as many – have caps.



This clearly indicates that states with caps fare worse in terms of quality in the healthcare arena, directly contradicting assertions that caps on medical malpractice claims lead to improved healthcare.

Conclusion

This analysis clearly demonstrates that assertions by special interests that stripping patients of their legal rights will lead to better care is groundless. Advocates of restricting patient rights simply

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[5] See footnote 2 at pg. 18.

[6] U.S. Census Bureau, "Household Income Rises, Poverty Rates Decline, Number of Uninsured Up," August 28, 2007. See http://www.census.gov/Press-Release/www/releases/archives/income_wealth/010583.html.

cannot get around the simple fact that patients are better off in states that do not limit the legal rights of patients.

While a number of factors go into determining the quality of care that patients receive, we believe that holding negligent doctors and careless hospitals accountable goes a long way toward improving overall patient care.

Rather than relying on flimsy conclusions made by insurance-backed interest groups and industry lobbyists, we encourage lawmakers in states across the nation to address the epidemic of medical errors by strengthening patient safety standards and ensuring fair and open access to the legal system.

About Texas Watch

Founded in 1998, Texas Watch is a citizens group based in Austin, Texas, which is dedicated to open access to the legal system for all Texans, fair markets for consumers, and strong accountability measures for wrongdoers. With 10,000 citizen members, Texas Watch actively advocates for real insurance and legal reforms that strengthen protections for families, patients, consumers, workers, and small business owners. To learn more about Texas Watch, visit www.TexasWatch.org.

Appendix

Table 1 Information

Overall Health System Performance

- Top Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 53%
- Second Quartile
  - Cap: 7/12 = 58%
  - No Cap: 5/12 = 42%
- Third Quartile
  - Cap: 8/13 = 62%
  - No Cap: 5/13 = 38%
- Fourth Quartile
  - Cap: 9/13 = 69%
  - No Cap: 4/13 = 31%

Table 2 Information

Access to Healthcare

- Top Quartile
  - Cap: 5/14 = 35%
  - No Cap: 9/14 = 64%
- Second Quartile
  - Cap: 8/12 = 67%
  - No Cap: 4/12 = 33%
- Third Quartile
  - Cap: 6/11 = 55%
  - No Cap: 5/11 = 45%
- Fourth Quartile
  - Cap: 11/14 = 79%
  - No Cap: 3/14 = 21%

Table 3 Information

Quality of Healthcare

- Top Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 54%
- Second Quartile
  - Cap: 6/13 = 46%
  - No Cap: 7/13 = 54%
- Third Quartile
  - Cap: 7/12 = 58%
  - No Cap: 5/12 = 42%
- Fourth Quartile
  - Cap: 11/13 = 84%
  - No Cap: 2/13 = 15%

THE FALSE CHOICE: DOCTORS OR ACCOUNTABILITY

The Real Impact of So-Called Tort "Reform" in Texas

February 2007

www.TexasWatch.org

Introduction

Texas voters were given a false choice in 2003: lose their doctors or lose access to their courts. As Texans were going to the polls to vote on an amendment to the state constitution known as Proposition 12, which placed severe and arbitrary restrictions that make it nearly impossible for those devastated by medical negligence to seek justice through our courts, they were inundated by an insurance industry-funded onslaught of slick advertising designed to scare them into thinking that their health care system would collapse if they didn't give up their constitutional right to seek justice in our courts.

The reality is that we do not have to settle for this false choice. We can – and should – have both strong legal protections, as well as access to quality, affordable health care. Citizens should not be forced to choose between the courts, our most important and effective forum for ensuring accountability, and a quality health care system.

As is often the case in political campaigns, however, the facts gave way to overblown assertions about a so-called medical liability "crisis" that simply did not exist. In fact, a landmark study by legal scholars from three major universities found that the number of large medical liability payments (over $25,000) in Texas were stable between 1991 and 2002 while the number of small claims dropped significantly. Additionally, the number of claims per 100 Texas doctors fell 28.12% (from 6.4 to 4.6) between 1990 and 2002.[1]

As a result of the heated rhetoric and efforts to keep turnout low by manipulating the election date and ballot language,[2] Texas voters issued a split decision (51.13%-48.86%),[3] narrowly stripping away the right to legal accountability through our courts.

Patients were told to expect significant improvements in health care across the state, as well as dramatically lower medical liability insurance premiums for their family doctors.

Well, where are we today? The sad reality is that little has changed to improve health care for those who most need it and doctors continue to pay too much for their liability insurance coverage. Underserved areas remain underserved and insurance profits continue to rise. What has changed is that patients are less safe and the leveling foundation of our courts has crumbled.

In this brief review, we will discuss the real impact of Proposition 12 in Texas: rural and indigent areas still struggling to meet their health care needs, insurance companies continuing long trends of overcharges, and families devastated by medical negligence climbing an impossibly steep hill to hold those who cause death or injury accountable.

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[1] Bernard S. Black, Charles M. Silver, David A. Hyman and William M. Sage, *Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002*, UNIVERSITY OF TEXAS LAW & ECONOMICS RESEARCH PAPER NO. 30; COLUMBIA LAW & ECON RESEARCH PAPER NO. 270; UNIVERSITY OF ILLINOIS LAW & ECONOMICS RESEARCH PAPER NO. LE05-002, March 2005. *See* http://ssrn.com/abstract=678601.

[2] Mimi Swartz, *Hurt? Injured? Need a Lawyer? Too Bad!*, TEXAS MONTHLY, November 2005.

[3] Proposition 12 passed by a margin of 51.13% in favor to 48.86% against. Out of 1,470,443 ballots cast, Proposition 12 prevailed by a margin of just 33,349 votes. The average margin of victory for measures on the 2003 Texas Constitutional Amendment ballot was 64.95%. *See* http://elections.sos.state.tx.us/elchist.exe.

Where are all the doctors?

Before the passage of Proposition 12, proponents of so-called tort "reform" claimed that doctors were fleeing our state and that with the passage of radical changes to our legal accountability system, we would see a marked increase in the number of doctors serving every corner of Texas. This was a carefully crafted formula that has been used in numerous states. The reality, however, is that doctors were never really leaving.

Statistics from the Texas Medical Board (TMB), the state agency responsible for licensing doctors, show that since 1997, Texas has seen a steady *increase* in the number of doctors licensed to practice medicine. Between 1997 and 2003, Texas had an average annual rate of increase in medical licensees of 3.5%. Not only was there not a decrease in the number of doctors obtaining licenses, but there was a dramatic jump in the rate of new licensees the year *before* Proposition 12 was debated and passed. In 2002, the rate of increase jumped to 5.11% – well above the average rate of growth.

Moreover, there is no evidence that Proposition 12 has improved overall access to care. Indeed, Texas Department of Health statistics show that in 2006, Texas gained only 639 direct care physicians – those that are actually practicing medicine – a paltry increase of just 1.8%, which is slower than it was pre-Proposition 12.[4]

When we look at particular regions of the state, we see that underserved areas remain underserved. In 2006 – three years after Proposition 12's enactment – rural, remote, and indigent parts of our state continue to struggle with rates of physician growth far below the statewide average of 3.54% over the last decade. Rural West Texas has actually experienced negative growth in each of the last three years.

Number of Doctors Licensed to Practice in Rural and Underserved Regions of Texas (1997-2006)[5]

REGION	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Panhandle and South Plains	1289	1308	1331	1341	1379	1418	1475	1522	1527	1519
Rate of Growth		*1.47%*	*1.76%*	*0.75%*	*2.83%*	*2.83%*	*4.02%*	*3.19%*	*0.33%*	*-0.52%*
North Texas (exc. DFW area)	673	688	726	726	759	765	774	785	796	791
Rate of Growth		*2.23%*	*5.52%*	*0.00%*	*4.55%*	*0.79%*	*1.18%*	*1.42%*	*1.40%*	*-0.63%*
Northeast Texas	1376	1430	1483	1530	1579	1660	1717	1799	1818	1803
Rate of Growth		*3.92%*	*3.71%*	*3.17%*	*3.20%*	*5.13%*	*3.43%*	*4.78%*	*1.06%*	*-0.83%*
Deep East & Southeast Texas	815	861	887	906	900	986	987	1004	999	1020
Rate of Growth		*5.64%*	*3.02%*	*2.14%*	*-0.66%*	*9.56%*	*0.10%*	*1.72%*	*-0.50%*	*2.10%*
Rural West Texas	639	678	696	697	708	724	752	740	738	737
Rate of Growth		*6.10%*	*2.65%*	*0.14%*	*1.58%*	*2.26%*	*3.87%*	*-1.60%*	*-0.27%*	*-0.14%*
South Texas	1718	1854	1938	2003	2053	2164	2224	2280	2361	2420
Rate of Growth		*7.92%*	*4.53%*	*3.35%*	*2.50%*	*5.41%*	*2.77%*	*2.52%*	*3.55%*	*2.5%*

[4] Charles Silver, *Did Texas Lose Physicians in 2006? Is Tort Reform to Blame?*, TORTDEFORM.COM, November 30, 2006. *See* http://www.tortdeform.com/archives/2006/11/did_texas_lose_physicians_in_2.html.

[5] Texas Medical Board; regions based on Texas Department of Health state health regions.

As the chart below illustrates, underserved regions have not been helped by Proposition 12's promise of new doctors. Every underserved region in our state has seen lower average growth in the rate of new doctors in the three years since Proposition 12 passed (2004-2006), than in the three years before (2001-2003). The trend leaves only one conclusion: Proposition 12 has failed to produce the results that were promised to Texans living in underserved parts of our state.

Average Rate of Change in Number of Doctors in Rural and Underserved Regions of Texas[6]

REGION	2001-2003 (Pre-Proposition 12)	2004-2006 (Post-Proposition 12)
Panhandle and South Plains	3.23%	1.00%
North Texas (exc. DFW area)	2.17%	0.73%
Northeast Texas	3.92%	1.67%
Deep East & Southeast Texas	3.00%	1.11%
Rural West Texas	2.57%	-0.67%
South Texas	3.56%	2.86%

During the debate on Proposition 12, proponents of the measure also bemoaned the lack of specialists – especially obstetricians – in counties all across Texas. In fact, they noted that 60% of Texas counties did not have a practicing obstetrician. According to TMB statistics, 152 of Texas' 254 counties (59.8%) did not have an obstetrician in May 2003. What they fail to mention, however, is that three years later, that trend persists. In fact, fewer Texas counties have an obstetrician today than before Proposition 12. In May 2006, 156 counties (or 61.4%) reported no obstetrician licensed to practice in their county.[7]

Using the medical and insurance industry's own measures, Proposition 12 has had no impact on our state's supply of doctors nor has it improved access to health care for those who most need it.

What about medical malpractice insurance premiums?

The long and short of the story about medical malpractice insurance rates in Texas is that insurance companies will stop at nothing to overcharge policyholders. By their own admission, non-economic damages are only a small percentage of total losses paid.[8] Only after intense political pressure and market forces began to force downward pressure on the market did rates begin to fall marginally.

In the run-up to the debate on Proposition 12, insurance companies increased premiums on doctors as much as 147.6%.[9] While rates have dropped somewhat overall, the reductions do not come close to making up for the overcharges doctors faced prior to Proposition 12. Through March 2006, medical liability premiums have fallen just 13.5% market wide.[10] Astonishingly, many companies have not lowered their premiums at all, and one, Preferred Professional Insurance Company, has increased its premiums a staggering 33.5%.[11]

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[6] *Id.*

[7] *See* www.tmb.state.tx.us.

[8] The Medical Protective rate filing to the Texas Department of Insurance, October 30, 2003. *See* http://www.consumerwatchdog.org/malpractice/rp/2059.pdf.

[9] Texas Department of Insurance, *Medical Malpractice Insurance: Overview and Discussion (Table 1: Estimated Physician and Surgeon Medical Malpractice Rate Changes)*, February 12, 2003.

[10] Texas Department of Insurance, *Texas Medical Professional Liability: Physicians, Surgeons and Osteopaths (chart)*, March 15, 2006.

[11] *Id.*

In the period just after Proposition 12 passed, insurance companies refused to reduce their premiums and many of the major carriers sought rate increases:

- The Medical Protective, the nation's largest medical liability insurance provider, asked for a 19% rate increase one month after Proposition 12 passed. In its filing to Texas insurance regulators, the company wrote, "Non-economic damages are a small percentage of total losses paid. Capping non-economic damages will show loss savings of 1.0%."[12]
- The Medical Liability Insurance Association (JUA), which covers 12.3% of Texas doctors, asked for a 35.2% rate increase immediately after Proposition 12's passage.[13]
- American Physicians Insurance Exchange, the state's third largest medical malpractice insurance company with 15.0%, requested a 16.6% rate increase in September 2003.[14]

When lawmakers saw companies continuing to seek rate hikes despite promised reductions, they put political pressure on state insurance regulators to produce results. In a heated committee hearing that took place six months after Proposition 12's enactment, a bipartisan group of lawmakers who had supported the legislation berated then-Insurance Commissioner Jose Montemayor for not doing enough to lower premiums.[15] Only then did rates begin to decline marginally.

Additionally, a market correction was already due for the Texas medical liability market. Prior to Proposition 12's passage, the national average medical liability insurance payout was 81 cents for every dollar they collected in premiums.[16] Meanwhile, the largest medical liability providers in Texas were paying out much less than this average.[17] In short, the market was already dictating a significant rate decrease for Texas doctors even before Prop 12's passage.

The bottom line is that Texas' so-called medical liability "crisis" was more a function of existing market forces and overblown rhetoric. The moderate dip in premiums came as a result of downward pressure on the market by the standard insurance cycle and political pressure put on state regulators to produce results.

Until we see comprehensive insurance reform that forces companies to charge fair and reasonable premiums, doctors will continue to pay too much. This was certainly the case in California where thirteen years after limits on damages were enacted, medical liability premiums had risen 450% to an all-time high. It was not until insurance reform was passed that premiums started to decline. Since insurance reform was enacted in California rates in that state have come down and stabilized.[18]

What about the patients?

The people who too often get lost in the debate about so-called medical liability "reform" are the patients who have the most at stake when legal protections are lost. Are patients seeing any of the

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[12] *See* Footnote 8.
[13] The Medical Liability Insurance Association (JUA) rate filing to the Texas Department of Insurance, October 2003.
[14] American Physicians Insurance Exchange rate filing to the Texas Department of Insurance, September 2003.
[15] David Pasztor, *House wants results on doctor premiums*, AUSTIN AMERICAN-STATESMAN, April 23, 2004.
[16] *Best's Aggregates and Averages - Property/Casualty, United States & Canada*, AM BEST, 2005 Edition.
[17] *Id.*
[18] Foundation for Taxpayer and Consumer Rights, *How Insurance Reform Lowered Doctors' Medical Malpractice Rates in California*, March 7, 2003. *See* http://www.consumerwatchdog.org/malpractice/rp/1008.pdf.

promised improvements in the access and cost of their health care? Are they any safer from deadly and disabling medical errors? What about those who have been devastated by medical negligence and no longer have an avenue for accountability?

Access to care is directly tied to the ability of patients to get health insurance. According to a recent report issued by the Texas Department of Insurance, 25% of all Texans do not have access to health insurance – that is 5.6 million Texans without health insurance.[19] Despite claims that Texans have greater access to health care, Texas continues to have the highest rate of uninsured adults among the 20 largest states.[20]

The cost of health care continues to rise nationwide. A recent study by the American Medical Association (AMA) found that 50 million Americans under the age of 65 spend 10% of their income on health care expenditures, a 20% increase in the number of families spending a larger chunk of their paychecks on health care.[21] Additionally, rising health care costs have reached a record breaking 16% of our nation's overall economy.[22] Texans are feeling this same trend. As Beaumont pharmacist Doug McMakin told the *Beaumont Enterprise*: "It [health care cost] just keeps going up. It's getting out of hand."[23]

Additionally, medical errors continue unabated. There is no evidence to suggest that the rate of medical errors has dropped at all since the passage of Proposition 12, but there is cause to believe that patients may be at greater risk. Without the threat of real accountability, oversight of the medical community falls entirely on the state medical board. While we believe the staff of the Texas Medical Board has improved its overall effort, it is clear from recent events that the physician-dominated board is willing to allow incompetent doctors into our state.

Recently, Dr. Pamela Johnson was granted a license to practice medicine in Texas despite her long and well chronicled history of negligence.[24] Dr. Johnson has had her license suspended in two states and was fired by Duke University after colleagues questioned her skills.[25] The fact that TMB – armed with this information – insisted on approving her to practice medicine tarnishes the licenses of all Texas doctors and raises serious concerns for patients. If oversight is lax at the medical board and accountability measures are no longer available to patients, then there is little guarantee for patients that they will be protected from negligent or careless health care providers.

The most significant result of legal changes like Proposition 12 is the impact they have on individuals and families who have been forced to endure unspeakable medical errors only to find that they have no way to hold those who harmed them responsible. What follows are a few profiles of the untold numbers of Texans who have been devastated by the impact of Proposition 12:

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[19] Texas Department of Insurance, *Biennial Report of the Texas Department of Insurance to the 80th Legislature*, December 2006. *See* http://www.tdi.state.tx.us/reports/documents/finalbie07.pdf.

[20] Robert T. Garrett, *Texas again tops bigger states in level of uninsured adults*, DALLAS MORNING NEWS, June 22, 2006.

[21] Jessica S. Banthin, PhD and Didem M. Bernard, PhD, *Changes in Financial Burdens for Health Care: National Estimates for the Population Younger Than 65 Years, 1996 to 2003*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, December 13, 2006. *See* http://jama.ama-assn.org/cgi/content/abstract/296/22/2712.

[22] Marc Kaufman and Rob Stein, *Record Share Of Economy Is Spent on Health Care*, WASHINGTON POST, January 10, 2006.

[23] Kristina Herndobbler, *Health care eating away at income; cost exceeds 10 percent of household budget for scores of Americans under 65*, BEAUMONT ENTERPRISE, December 13, 2006.

[24] *See* http://www.texaswatch.org/TW/index.cfm?event=showPage&pg=DoctorsRun12052005.

[25] Cheryl W. Thompson, *Doctor Formerly in Va. Applies for Tex License*, WASHINGTON POST, July 15, 2005.

- **Alvin Berry; Copperas Cove, Texas.** In 2003, 71 year-old Alvin Berry had a routine test to check his prostate specific antigen (PSA) level. His test showed an elevated PSA, which is often an early indicator of prostate cancer. His family doctor referred Alvin to a urologist who told him there was nothing to worry about. Seven months later, Alvin's PSA had risen from an elevated 12.6 to a staggering 166. By then it was too late. He had developed prostate cancer which had spread to his bones. Alvin was given just five years to live. Alvin Berry, who had voted for Proposition 12 because he believed it would block so-called "frivolous lawsuits," found that he was unable to pursue justice because of the constitutional amendment he had once supported. About the campaign to pass Proposition 12 he says: "We'd voted on something, and we really didn't know what the facts were."[26]
- **Monica Meza; Pflugerville, Texas.** Angie Meza took her four year-old daughter Monica to the pediatrician with flu-like symptoms. Monica was prescribed an antiviral with some cough medicine and sent home. It was clear the next day that she needed more attention. Her blood-oxygen was dangerously low and she was admitted to the hospital. While inserting a central line to administer medications, healthcare workers punctured a vein, which led to bleeding in her right lung. The trauma led to multiple organ failure and Monica rapidly deteriorated because her immune system had shut down. Two weeks later, Monica Meza died. It remains unclear how or why Monica Meza died. Her mother has spent the years since trying to find out what led to her daughter's death. Because of Proposition 12, she has been unable to get the answers she needs. As she told the *Austin American-Statesman*: "I wasn't looking to get money or to get rich. I wanted answers."[27]
- **Noe Martinez, Sr.; McAllen, Texas.** After years of caring for their 77 year-old father in their Edinburg, Texas home, Noe Martinez, Jr. and his sister Leticia, decided it was time to get help and they turned to the McAllen Nursing Center. One night, Noe Sr., who suffered from Alzheimer's disease, told an attendant at the nursing home that he was hungry. Without checking his records which showed that Mr. Martinez was on a diet of only pureed food, the vocational nurse got him a peanut butter sandwich. Noe Sr. choked on his food, which led to multiple heart attacks. By the time Noe Jr. and Leticia arrived, their father did not have any brain function. He died two weeks later. Because measures like Proposition 12 arbitrarily impact the aged and disabled more harshly than the rest of the population, the Martinez family has been unable to hold the nursing home accountable.[28]

To learn more about some of the men, women, and children who have had to face the reality of a system that allows wrongdoers to escape accountability, please visit our website.[29]

What should we do?

Instead of improving health care for Texas patients, Proposition 12 has exacerbated existing problems by diverting attention away from the need for legal and insurance reforms which include real penalties for bad doctors, stronger patient safety standards, and an avenue for accountability through our courts. In Texas, we have clearly misdiagnosed this problem.

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[26] *See* Footnote 2.
[27] Eric Dexheimer, *Medical lawsuit caps shutting some out of courthouse*, AUSTIN AMERICAN-STATESMAN, March 26, 2006.
[28] Dave Mann, *A Death in McAllen*, THE TEXAS OBSERVER, September 23, 2005.
[29] *See* http://www.texaswatch.org/TW/index.cfm?event=showPage&pg=MedMalProfiles.

Lawmakers should consider common sense patient protection measures that will lower the likelihood of a medical error:

- **Crack Down on Bad Doctors.** We know that a small number of doctors commit most of the malpractice. In fact, just 5.9% of doctors are responsible for 57.8% of all medical malpractice payments.[30] Instead of protecting the few bad doctors who are the bulk of the problem, we should be beefing up licensure and oversight requirements to ensure that all Texas doctors meet the highest standard.
- **Improve Nurse to Patient Ratios.** Nurses are grossly overworked with staffing ratios that put patients in danger. Reducing the nurse to patient ratio would improve patient care and lessen the possibility of patient death or injury.[31]
- **Reduce Hospital Infections.** Hospitals should be required to report infection rates and take action to ensure a clean and sterile environment. Recent studies show that infections continue to plague hospitals across the country.[32] Beefing up reporting and taking action to clean up health care facilities could significantly reduce patient infections.

Additionally, insurance companies must be brought in line through comprehensive reform. As we have seen in Texas, the insurance industry is more than willing to keep premiums high until pressure is brought to bear by lawmakers and regulators. Sadly, once that pressure was applied, it was short-lived. Once political leaders could declare victory and move on, they stopped keeping track of the problem, and insurance companies have been allowed to keep premiums artificially high. Without real insurance reform that includes strict oversight and vigilant efforts to keep rates in check, the industry will continue to overcharge doctors and patients.

Finally, instead of punishing patients by limiting their legal rights, we need open and fair access to our courts so that patients are able to hold the wrongdoer who harmed them accountable in a court of law.

What is the bottom line?

States looking to Texas for guidance should beware. Millions of dollars were spent by the insurance and medical industries, as well as their special interest groups, to convince Texans that the only way out of our state's health care mess was to trample our constitution. As is too often the case, the only beneficiaries have been the groups and industries that funded the campaign to shred our legal rights.

The false choice between health care and accountability has failed Texas patients. Until we have real legal reforms that protect patients and stiffen accountability measures for wrongdoers, Texans will continue to struggle with a system that favors those who commit medical errors over those who are harmed by them.

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[30] Public Citizen, *The Great Medical Malpractice Hoax*, January 2007. *See* http://www.citizen.org/documents/NPDB%20Report_Final.pdf (at PDF p. 16).

[31] National Nurses Organizing Committee, *RN-to-Patient Staffing Ratios & Patient Safety* (Fact Sheet). *See* http://www.calnurses.org/assets/pdf/ratios/ratios_patient_safty.pdf.

[32] Christopher Lee, *Studies: Hospitals Could Do More to Reduce Infections*, WASHINGTON POST, November 21, 2006.

APPENDIX VII

Frivolous Lawsuits: Available Relief

AVAILABLE GROUNDS FOR RELIEF	LEGAL AUTHORITY
Causes of Actions	
Malicious Prosecution of Civil Proceedings	Exists at common law. See *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203 (Tex. 1996); *Akin v. Dahl*, 661 S.W.2d 917 (Tex. 1983); *James v. Brown*, 637 S.W.2d 914 (Tex. 1982).
Abuse of Process	Exists at common law. For a recent case on point see *Montemayor v. Ortiz*, 208 S.W.3d 627 (Tex. App. —Corpus Christi 2006, pet. denied).
Other causes of action: Wrongful Attachment, Wrongful Garnishment, Wrongful Sequestration, Action on the Injunction Bond	Case citations available on request.
Procedural Remedies & Sanctions	
Groundless/Frivolous Pleadings	Chapters 9 and 10, Civil Practice and Remedies Code
Groundless pleadings brought in bad faith or to harass	Rule 13, Texas Rules of Civil Procedure
Vexatious litigants	Chapter 11, Civil Practice and Remedies Code
Frivolous or malicious suits by persons claiming indigency under Rule 145, Texas Rules of Civil Procedure	Chapter 13, Civil Practice and Remedies Code
Frivolous or Malicious Suits by Inmates filing Sworn Declaration of Inability to Pay	Chapter 14, Civil Practice and Remedies Code
Trial court's inherent power to sanction for abuse of judicial process	Exists at common law. See *Eichelberger v. Eichelberger*, 582 S.W.2d 395 (Tex. 1979), and *Kutch v. Del Mar College*, 831 S.W.2d 506 (Tex. App. — Corpus Christi 1992, no writ).
Discovery abuse	Rules 191.3, 199.5, and 215, Texas Rules of Civil Procedure
Contempt of court	Section 21.002, Government Code (lawyer or party), and Section 82.061, Government Code (lawyer).
Groundless Petition or Misleading Statement or Record in Original Proceedings – Supreme Court and Courts of Appeals	Rule 52.11, Texas Rules of Appellate Procedure
Frivolous Appeals in Civil Cases – Courts of Appeals	Rule 45, Texas Rules of Appellate Procedure
Frivolous Appeals – Supreme Court	Rule 62, Texas Rules of Appellate Procedure
Disciplinary Actions	
Non-Meritorious Claims and Contentions	Rule 3.01, Texas Disciplinary Rules of Professional Conduct

NOTE: This list of available relief to frivolous lawsuits is limited to relief provided by Texas statutes, cases, and rules. This list is not intended to be exhaustive of all relief available in the event of a frivolous suit and it does not take into consideration relief available under federal law.

APPENDIX IX

TEXAS APPLICATION
FOR
ADDITIONAL COIN-OPERATED MACHINE TAX PERMIT(S)

SUSAN COMBS • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

GENERAL INFORMATION

- The owner of any music, skill or pleasure coin-operated machine MUST register the machine with the Comptroller by serial number/inventory I.D. number, make and type. *DO NOT include coin-operated cigarette, service or merchandise vending machines and coin-operated amusement machines designed exclusively for children.*
  Registration Certificate holders must also give the business name and location where each machine is placed.
- Each coin-operated machine must have a serial number that is clearly visible on the OUTSIDE of the machine. If a machine is manufactured without a serial number, the machine owner must assign a serial number and stamp or engrave the number on the machine.
- All License and Registration Certificate holders must purchase from the Comptroller an annual $60 occupation tax permit for each machine on location in Texas.
- An occupation tax permit issued by the Comptroller MUST be affixed to each registered machine when it is placed on location. Permits MUST be securely attached to each registered machine on location and in a manner that can be clearly seen by the public.
- Any person who intentionally removes a current tax permit from a machine is subject to criminal sanction.
- If you plan to purchase additional coin-operated machines, a valid tax permit must be purchased for each new machine placed on location.
- If you purchase a machine from an out-of-state vendor without paying Texas tax, use tax must be reported. If you paid Texas use tax to a vendor, you are not required to report the tax. That vendor must provide you with a receipt showing, among other things, the amount of use tax collected. You should retain a copy of the receipt showing you paid Texas use tax.
- No permits will be issued except for machines exhibited or displayed on location. License and Registration Certificate holders cannot stockpile permits or attach any permits to unregistered machines. Rule 3.601(d)
- Tax permits expire on December 31 of each calendar year.
- Tax permits must be renewed on or before November 30 of each year.
- Current calendar year tax permits can be transferred with the sale of a machine by filing a *Coin-Operated Machine Tax Permit(s) Ownership Transfer Statement*, Form AP-212.
- Occupations Code §2153.406 and Rule 3.602 govern the use of occupation tax permits.

FOR ASSISTANCE - If you have any questions about this application, contact your nearest Texas State Comptroller's field office or call us toll free at (800) 252-1385. The local number in Austin is (512) 463-4600. Our e-mail address is tax.help@cpa.state.tx.us.

Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at the address or toll-free number listed on this form.

Completed application and payment should be mailed to:
COMPTROLLER OF PUBLIC ACCOUNTS
111 E. 17th Street
Austin, Texas 78774-0100

• PLEASE READ INSTRUCTIONS ***• TYPE OR PRINT*** ***• DO NOT WRITE IN SHADED AREAS***

TAXPAYER INFORMATION

1. I hold one of the following (Check one)
   ☐ Registration Certificate ☐ General Business License
2. Legal name of owner *(Sole owner, partnership, corporation or other name)* — Taxpayer number
3. ☐ Check here if there has been a change in your mailing address. Enter the correct address.
   Mailing address *(Street number and name, P.O. Box or rural route and box no.)*
   City — State — ZIP code — County

BUSINESS LOCATION

4. Trade name of business/machine location — Business phone *(Area code and number)*
5. Location of business / machine location
   (If business location address is a rural route and box number, provide directions or use 9-1-1 address if possible.)
   City — State — ZIP code — County

TEXAS APPLICATION FOR ADDITIONAL COIN-OPERATED MACHINE TAX PERMIT(S)

PRINT FORM RESET FORM

• *PLEASE READ INSTRUCTIONS* • *TYPE OR PRINT* • *DO NOT WRITE IN SHADED AREAS*

Legal name (Same as Item 2)

MACHINE INFORMATION

6. For each additional machine being placed on location and requiring a permit, list the serial number/inventory I.D. number, machine make and machine type.
NOTE: FOR REGISTRATION CERTIFICATE HOLDERS ONLY: If the additional machines requiring permits are being placed in different locations, you MUST complete a separate application for each location and list the machines placed in that location.

	MACHINE SERIAL NUMBER/INVENTORY I.D. NUMBER	MACHINE MAKE OR MANUFACTURER	MACHINE TYPE CODE *(Use letter codes from Item 7)*	EXHIBITED OR DISPLAYED ON LOCATION
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

	MACHINE SERIAL NUMBER/INVENTORY I.D. NUMBER	MACHINE MAKE OR MANUFACTURER	MACHINE TYPE CODE *(Use letter codes from Item 7)*	EXHIBITED OR DISPLAYED ON LOCATION
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				

If additional space is needed, add supplemental page. COMPUTER PRINTOUT MAY BE USED.

7. Enter the total number of EACH TYPE of music, skill or pleasure coin-operated machines being placed in **ALL** locations for which you are purchasing additional tax permits

– A – PHONOGRAPHS	– B – POOL TABLES	– C – PINBALL GAMES	– D – VIDEO GAMES	– E – DARTS	– F – OTHER

8. TOTAL NUMBER of additional machines in **ALL** locations that require tax permits. *(Total of Item 7A - F)* .....

OCCUPATION TAX CALCULATION

TAX RATE SCHEDULE FOR EACH COIN-OPERATED MACHINE PLACED ON LOCATION FOR THE FIRST TIME IN:

1st quarter (January - March) $60.00
2nd quarter (April - June) $45.00
3rd quarter (July - September) $30.00
4th quarter (October - December) $15.00

9. Calculate the total amount of occupation tax due for permits.
Multiply the number of machines placed on location <u>for the first time</u> in each calendar quarter by the appropriate tax rate for that quarter.

a. 1st quarter: _____ machines at $60.00 each = $ _____
b. 2nd quarter: _____ machines at $45.00 each = $ _____
c. 3rd quarter: _____ machines at $30.00 each = $ _____
d. 4th quarter: _____ machines at $15.00 each = $ _____

10. TOTAL AMOUNT DUE FOR TAX PERMITS *(Total Items 9a, 9b, 9c and 9d)* ..... $ _____

*NOTE: Payment must be made payable to **STATE COMPTROLLER.** DO NOT send cash.*

STATEMENT

11. CERTIFICATION

I am applying for occupation tax permits for the coin-operated machine(s) which are listed in this application. I certify that all information submitted in this application for tax permit(s) is true and correct.

Type or print name and title of sole owner, partner or officer | Driver's license number / state | sign here | Sole owner, partner or officer

The law provides that a person who knowingly secures or attempts to secure a license by fraud, misrepresentation or subterfuge is guilty of a second degree felony and upon conviction is punishable by confinement for two (2) to twenty (20) years and a fine up to $10,000. (Occupations Code §2153.357; Penal Code §12.33)

Business phone *(Area code and number)* | Residence phone *(Area code and number)*

No. of permits issued _____ Occupation Tax Permit(s) issued for _____ : Permit number _____ through _____

Field office number	E.O. name	User ID	Date	Reference number

APPENDIX X

Texas Pension Review Board
Senate Committee on State Affairs Hearing
November 20, 2008

Charge 10: Analyze the advantages and disadvantages of phasing in a defined-contribution pension for future employees versus the existing defined-benefit pension plan. Study options for transition or implementation issues and how the phase-in could be structured. Evaluate the possibility of requiring the state employee contribution rate to meet the annually required contribution for statewide retirement funds each biennium in order to prevent unfunded liabilities.

Definitions

Defined Benefit (DB): A pension plan under which an employee receives a set monthly amount upon retirement, guaranteed for their life or the joint lives of the member and their spouse. The monthly benefit amount is based upon the participant's wages and length of service. A defined benefit plan pays the benefit at retirement based on the formula for the plan. Defined benefit plans have features that may allow for post retirement benefit increases, ancillary benefits including death and disability benefits, and early retirement window benefits. The employer guarantees the defined benefit plan benefits. Examples of defined benefit plans include flat benefit plans, where benefits are a flat amount such as 60% of final average pay reduced and unit benefit plans, where benefits are service based such as 1% of average pay times years of service.

Defined Contribution (DC): A retirement savings program under which an employer promises certain contributions to a participant's account during employment, but with no guaranteed retirement benefit. The benefit is based exclusively upon contributions to, and investment earnings of the plan. The benefit ceases when the account balance is depleted, regardless of the retiree's age or circumstances. The participant bears the investment risk in a DC plan. Examples of defined contribution (DC) plans include 401(k) plans, 403(b) plans, and 457 plans.

Transition or Implementation Issues

There are basically three choices as an alternative to the existing mandatory DB plan for new hires: a mandatory DC plan, a combination of a DB and DC plan, or the choice between a DB and DC plan. A study by Boston College[1] found that "only two states — Michigan and Alaska — have plans that require all new hires to join the defined contribution plan. Two states — Oregon and Indiana — have adopted "combined" plans, where employees are required to participate in both a defined benefit and a defined contribution plan. Another eight states have retained their defined benefit plan and simply offer the defined contribution plan as an option to their employees." The eight states

[1] Center for Retirement Research at Boston College, "Why Have Some States Introduced Defined Contribution Plans?", January 2008

offering the choice between a DB and DC plan are Washington, Vermont, North Dakota, Montana, Florida, South Carolina, Ohio and Colorado.

The State of Texas currently offers an optional DC plan for new hires in the form of a 401(k) plan. This option avoids the issues that arise from offering either a DC only option or the option for new hires to choose either the DB plan or the DC plan. If new hires are required to either participate in a DC plan or choose between a DB or DC plan, issues such as equity, costs and the funding requirements of the existing DB plan will arise.

Equity

If a plan for new hires is perceived to be more generous than the plan for current members, then there would be pressure from current members to have an option to participate in the plan for the new hires. Conversely, if a plan for new hires is perceived to be less generous than the plan for current members, then it could imply that future employees would be expected to work for a lower total compensation package than the current employees, unless the difference was made up in some other form of compensation such as salary or reduced contributions by the employee.

Costs

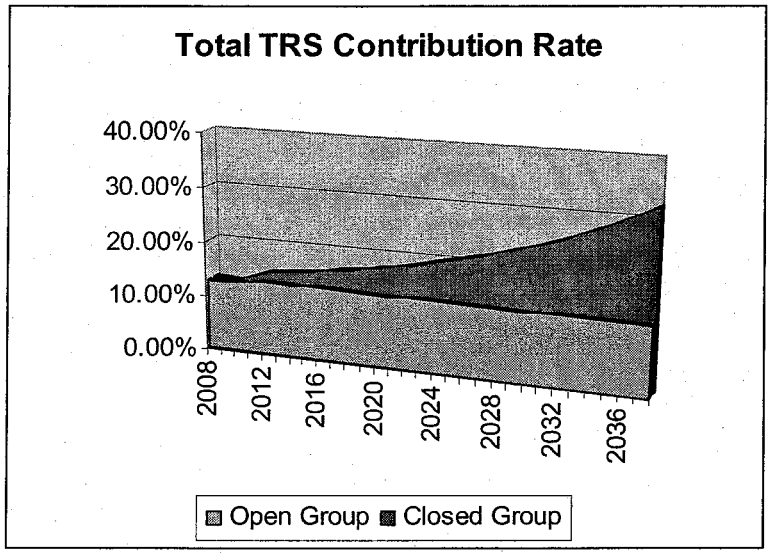
Besides potential generational inequities from having different types of retirement plans based on date of hire, having members in different types of plans would make the plan administration more expensive and complicated. The state would have to establish the new DC plan, which would produce new costs. Additionally, funding the administration of a DC plan can not be done in quite the same way as a DB plan. A DB plan's investment income can be used to cover the administrative costs of that plan; however, this option is not available for a DC plan since the investment income earned is not pooled. Additionally, if new hires are given the choice between the existing DB plan and a new DC plan, the total cost could increase as a result of adverse selection.

Funding the Existing DB Plan

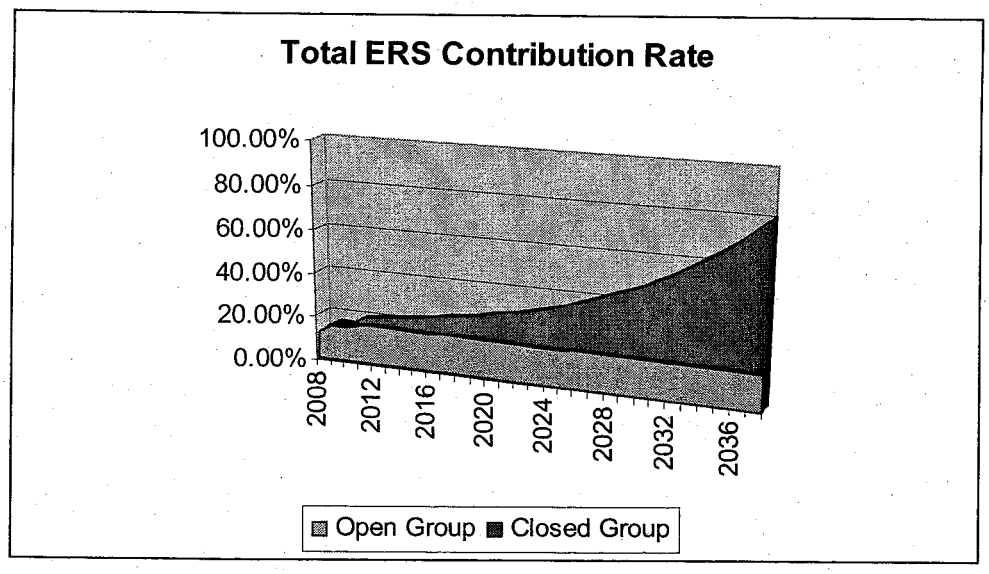
Putting the new employees into a DC plan would not make the Unfunded Actuarial Accrued Liability (UAAL) of the DB plan go away. The UAAL is the result of deferral of full funding. The accrued liability is for prior service and would need to be paid regardless of whether new entrants go into the DB plan or a DC plan. The only potential savings from switching from a DB plan to a DC plan is from the normal cost portion of the contribution.

DB plans are funded on an open group basis. The assumption is that new entrants will join the plan each year and the total payroll of the active members will grow. On an open group basis, the plan can be funded as a level percent of payroll. If the DB plan were closed to new entrants because the new entrants were going to join a new DC plan instead, the funding requirements would increase significantly as a percent of payroll for the closed group. Depending on the funding policy, the total contribution rate increase that would apply to the closed group payroll would either be a significant one-time increase that would remain somewhat level, or a gradual increase to a significantly higher ultimate contribution.

For the Teacher Retirement System (TRS), the PRB projects that the total contribution rate for the next 30 years is expected to be generally in the range of 12% to 14% of total payroll, including the new entrants. This is based on the valuation results as of August 31, 2008, projected using the current methods and assumptions and the current plan provisions. Funded as a level percentage on a closed group basis, the total contribution would be expected to be in the range of 17% to 20% of the closed group payroll, excluding the new entrants. Funded as an increasing percent of the closed group payroll, the total TRS contribution rate would be expected to exceed 30% in 30 years. This is because the closed group payroll would decrease significantly over time.



For the Employees Retirement System (ERS), the PRB projects that the total contribution rate for the next 30 years is expected to be generally in the range of 16% to 18% of total payroll, including the new entrants. This is based on the valuation results as of August 31, 2008, projected using the current methods and assumptions and the current plan provisions. Funded as a level percentage on a closed group basis, the total contribution would be expected to be in the range of 27% to 30% of the closed group payroll, excluding the new entrants. Funded as an increasing percent of the closed group payroll, the total ERS contribution rate would be expected to exceed 80% in 30 years.



These projections for ERS and TRS are based on the assumption that the funds will generate net investment earnings of 8% per year after August 31, 2008. Both funds experienced investment losses in September and October of 2008 which are not reflected in these projections.

Advantages of Defined Contribution (DC) Plans

Compared to DB plans, DC plans provide greater benefits for short-service employees with higher rates of turnover. DC plans also provide better benefits for long-service employees with a history of low merit raises. DC plans can potentially provide greater benefits for members who are risk-takers. DC plans are easy to understand, portable, and do not require an actuary. Contributions are predictable. DC plans have no unfunded liabilities. Advantages for the employer are that the employer does not guarantee the benefit and the member bears the investment risk and the longevity risk.

Disadvantages of Defined Contribution (DC) Plans

Compared to DB plans, DC plans provide lower benefits for long-service employees with low rates of turnover. DC plans offer greater benefits to employees with high turnover rates. DC plans also provide lower benefits for fast-track employees with a history of high merit raises. DC plans can potentially provide lower benefits for members who are risk-averse. DC plans have higher administrative and investment expenses than DB plans. Unlike DB plans, the retirement age in DC plans cannot be set in a way to influence retirement behavior by providing early retirement subsidies or windows. Members may not be able to afford to retire after a downturn in the market. Unlike DB plans, it is difficult to provide meaningful death and disability benefits from a DC plan.

Disadvantages for members are that the employer does not guarantee the benefit and the member bears the investment risk and the longevity risk. A chart comparing DB and DC plans can be found at the end of this paper.

A study by the National Institute for Retirement Security found that DB plans cost 46% less than DC plans for the same level of benefits.[2] The study identified three characteristics of DB plans that drive their efficiency:

> *1. DB Plans Avoid "Over-Saving." We won't all live to be ninety-five or one hundred. But in an individual plan, many of us will want to save enough to last until very old age to avoid the risk of running out of money. By contrast, a DB plan only has to save for the AVERAGE life expectancy, which is much lower and which actuaries can calculate with a high degree of accuracy. By saving for a realistic average life expectancy, the DB plan realizes a 15% cost savings. In technical terms, this is called "longevity risk pooling."*
>
> *2. DB Plans Stay Forever Young. Individuals age. Therefore, those of us in individual retirement plans must adjust our asset allocation to ensure sufficient cash is on hand throughout retirement. Most advisors counsel individuals to downshift from higher risk/higher return investments to lower risk/lower return investments as they get older. This process protects us from the risk of a stock market crash, but progressively reduces the investment returns we can expect to earn in our retirement piggybanks. However, a DB plan exists across generations and can always maintain the most optimal asset allocation. There isn't a need to be overly weighted in bonds or cash. This results in a 5% cost savings.*
>
> *3. DB Plans Achieve Higher Investment Returns. The higher returns of DB plans as compared to individual accounts can be attributed a combination of professional asset management and lower fees. A retirement plan that earns greater investment returns will require less money in contributions. Even seemingly small differences in annual returns compound over time. In our model, a 1% difference in annual investment returns results in a 26% cost savings over a career, as compared to the DC plan.*

The Annually Required Contribution

Regarding the possibility of requiring the state employee contribution rate to meet the Annually Required Contribution (ARC) each biennium in order to prevent unfunded liabilities, it would be appropriate to consider both employer and employee rates rather than just the employee rate. The ARC may be unusually high as the result of prior underfunding on the part of the employer, and to assign this cost only to the employees could introduce an unnecessary inequity.

Public plans in Texas have cost sharing arrangements with both employee and employer contributions. The liabilities can be split into three pieces – the part already accrued, the part being accrued in the current year, and the part to be accrued in the future. The cost

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[2] Almedia, Beth, and Fornia, William B. A Better Bang for the Buck: The Economic Efficiencies of Defined Benefit Plans, National Institute on Retirement Security, August 2008.

sharing is generally applied to the part being accrued currently and in the future, with the employer generally being responsible for the part accrued in the past.

The term ARC is defined by Governmental Accounting Standards Board (GASB) 27.[3] The ARC is not necessarily an amount sufficient to make a plan actuarially sound. GASB allows for the amortization payment on the UAAL to be less than the interest on the UAAL.[4] There is no requirement in GASB that requires plans to contribute the ARC. GASB requires disclosure of funding progress towards making the ARC. The cumulative difference between the ARC and the contributions actually made is disclosed as part of the employer's Net Pension Obligation (NPO). Contributing the ARC is considered the lowest threshold for a minimum contribution.

Full Funding

It is not necessary to target 100% funding as the ultimate goal. There are several reasons not to fund at the 100% level. When a plan is below 100 percent funding, no question arises regarding ownership of any excess, the contributions can carry through the plan to cover the last remaining member. Who really owns any surplus in a public plan is not clear. At one extreme, there is the "last man standing" philosophy held by a few individuals, with the belief that the last retiree or survivor alive in pay status gets what is left over. There is also the belief that any surplus would go to the plan sponsor, but these are contributory plans, so the surplus would need to be shared with the members in a manner that is proportionate to the contributions. The administration of any surplus-sharing calculations would be very complex.

There is also pressure to improve benefits when the funded ratio is 100% or greater, reducing the incentive for the plan sponsor to increase the funding to that level. Full funding allows plan sponsors and members to take a contribution holiday. As funding levels improve, there is less pressure to offer the same level of contributions. When an employer has a contribution holiday, the money is routed to other projects. When that money is required again for a pension system, it creates friction with other priorities. The marginal utility of each dollar must then be weighed against the pension needs and the needs of the competing project.

Conclusion

Transitioning to a DC plan for new hires can be accomplished in different ways, either through mandatory participation in a new DC plan; offering a combination of a DB and DC plan, or by requiring new employees to choose between either DB or DC plans. Under either scenario, potential issues will have to be addressed. Foremost, the funding requirements of the existing DB plan will have to be met and also can change

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[3] Statement No. 27 of the Governmental Accounting Standards Board, Accounting for Pensions by State and Local Governmental Employers, paragraphs 8-10.

[4] Starting ten years after the effective date of GASB 27, which was effective for periods beginning after June 15, 1997, GASB 27 paragraph 10(f) requires a maximum amortization period of 30 years. The amortization method may be a level dollar amount or a level percentage of payroll.

substantially without new entrants to the plan. Equity and cost issues will also arise. DB plans typically provide benefits in a more efficient and economical manner than DC plans.

Under a cost-sharing arrangement, the responsibility for making adequate contributions to DB plans is usually shared by employees and employers. Any requirement for state and employee contribution rates to meet the annually required contribution for the state retirement funds each biennium in order to prevent unfunded liabilities would have to be set in such a manner so that the language of the Texas constitution is not violated.

DB versus DC

Feature	DB	DC
Long-Service Employees	Better benefits for long-service employees with low turnover	Better benefits for short-service employees with high turnover
Fast Track Employees	Better benefits for fast-track employees because of final-average pay formulas	Better benefits for slow-track employees because they are like career-average formulas
Risk Aversion	Better for risk-adverse individuals	Better for members who are risk-takers
Communication	Difficult to understand	Easy to understand
Portability	Lack portability	Portable
Actuarial Services	Require an actuary	Do not require an actuary
Investments	Pooling can reduce risk, allowing for more aggressive investments	Individual accounts are risky, tendency towards less aggressive investments
Inflation	Benefits eroded with inflation	Less erosion of benefits
Expenses	Lower expenses of 0.3% of assets (Boston College study)	Higher expenses of 1.1% of assets (Boston College study)
Retirement Rates	Can impact retirement rates by setting age for unreduced retirement, early retirement subsidies	Cannot impact retirement rates, members may not be able to afford to retire after a market downturn
Early retirement windows	Early retirement windows allowed	No early retirement windows
Guarantee	Employer guarantee	No employer guarantee
Contributions	Less predictable contributions	Predictable contributions
Unfunded Liabilities	Can have unfunded liabilities	Fully funded
Investment Risk	Borne by plan sponsor	Borne by member
Longevity Risk	Longevity risk borne by plan sponsor	Member bears longevity risk unless annuitized
Ancillary Benefits	Can provide enhanced death and disability benefits	Death and disability benefits typically the return of the account balance
Survivorship	Benefits after retirement depend on option chosen, often reduced	Return of remaining account balance
Benefit Form	Benefits typically in the form of an annuity	Benefits typically in the form of a lump sum
Post-Retirement Benefit Increases	Cost-of-living adjustments may be provided	No cost-of-living adjustments
Qualified Domestic Relations Orders (QDROs)	Difficult to administer, challenge to determine share for ex-spouse	Relatively easy to administer

Top 10 reasons Texas should not switch to a defined contribution plan for public employees

1. Switching to a defined contribution plan won't save money in the short-term, and any potential long-term savings are uncertain and possibly insignificant.
2. Abandoning traditional pension benefits will impede the ability of the state and other public employers to retain long-term and career employees.
3. Efforts in other states to replace traditional pensions with 401k plans have proven to be largely unsuccessful, chiefly because asset accumulations in most retirement accounts were insufficient to provide an adequate level of retirement income.
4. The State enjoys significant economic benefits from the pensions paid to state, local, and higher education retirees and to retired public school teachers. Because the benefits are pre-funded, annual benefit payments far exceed annual contributions.
5. Public employees, including school teachers and state employees, would experience diminished retirement financial security, contributing to an already-gloomy financial future projected for a large percentage of working Americans.
6. By pooling risks, reducing administrative and investment costs, and retaining a higher percentage of retirement savings in retirement funds, traditional pensions are a more cost-effective means for delivering retirement benefits. By contrast, 401k plan administrative costs are higher, and a greater percentage of their assets leave the system before retirement.
7. Because nearly all public school teachers in Texas do not participate in Social Security, and given the poor track record of defined contribution plans in providing an assured source of retirement income, removing traditional pension benefits would expose public school teachers to a real chance of destitution in retirement.
8. Because traditional pension plans enable participants to retire on the basis of age and years of service, they also enable employers to facilitate an orderly turnover of workers, thereby avoiding the awkward and unpleasant task of terminating employees who cannot afford to retire but whose workplace effectiveness has diminished or disappeared due to age.
9. Much of the private sector has closed its traditional pension benefits due to the effects of federal regulations that do not apply to state and local government pension plans.
10. A fair analysis of how best to achieve public policy objectives, including how to enable employers to attract and retain qualified workers, how to compensate them, how to promote retirement security for public employees in a cost-effective manner, among others, inevitably will point to some form of traditional pension plan as a core component of public employee compensation.

Keith Brainard
Research Director
National Association of State Retirement Administrators
Texas Senate State Affairs Hearing, November 20, 2008

APPENDIX XII

SCOPE OF EXEMPTION UNDER FEDERAL LOTTERY STATUTES FOR LOTTERIES CONDUCTED BY A STATE ACTING UNDER THE AUTHORITY OF STATE LAW

The statutory exemption for lotteries "conducted by a State" requires that the State exercise actual control over all significant business decisions made by the lottery enterprise and retain all but a de minimis share of the equity interest in the profits and losses of the business, as well as the rights to the trademarks and other unique intellectual property or essential assets of the State's lottery.

It is permissible under the exemption for a State to contract with private firms to provide goods and services necessary to enable the State to conduct its lottery, including management services, as discussed in the opinion.

October 16, 2008

MEMORANDUM OPINION FOR THE ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Federal law generally prohibits the promotion and advertisement of lotteries in interstate commerce, 18 U.S.C. §§ 1301-1304, 1953(a) (2000 & West Supp. 2008), but exempts from these prohibitions, among other things, lotteries "conducted by [a] State acting under the authority of State law." *Id.* §§ 1307(a)(1), 1307(b)(1), 1953(b)(4) (2000). We understand that a number of States have proposed to enter into contracts with private management companies for the long-term operation of their lotteries, pursuant to state legislation. Under the terms of these proposed arrangements, the private management company would operate the lottery business under standards established by the State, would make a fixed upfront or annual payment to the State representing a projection of profits from the lottery business, and would have some significant economic interest in the additional profits of the enterprise and would bear some significant portion of the risk of losses. The Criminal Division has asked us for guidance in determining whether a lottery operating under such a long-term private management arrangement would qualify as a lottery "conducted by a State acting under the authority of State law" within the meaning of the federal lottery statutes.

We conclude that the statutory exemption for lotteries "conducted by a State" requires that the State exercise actual control over all significant business decisions made by the lottery enterprise and retain all but a de minimis share of the equity interest in the profits and losses of the business, as well as the rights to the trademarks and other unique intellectual property or essential assets of the State's lottery. It is permissible under the exemption for a State to contract with private firms to provide goods and services necessary to enable the State to conduct its lottery, including management services, as discussed herein.

I.

State-chartered lotteries were prevalent during the colonial period and the early years of the Republic. In the nineteenth century, public sentiment shifted against gambling, and by the end of the century most States had banned lotteries of any sort, public or private. The State of Louisiana, however, continued to permit the Louisiana Lottery Company, a powerful private

concern, to operate under a monopoly from the State. Largely unregulated by Louisiana, the Louisiana Lottery Company made significant profits by promoting and selling tickets to the citizens of other States where lotteries were illegal. *See generally* National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice, *The Development of the Law of Gambling 1776-1976* (1977) ("*DOJ Gambling Report*"); G. Robert Blakey & Harold A. Kurland, *The Development of the Federal Law of Gambling*, 63 Cornell L. Rev. 923, 927-38 (1978).

To stop this circumvention of other States' laws and to address the perceived evils of the Louisiana Lottery Company, including the corruption of government officials and other problems associated with the commercialization of gambling, Congress in the 1890s made it a crime to sell or advertise lotteries through the mail or through interstate commerce. *See* Act of Sept. 19, 1890, ch. 908, § 1, 26 Stat. 465, *codified as amended at* 18 U.S.C. § 1302 (2000) (prohibiting the use of the mails for lottery-related purposes); Act of Mar. 2, 1895, ch. 191, § 1, 28 Stat. 963, *codified as amended at* 18 U.S.C. §§ 1301 (prohibiting interstate traffic in lottery materials), 1303 (prohibiting mail carriers from participating in lottery activities). Congress subsequently extended these prohibitions to broadcast media and to a broader array of gambling activity. *See* Communications Act of 1934, Pub. L. No. 73-416, § 316, 48 Stat. 1064, 1088-89, *codified as amended at* 18 U.S.C. § 1304 (prohibiting the broadcast of information concerning a lottery); Pub. L. No. 87-218, 75 Stat. 492 (1961) (amending Travel Act), *codified at* 18 U.S.C. § 1953(a) (prohibiting interstate transport of wagering paraphernalia). These prohibitions applied regardless of whether the lottery was run by a private entity or by a State. *United States v. Fabrizio*, 385 U.S. 263, 269 (1966).

Beginning with New Hampshire in 1963, a number of States decided to institute or reinstitute their own State-run lotteries to raise public funds. *DOJ Gambling Report* at 116-21; Blakey, *Federal Law of Gambling*, 63 Cornell L. Rev. at 950 & nn.114-15. By the end of 1974, thirteen States were conducting their own lotteries. H.R. Rep. No. 93-1517, at 4 (1974) (Committee on the Judiciary). To accommodate the promotion of these State-run lotteries, Congress in 1975 enacted exemptions to the criminal prohibitions in 18 U.S.C. §§ 1301-1304 and 1953(a) for "lotter[ies] conducted by [a] State acting under the authority of State law." Pub. L. No. 93-583, §§ 1, 3, 88 Stat. 1916 (the "1975 Act"), *codified as amended at* 18 U.S.C. §§ 1307(a)(1), 1307(b)(1), 1953(b)(4). An earlier version of the bill would have "permit[ted] the advertisement of any legal lottery, whether it is conducted by the State or not," but at the urging of the Department of Justice, it was rejected in committee in favor of the more restrictive limitation quoted above.[1]

In 1988, Congress added an exemption to section 1307 for lotteries that are "authorized or not otherwise prohibited by the State in which [they are] conducted," if those lotteries are

[1] *State Conducted Lotteries: Hearing on H.R. 6668 and Companion Bills Before the Subcomm. on Claims and Governmental Relations of the H. Comm. on the Judiciary*, 93d Cong. 3 (1974) ("*State Lottery Hearing*"); *see also* H.R. Rep. No. 93-1517, at 8 (1974) (Committee on the Judiciary) ("When the subcommittee took favorable action on bill 6668 and reported it to the full committee it recommended a series of amendments which would have extended the exceptions in the bill to lotteries '. . . authorized and licensed in accordance with State law.' These amendments were rejected by the full committee, and are the amendments referred to in the statement of additional views appended to this report. The Justice Department opposed this series of amendments and, as has been noted, they were not accepted by the full committee and were not reported to the House.").

"conducted by a not-for-profit organization or a governmental organization" or "conducted as a promotional activity by a commercial organization and [are] clearly occasional and ancillary to the primary business of that organization." Pub. L. No. 100-625, § 2(a), 102 Stat. 3205, *codified at* 18 U.S.C. § 1307(a)(2). Again, Congress gave serious consideration to legislation that would have "remove[d] federal restrictions on the advertising of legitimate lotteries and gambling activities in interstate commerce, whether conducted by public, private, or charitable interests," but declined to adopt such a broad exemption.[2]

Today, forty States, as well as the District of Columbia, operate government-run lotteries.[3] Although lotteries conducted by for-profit companies remain subject to the criminal prohibitions in 18 U.S.C. §§ 1301-1304 and 1953(a), some States are considering legislation that would authorize long-term agreements with private management companies to operate lotteries for the States, subject to prescribed standards, in return for a significant share of the profits of the lottery enterprise. The Criminal Division has sought our views on whether lotteries operated under such arrangements would fall within the scope of the federal exemption for lotteries "conducted by a State acting under the authority of State law." The arrangements proposed by the States, as we understand them, would be authorized by state legislation, and the question comes down to whether lotteries so operated would be "conducted by" the States.[4]

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[2] H.R. Rep. No. 100-557, at 3 (1988); *see also id.* at 9 (noting that the bill "would [have] permit[ted] the advertising of 'state-authorized' lotteries, and not merely 'state-conducted' lotteries") (quoting testimony of Douglas W. Kmiec, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice); 131 Cong. Rec. 25,508 (1985) (statement of Rep. Frank) (introducing earlier version of bill that would have exempted any lottery "authorized and regulated by the State in which it is conducted").

[3] *See* Ariz. Rev. Stat. Ann. §§ 5-501 to 5-525 (2002 & Supp. 2007); Cal. Gov't Code § 8880 (2005 & West Supp. 2008); Colo. Rev. Stat. §§ 24-35-201 to 24-35-222 (2006); Conn. Gen. Stat. §§ 12-800 to 12-834 (2000 & West Supp. 2008); Del. Code Ann. tit. XXIX, §§ 4801-4824 (2003 & Supp. 2006); D.C. Code §§ 3-1301 to 3-1337 (2007 & Supp. 2008); Fla. Stat. Ann. §§ 24.101-24.124 (2003 & West Supp. 2008); Ga. Code Ann. §§ 50-27-1 to 50-27-55 (2006); Idaho Code §§ 67-7401 to 67-7452 (2006 & Supp. 2008); 20 Ill Comp. Stat. Ann. §§ 1605/1-1605/27 (West 2008); Ind. Code Ann. §§ 4-30-1-1 to 4-30-19-4.2 (1996 & Lexis/Nexis Supp. 2008); Iowa Code § 99G (2004 & West 2008); Kan. Stat. Ann. §§ 74-8701 to 74-8721 (1992); Ky. Rev. Stat. Ann. §§ 154A.010-154A.990 (2006 & West 2007); La. Rev. Stat. Ann. §§ 47:9000-47:9081 (Supp. 2008); Me. Rev. Stat. Ann. tit. VIII, §§ 371-389 (1997 & Supp. 2007); Md. Code Ann., State Gov't §§ 9-101 to 9-125 (2004 & Lexis/Nexis Supp. 2007); Mass. Ann. Laws. ch. 10, §§ 22-35, 36-40, 56-58 (2000 & Lexis/Nexis Supp. 2008); Mich. Comp. Laws Ann. §§ 432.1-432.47 (2001 & West Supp. 2008); Minn. Stat. Ann. §§ 349A.01-349A.16 (2004 & West Supp. 2008); Mo. Rev. Stat. §§ 313.200-313.353 (2001 & West Supp. 2008); Mont. Code Ann. §§ 23-7-103 to 23-7-412 (2007); Neb. Rev. Stat. Ann. §§ 9-801 to 9-841 (2003 & Lexis/Nexis Supp. 2007); N.H. Rev. Stat. Ann. §§ 284-21-a to 284-21-v (Lexis/Nexis Supp. 2007); N.J. Stat. Ann. §§ 5-9-1 to 5-9-25 (1996 & West Supp. 2008); N.M. Stat. Ann. §§ 6-24-1 to 6-24-34 (2008); N.Y. Tax Law §§ 1600-1620 (2004 & McKinney Supp. 2008); N.C. Gen. Stat. §§ 18C-101 to 18C-172 (2007); N.D. Cent. Code §§ 53-12.1-03 to 53-12.1-10 (2007 & Supp. 2007); Ohio. Rev. Code Ann. §§ 3770.01-3770.99 (2005 & Lexis/Nexis Supp. 2008); Okla. Stat. Ann. tit. 3A, §§ 701-735 (West Supp. 2008); Or. Rev. Stat. §§ 461.010 to 461.740 (2007); 72 Pa. Cons. Stat. §§ 3761-101 to 3761-314 (1995 & West 2008); R.I. Gen. Laws §§ 42-61-1 to 42-61-17 (2006); S.C. Code Ann. §§ 59-150-10 to 59-150-410 (2004 & Supp. 2007); S.D. Codified Laws §§ 42-7A-1 to 42-7A-65 (2004 & Supp. 2008); Tenn. Code Ann. §§ 4-51-101 to 4-51-206 (2005 & Supp. 2007); Tex. Gov't Code Ann. §§ 466.001 to 466.453 (2004 & Vernon Supp. 2008); Vt. Stat. Ann. tit. XXXI, §§ 651-678 (2000 & Supp. 2007); Va. Stat. Ann. §§ 58.1-4000 to 58.1-4027 (2004 & Supp. 2007); Wash. Rev. Code Ann. §§ 67.70.010 to 67.70.905 (2001 & Lexis/Nexis 2008); W. Va. Code §§ 29-22-1 to 29-22-28 (2004 & Lexis/Nexis Supp. 2008); Wis. Stat. Ann. §§ 565.01 to 565.50 (West 2006).

[4] Such a lottery would not appear to qualify under any other exemption to the federal lottery statutes. The private management company contemplated in the various state proposals would not be a "not-for-profit

II.

For the reasons set forth herein, we believe that the statutory exemption for lotteries "conducted by a State" requires that the State manage and direct the course of the lottery venture—by exercising actual control over all significant business decisions made by the enterprise—and that the State retain all but a de minimis share of the equity interest in the profits and losses of the business, as well as the rights to the trademarks and other unique intellectual property and assets essential to the State's lottery. As we discuss more fully below, preserving the State's ownership interests in the lottery business will help to ensure that the lottery will be operated *by* the State and solely *for* the public benefit of the State, which we believe the federal lottery statutes require. In our view, these requirements flow from the text and structure of the statutes, from their legislative history, and from relevant court decisions. In interpreting the scope of the exemption for lotteries "conducted by a State," we find that principles of agency and partnership law are instructive by analogy.

A.

The verb "conduct" means "[t]o manage; direct; lead; have direction; carry on; regulate; do business." Black's Law Dictionary 295 (6th ed. 1990). *See* Webster's Third New International Dictionary 474 (1993) (defining verb "conduct" to mean "lead," "direct," "control," or "manage"); II Oxford English Dictionary 791 (1978) (similar). In the context of the federal lottery statutes, we believe the phrase "conducted by the State" contemplates that the State will "manage" the business, "direct" the affairs of the business, "carry on" its operations, and "do business" as a State-run enterprise, for the benefit of the State.

Although "regulate" is suggested in the dictionaries as one synonym for "conduct," merely regulating the lottery, or licensing a private lottery concession pursuant to detailed standards prescribed by the State, plainly cannot be sufficient to satisfy the requirements of the statutory exemption. That the exemption requires more than state regulation or licensing is confirmed by 18 U.S.C. § 1307 as a whole. The exemption for lotteries "conducted by a State" in section 1307(a)(1) is followed immediately in section 1307(a)(2) by the exemption for a lottery "authorized or not otherwise prohibited by the State in which it is conducted" and "conducted by" a "not-for-profit organization," a "governmental organization," or "as a promotional activity by a commercial organization" that is clearly occasional and ancillary to the business of the organization. Were the phrase "conducted by a State" construed to include lotteries authorized, licensed, or regulated by the State (for example, pursuant to state law and subject to State-imposed standards), the exemption in section 1307(a)(1) would swallow those separately enumerated in section 1307(a)(2), a result that is strongly disfavored as a matter of statutory interpretation. *See Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 & n.11 (1988) ("[W]e are hesitant to adopt an interpretation of a congressional enactment

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organization" for purposes of the exemption enumerated in 18 U.S.C. § 1307(a)(2)(A); nor would the lottery be managed "as a promotional activity" that "is clearly occasional and ancillary to the primary business of that organization," *id.* § 1307(a)(2)(B). Similarly, even if the private management company were to maintain a close working relationship with the state government, it would be highly unlikely to qualify as a "governmental organization" under section 1307(a)(2)(A). None of the remaining exemptions in sections 1307 and 1953(b) would have any conceivable application to a State-sponsored lottery. *See* 18 U.S.C. §§ 1307(b)(2), 1953(b)(1), (b)(3), (b)(5).

which renders superfluous another portion of that same law."). Furthermore, the parallel use of the phrase "conducted by" in section 1307(a)(2)'s exemptions for certain lotteries run by not-for-profit organizations and as occasional promotional activities by commercial organizations strongly suggest that "conducted by" cannot mean "regulated by," because not-for-profit organizations and commercial entities do not, in any conventional sense of the word, "regulate."

The only federal decision to address the meaning of the statutory exemption for lotteries "conducted by a State" is consistent with this reading. In *United States v. Norberto*, 373 F. Supp. 2d 150 (E.D.N.Y. 2005), the court considered whether the exemption in section 1307(b)(2) for lotteries "authorized by the law[s] of [a] foreign country" requires that the foreign country affirmatively approve the conduct in question. *See id.* at 156. The defendants objected to such a reading on the ground that it would essentially read into that exemption a requirement (paralleling section 1307(a)(1)) that the lottery be "conducted by" the foreign government. The court rejected this contention, on the ground that a State's affirmative authorization of an activity was not equivalent to its conducting that activity. To make this point, the court contrasted "the State of New York which has a state run lottery" with "the United Kingdom[, which] authorizes a private company known as 'Camelot' to be the government sanctioned operator of its National Lottery." *Id.* at 156-57. Consistent with our conclusion here, the court indicated that the British arrangement—which the court understood to involve the use of a government-licensed and regulated management company to operate the lottery—would not qualify as a lottery conducted by a State. *Id.*[5]

The Rhode Island Supreme Court reached a similar conclusion in two advisory opinions addressing whether state lottery proposals were consistent with the Rhode Island Constitution's prohibition on gaming except where "operated by the state." R.I. Const. art. 6, § 15. The statutory proposals would have permitted a private gaming company and an Indian tribe to run a casino subject to close regulatory supervision by the State, and the court was asked to determine whether the proposed arrangements left the State with sufficient control to satisfy the requirements of the constitutional provision. Interpreting the word "operate" as we interpret "conduct" here (as entailing active control over the enterprise), the court held that the State must possess "the power to make decisions about *all aspects* of the functioning of [the] business enterprise." *In re Advisory Opinion to House of Representatives*, 885 A.2d 698, 706 (R.I. 2005) ("*Casino II*") (emphasis in original) (quoting *In re Advisory Opinion to Governor*, 856 A.2d 320, 331 (R.I. 2004) ("*Casino I*")). Thus, even though the state gaming commission would have had regulatory control over the casino under the proposal, and under one proposal would have had veto authority over certain decisions, the court found it disqualifying that "Harrah's would make day-to-day decisions having to do with the functioning of the proposed casino while the Lottery Commission merely would enforce the applicable regulations." *Casino I*, 856 A.2d at 331-32; *see also Casino II*, 885 A.2d at 707 ("Mere regulatory power over the most fundamental aspects of the gaming business—selection of the casino service provider—certainly falls short of 'operating' 'all aspects' of the facility.").

[5] It is significant to note that while the British government regulates the activities of Camelot, the private company retains a substantial portion of the profits of the enterprise and is authorized to make business decisions for the lottery without the approval of the British government. *See* http://www.natlotcomm.gov.uk/UploadDocs/Contents/Documents/Final%20ITA-Full.pdf (last visited Aug. 5, 2008).

This interpretation of "operate"—as necessarily including "the power to make decisions about all aspects of the functioning of [the] business enterprise"—is consistent with our interpretation of the verb "conduct" in sections 1307 and 1953(b). The court concluded that the State had to have "actual control," which meant that it could not cede the power to "make day-to-day decisions having to do with the functioning of" the lottery. In addition, while ultimately concluding that the statutory proposal did not leave the State with sufficient authority to "operate" the lottery, the Rhode Island Supreme Court drew favorable attention to features of the proposal that "appear[ed] to vest operational control in the state." *Casino II*, 885 A.2d at 708. These features included the right of the State "to direct daily revenue," *id.* at 709; the responsibility of the gaming company to comply with detailed accounting procedures, *id.* at 709 & n.11; the right of the State to monitor all "gaming devices," *id.* at 710; the right of the State to set the number of video lottery terminals and non-slot table games to be played at the casino, *id.*; the right of the State to set the odds of winning, *id.*; and "all other powers necessary and proper to fully and effectively execute and administer the provisions of this chapter for its purpose of allowing the state to operate a casino gaming facility," *id.* at 711. Similarly here, a State's authority over these aspects of lottery operations would be important in establishing that it is "conducting" the lottery and therefore that the lottery is eligible for section 1307(a)(1)'s statutory exemption.

There is a question whether the statutory exemption would allow for an arrangement in which the State's lottery is conducted jointly by the State and by a private for-profit management company—in effect, through a partnership or joint venture between the State and the private company. It might be suggested that even if the private company participates in the conduct of the business, by exercising significant control over some business decisions and participating significantly in the profits and risks of the venture, the lottery could still be "conducted by the State" as long as the State participates in the joint conduct of the lottery. We do not believe, however, that that is the better reading of the statutes.

The overall structure of the statutory scheme strongly suggests that to qualify for the exemption the lottery must be conducted by the State and only by the State, not jointly by the State and a private for-profit entity. Section 1307(a) sets forth several parallel exemptions for lotteries that are "conducted by a State," "conducted by a not-for-profit organization or a governmental organization," or "conducted as a promotional activity by a commercial organization" where the lottery is clearly only occasional and ancillary to the business of the commercial organization. 18 U.S.C. §§ 1307(a)(1), 1307(a)(2). These various options are stated disjunctively in the statute; the statute does not appear to allow for an option whereby a lottery might be conducted jointly by more than one of these entities at the same time (though admittedly the statute does not expressly foreclose that possibility). The very narrow scope of the exemption for "clearly occasional and ancillary" "promotional" lotteries conducted by "commercial organization[s]" underscores the evident objective of the federal lottery prohibitions to prevent the broader commercial promotion of lotteries that serve the profit-making interests of private companies, as opposed to the public interests of state and local governments and charitable organizations.

This conclusion is strongly reinforced by the legislative history of the lottery statutes. Although enacted in phases over time, marking the evolving nature of interstate commerce, the federal lottery statutes as a whole reflect a consistent and focused policy by Congress to prohibit

private for-profit concerns from engaging in the promotion of lotteries and thereby to prevent recurrence of the perceived evils that were associated with the Louisiana Lottery Company. As explained by lawmakers at the time, the 1975 Act that created the exemption for State-conducted lotteries sought to accommodate the States' renewed interest in using lotteries to generate state revenue for the benefit of the public interest[6] while avoiding the risk of corruption and commercialization driven by private interests that Congress believed to be presented by privately operated lotteries, such as the Louisiana Lottery Company.[7] Indeed, the House Committee on the Judiciary considered a version of the 1975 Act, passed out of a subcommittee, that would have exempted any lottery "authorized and licensed in accordance with state law." H.R. Rep. No. 93-1517, at 8. A Department of Justice witness testified, however, that "the Department would not favor any change in the law which would have the effect of opening up the channels of commerce to individuals who would seize upon the existence of a State authorized lottery to 'commercialize the process,'" and the Committee subsequently amended the bill to exempt only lotteries that were "conducted by a State." *Id.* at 5-7 (quoting testimony of Deputy Attorney General Henry E. Petersen).

In 1988, Congress again considered statutory language—this time, supported by the Justice Department—that would have "remove[d] federal restrictions on the advertising of legitimate lotteries and gambling activities in interstate commerce, whether conducted by public, private, or charitable interests." H.R. Rep. 100-557, at 3 (1988); *see also id.* at 9 (noting that the bill "would [have] permit[ted] the advertising of 'state-authorized' lotteries, and not merely

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[6] *See* S. Rep. No. 93-1404, at 8 ("It is the recommendation of the Committee that the Federal Government should not allow its laws to impede or prevent the lawfully authorized efforts of States to raise revenues and benefit its own citizens"); 120 Cong. Rec. 22,145 (1974) (statement of Sen. Kennedy) ("State lotteries . . . are not operating for private gain, but to supplement revenue in order to support essential public services."); 120 Cong. Rec. 12,599 (1974) (statement of Rep. Rodino) ("I would like to point out that the revenue being derived from State authorized lotteries is being used for the purposes of education in many States. In some States it is being used to fund programs designed to serve the interests of the elderly."); *id.* at 12,600 (statement of Rep. Cohen) ("Since there is no overriding Federal interest in prohibiting State controlled lotteries, the Federal Government should not interfere with the sovereignty of the individual States or in their selection of revenue-raising measures."); *id.* at 12,604 (statement of Rep. Daniels) ("The lottery . . . is a painless means of raising much needed revenue").

[7] *See* 120 Cong. Rec. 12,601 (1974) (statement of Rep. Sarasin) (the 1890 anti-lottery acts were "intended to correct the abuses of a privately run illegal lottery," not to prevent "the situation which exists today, where the States use lotteries to fund such worthwhile programs as education, environmental research, programs to aid the elderly, and for maintenance of open spaces and recreation areas"). *See also State Conducted Lotteries: Hearing on H.R. 6668 and Companion Bills Before the Subcomm. on Claims and Governmental Relations of the H. Comm. on the Judiciary*, 93d Cong. 29-30 (1974) (statement of William S. Lynch, Chief of the Organized Crime and Racketeering Section of the Criminal Division of the Department of Justice) ("[T]oday most State-operated lotteries are conducted by means of a central computer with information key-punched into its memory banks concerning every aspect of the lottery operation. This method prevents ticket alterations and duplications, improper claims, and thefts. It further operates to hinder organized criminal groups from infiltrating or stealing from these State lotteries."), *quoted in* H.R. Rep. No. 93-1517, at 5-6; 120 Cong. Rec. 22,145 (1974) (statement of Sen. Kennedy) ("None of the abuses which existed in lotteries run for private profit a century ago are present in the lotteries of these States."); 120 Cong. Rec. 12,600 (1974) (statement of Rep. McClory) ("Policing and disclosure policies have been built into the [Illinois lottery] system with the expectation of making impossible the kind of graft or corruption which existed in 19th century lottery systems."); *id.* at 12,604 (statement of Rep. Daniels) ("Thirteen States now conduct State lotteries under the full protection of State law and regulation. During the several years of experience there have been none of the scandals that had been forecast and the lotteries have brought in millions of dollars in revenue for education and other needs.").

'state-conducted' lotteries") (quoting testimony of Douglas W. Kmiec, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice); 131 Cong. Rec. 25,508 (1985) (statement of Rep. Frank) (introducing earlier version of bill that would have exempted any lottery "authorized and regulated by the State in which it is conducted"). Again, however, Congress rejected the proposal, and Members expressed concerns that private for-profit companies could not be trusted to operate lotteries in a publicly beneficial manner. *See, e.g.*, 134 Cong. Rec. 10,317-18, 11,261, 11,376 (1988) (statements of Rep. Wolf). Congress instead passed a version of the bill that gave exemptions to lotteries that were "authorized or not otherwise prohibited by the State in which [they are] conducted," but only if those lotteries were "conducted by a not-for-profit organization or a governmental organization" or "as a promotional activity by a commercial organization." Pub. L. No. 100-625, § 2(a), 102 Stat 3205, *codified at* 18 U.S.C. § 1307(a)(2).

We believe this history reflects a consistent legislative judgment against permitting private for-profit companies to conduct lotteries. It would appear to be inconsistent with this judgment to permit the injection of a private company's profit-making interests into the conduct of the state lottery, because doing so would raise the risk that the lottery business would serve a private commercial motive, rather than serving solely the public interest of the State.

The law of partnership offers useful guidance, by analogy, on the sorts of arrangements with a private management company that would convert a lottery business "conducted by a State" into a joint enterprise between the State and the private entity. Perhaps most significantly, partnership law would suggest that a business becomes a partnership (as distinguished from a principal-agent relationship) when a single entity does not exercise actual control over all significant business decisions. Under the Uniform Partnership Act ("UPA"), which has been widely adopted and followed, "the power of ultimate control" is an essential element that "distinguishes a partnership from a mere agency relationship." Uniform Partnership Act § 202 cmt. 1 (1997); *see also, e.g.*, *Kidz Cloz, Inc. v. Officially For Kids, Inc.*, 320 F. Supp. 2d 164, 171 (S.D.N.Y. 2004) (under New York law, demonstrating "the parties' joint control and management of the business" is necessary to prove the existence of a partnership); *Harbaugh v. Greslin*, 436 F. Supp. 2d 1315, 1321 (S.D. Fla. 2006) (same under Florida law). Similarly, mutual control is a hallmark of a joint venture. *See, e.g.*, *Taylor v. Texaco, Inc.*, 510 F. Supp. 2d 1255, 1262 (N.D. Ga. 2007) (under Georgia law, "The element of mutual control is a crucial element of a joint venture"); Black's Law Dictionary 843 (7th ed. 1999) (defining "each member's equal voice in controlling the project" as a "necessary element" of a joint venture). These concepts closely mirror, in our view, the proper meaning of "conducted by a State," consistent with the text and legislative history and purpose of the federal lottery statutes.

In our view, it is also relevant to note that the sharing of a significant interest in the profits and losses of the business is recognized as "characteristic of a partnership." *Steelman v. Hirsch*, 473 F.3d 124, 130 (4th Cir. 2007); *see also, e.g.*, *Mallis v. Bankers Trust Co.*, 717 F.2d 683, 690 (2d Cir.1983) (under New York law, "the crucial element of a joint venture is the existence of a mutual promise or undertaking of the parties to share in the profits . . . and submit to the burden of making good the losses") (quotation marks omitted); *Thomas v. Price*, 718 F. Supp. 598, 605 (S.D. Tex. 1989) (under Texas law, "Major incidents of the partnership relationship are an agreement among the participants to share profits and losses and a mutual right of control to manage the partnership"); Black's Law Dictionary at 843 (defining "shared

profits and losses" as a "necessary element" of a joint venture). The UPA creates a rebuttable presumption that a person "who receives a share of the profits of a business" is a partner in the business. Uniform Partnership Act § 202(c)(3). Importantly, however, the presumption does not attach if the profits were received "in payment . . . for services as an independent contractor or of wages or other compensation to an employee." *Id.* This result supports the notion that some de minimis portion of profits or revenues may be shared among the parties without creating a partnership, because de minimis profit-sharing is consistent with a principal-agent relationship, rather than a true partnership.[8] We believe this concept is relevant in interpreting the exemption for lotteries "conducted by a State," because the sharing of a significant interest in the profits and losses of the lottery enterprise would be expected to diminish significantly the State's incentive to exercise actual control over the management of the business and would mean also that the lottery would not be conducted solely in the public interest of the State, as Congress has mandated, but rather at least partially in the profit-maximizing interest of the private firm.[9]

For these reasons, we believe that an arrangement by which a State engages in the business of operating a lottery jointly with a private firm that shares substantially in the profits and risks of the enterprise would not be consistent with the statutory exemption. The concerns that apparently led Congress to prohibit private companies from conducting lotteries would still apply if a private company and a State were jointly to own and operate the lottery venture. *See* H.R. Rep. No. 93-1517, at 5-6; 120 Cong. Rec. 22,145 (1974) (statement of Sen. Kennedy) (warning against the abuses of "lotteries run for private profit" and stating the view that such abuses would not be present in State-conducted lotteries). We therefore believe that the exemption for lotteries "conducted by a State" requires that the lottery be "conducted by" the State alone, and not be conducted jointly by the State and by a private for-profit corporation, whether through a formal partnership or through some other form of joint business venture.

B.

Our conclusion that the State must exercise actual control over all significant business decisions of the lottery and retain all but a de minimis share of the equity interest does not mean that the State in conducting the lottery enterprise may not contract with private firms to provide goods and services necessary to the lottery. States that operate their own lotteries routinely

[8] *Cf. TIFD III-E, Inc. v. United States*, 459 F.3d 220, 233-35 (2d Cir. 2006) (holding that foreign banks' investment in a partnership was properly classified as debt, not equity, for tax purposes where the banks had the contractual right to recoup their investment at an agreed upon rate of return *plus* an opportunity to participate in the profits of the partnership that was, as a practical matter, limited to 2.5% of the banks' total investment—"a relatively insignificant incremental return over the projected eight-year life of the partnership").

[9] Although there may be no bright-line rule for identifying what would constitute a significant, or more than de minimis, ownership interest in the State's lottery business, examples of rules from other statutory and regulatory contexts may be useful by analogy. *See, e.g.*, 15 U.S.C. § 78n(d)(1) (2006) (Williams Act provision requiring any person making tender offer for class of stock of publicly traded corporation to file disclosure report with SEC if, after consummation of offer, the person would own more than 5% of the class); H.R. Rep. No. 91-1655, at 3 (1970) (justifying Williams Act disclosure requirement on ground that "shareholders should be fully informed" of acquisitions of equity interests exceeding 5% because "[t]hese acquisitions may lead to important changes in the management or business of the company"); 26 C.F.R. § 1.368-2T(*l*)(2)(iii) & ex. 4 (2008) (IRS rule providing that "de minimis" variations in shareholder identity or proportionality of ownership are disregarded in determining whether transaction qualifies for tax treatment as "reorganization" under 26 U.S.C. § 368(a)(1)(D) (2000), and giving as example of such de minimis variation a 1% difference in stock ownership).

contract with private businesses to print and sell lottery tickets, promote the lottery, insure against loss, consult about games, and perform a wide range of other functions as part of operating the lottery.[10] We do not read the lottery statutes to foreclose these types of arrangements; that a State contracts with a private company to assist in certain functions associated with the lottery, even where the contractor is compensated for its services by a relatively small fixed percentage of the revenues of the lottery, does not mean that the State itself is no longer conducting the lottery. The private contractor in such circumstances—though providing valuable assistance to the State—is not "conducting" the lottery within the meaning of the statutes.

The delegation of management responsibilities to a private contractor presents a more difficult question. As discussed above, the verb "conduct" itself connotes management. Thus, unlike the delegation of other activities necessary to a lottery, such as promoting the lottery or printing tickets, an overbroad delegation of management responsibility would definitely call into question whether the State, and only the State, is exercising actual control over all significant business decisions of the lottery. For instance, simply imposing operating standards, even if freely amendable, would not be enough to give the State the necessary control over all significant business decisions of the lottery. Nor would a regulatory system of legal authorization and license alone be sufficient. Accordingly, we believe that there must be significant limits on the authority the State may delegate and still qualify for the exemption under section 1307(a)(1).

Principles of agency law are instructive in defining the appropriate line in judging a management services contract. To be said to "conduct" a lottery, the State must maintain and exercise control over all significant aspects of the lottery operation. To the extent that such authority is delegated to a private management company, the management company should operate more in the role of an agent of the State, *see* Restatement (Third) of Agency § 1.01 (2006), than a partner that shares in the authority to make significant business decisions. This conclusion is fully consistent with the opinions of the Rhode Island Supreme Court in the *Casino I* and *Casino II* cases discussed above. In particular, a state official or agency must have the authority to direct or countermand operating decisions by the management company at any time. *Cf.* Restatement (Third) of Agency § 8.09, cmt. c (citing *id.* § 1.01, cmt. f(1)) ("The power to give interim instructions is an integral part of a principal's control over an agent and a defining element in a relationship of common-law agency.").[11] The State need not always choose to

[10] *See, e.g., Dalton v. Pataki*, 5 N.Y.3d 243, 271 (2005) ("The Division of the Lottery regularly contracts with outside vendors and other entities for various equipment and services to assist in the operation of the state lottery," under state constitutional provision prohibiting lotteries unless "operated by the state"); *State ex rel. Ohio Roundtable v. Taft*, No. 02AP-911, ¶ 32, 2003 WL 21470307, *6 (Ohio App. June 26, 2003) ("Ohio undisputedly contracts with various vendors for the operation and promotion of the lottery, whether for existing in-state games or the new multi-state Mega Millions," under state constitutional provision prohibiting lotteries unless "conduct[ed]" by "an agency of the state"); Mo. Rev. Stat. § 313.270 (2001) ("The director, pursuant to rules and regulations issued by the commission, may directly purchase or lease such goods or services as are necessary for effectuating the purposes of sections 313.200 to 313.350, including procurements which integrate functions such as lottery game design, supply of goods and services, and advertising."); Minn. Stat. § 349A.07(1) (2004) ("The director may enter into lottery procurement contracts for the purchase, lease, or lease-purchase of the goods or services.").

[11] Unlike a principal at common law, which can contract away the right to direct its agents' actions, *id.*, a State may not waive this responsibility, nor may it limit its authority to a veto power. *Cf. Casino II*, 885 A.2d at 706 ("[T]he power to choose is qualitatively different from the lesser power of vetoing another's choice.").

exercise this authority if it is satisfied from its oversight that the management company is operating the lottery properly, but the existence of this authority is vital for the State to exercise actual control over the business—and to ensure that it has not shared such control with a private company.

For the same reason, we believe that to "conduct" the lottery through the agency of a management company, a State must maintain ready access to information regarding all lottery operations. To this end, as a necessary corollary of its authority over lottery operations, a State should have the right to demand and receive information from the management company concerning any aspect of the lottery operations at any time. *Cf.* Restatement (Third) of Agency § 8.12(3) (agent has duty "to keep and render accounts to the principal of money or other property received or paid out on the principal's account"); La. Civ. Code art. 3003 (2005) ("At the request of the principal . . . the mandatary [agent] is bound to provide information and render an account of his performance of the mandate.").

In addition, the management company must have the affirmative duty to provide the State with any information the company reasonably believes State officials would want to know to enable the State to conduct the lottery. *Cf.* Restatement (Third) of Agency § 8.11 ("An agent has a duty to use reasonable effort to provide the principal with facts that the agent knows, has reason to know, or should know when (1) subject to any manifestation by the principal, the agent knows or has reason to know that the principal would wish to have the facts or the facts are material to the agent's duties to the principal; and (2) the facts can be provided to the principal without violating a superior duty owed by the agent to another person."). These notifications will "enable[] the [State] to update and sharpen instructions provided to the [management company]" as the lottery operation evolves. *Id.* cmt. d. We conclude also that a management company must give the State advance notice of any operating decision that bears significantly on the public interest, such as decisions on the kinds of games to be offered to the public and decisions affecting the relative risk and reward of the games being offered, so that the State will have a reasonable opportunity to evaluate and countermand that decision. The affirmative duties to report material information, and to inform the State in advance of significant decisions, are critical to ensuring that the State's legal authority to direct the actions of the lottery translates into actual, practical control over the lottery's operations.

As for the ownership of assets, we do not foreclose the possibility that the State may, consistent with the limits of the exemption, permit the private management contractor to own and provide most of the assets needed for the lottery. Many such assets—computers, printing equipment, possibly the gaming equipment—are likely to be widely available for lease or purchase from other sources if the private company were to withdraw from the contract with the State. Thus, we do not think that a State's contracting with a private management company to provide these assets for its lottery would necessarily put the lottery business under the effective control of the private contractor, so as to make the private company the State's partner in conducting the lottery. Even some non-fungible assets—software, games, accounting systems—can be redeveloped or replaced, and therefore could also be leased by a State for use in its lottery without elevating the role of the company providing the assets to that of a partner or joint venturer in the lottery.

Other assets, such as the trade name and trademarks of the state lottery, may perhaps be truly essential to the State's ownership and control of the lottery, in the sense that the State could not continue "conducting" its lottery (at least not without serious disruption) unless it retained ownership of these assets after discharging the management company. Ownership of these assets could be viewed as inextricably intertwined with the conduct of the lottery. Were a State to transfer such essential assets to a private company assisting the State in the management of the lottery, the State could become so dependent upon the management company for the continued operation of the business as to call into significant question whether the State is actually conducting the lottery.

As we have discussed above, we believe that the ownership by the private management company of a significant equity interest in the profits of the lottery would go beyond the scope of the exemption. We understand that some States have proposed to enter into agreements with private management firms under which the private company would assist in the management of the lottery and receive a significant share of the lottery's profits or bear a significant share of the risk of losses. In return, it has been proposed that the management company would make a significant upfront payment to the State or make annual disbursements to the State. We believe that such an arrangement would not be consistent with the limited exemption for lotteries "conducted by a State." If a private management company were to oversee the lottery's operations and receive a significant share of the lottery's profits (particularly in return for an investment of capital), we think it clear that the company would not be a mere contractor or agent, assisting the State in operating a lottery that the State conducts, but rather a co-participant in the conduct of the lottery with substantial managerial responsibilities and a significant equity stake in the lottery's success or failure. In such circumstances, the private management company's incentives and ability to influence the lottery would be significant. Where a State has a reduced stake in the profits or losses of a lottery, its incentive to exercise the actual control over all significant business decisions required by the exemption is necessarily diminished. Indeed, in practical respects, an arrangement in which the State cedes to a private firm a significant economic interest in the profits and losses of the business may be functionally quite similar to an arrangement whereby the State licenses a lottery concession to a private company. As described above, these incentives and characteristics are precisely what Congress sought to avoid in enacting the exemption for lotteries "conducted by a State." *See supra* nn. 6-7 (contemplating that State-conducted lotteries would be operated for the public benefit).[12]

[12] *See also* Colo. Const. art. XVIII, § 2(7) ("Unless otherwise provided by statute, all proceeds from the lottery, after deduction of prizes and expenses, shall be allocated to the conservation trust fund of the state for distribution to municipalities and counties for park, recreation, and open space purposes."); Del. Const. art. II, § 17(a) ("All forms of gambling are prohibited in this State except . . . [l]otteries under State control for the purpose of raising funds"); Ga. Const. art. I, § 2, ¶ 8(c) ("Proceeds derived from the lottery or lotteries operated by or on behalf of the state shall be used to pay the operating expenses of the lottery or lotteries, including all prizes, without any appropriation required by law, and for educational programs and purposes as hereinafter provided."); La. Const. art. XII, § 6(A)(1) ("The net proceeds from the operation of the lottery shall be deposited in a special fund created in the state treasury entitled the Lottery Proceeds Fund."); N.D. Const. art. XI, § 25 ("[T]he legislative assembly shall authorize the state of North Dakota to join a multi-state lottery for the benefit of the state of North Dakota"); Mo. Const. art. III, § 39(b)(2), (3) ("The money received by the Missouri state lottery commission from the sale of Missouri lottery tickets, and from all other sources . . . shall be appropriated solely for public institutions of elementary, secondary and higher education."); N.H. Const. pt. 2, art. 6-b ("All moneys received from a state-run lottery and all the interest received on such moneys shall, after deducting the necessary costs of administration, be

That said, we think it is permissible for a State to compensate private contractors with some portion of the lottery's revenues or with some financial incentives that are contingent on the lottery's achievement of certain revenue objectives. For example, a State may agree to increase a private management company's fee by a certain amount if the lottery's revenues grow by a specified percentage in a given year. So long as the management company is not to receive more than a de minimis share of the lottery's profits, such an agreement would not significantly diminish the State's incentive to exercise actual control over the lottery.

Finally, it has been suggested that a private management company should be required to deposit lottery revenues into accounts owned by and maintained in the name of the State or state agency overseeing the lottery, and that the company be permitted to disburse funds from these accounts only on terms set forth in the management agreement. We believe that such accounting practices could be helpful in ensuring that the State, and not the private management company, is actually conducting the lottery business. Although we are not able to say that any particular accounting practice is mandated by the statutes, the more transparent the accounting procedure,[13] the more likely it will be that the State is in fact exercising active ownership and control over the enterprise.

III.

In sum, in order to satisfy the federal lottery statute exemption for lotteries "conducted by a State," the State must exercise actual control over all significant business decisions made by the lottery enterprise and retain all but a de minimis share of the equity interest in the profits and losses of the business, as well as the rights to the trademarks and other unique intellectual property or essential assets of the State's lottery. It is permissible under the exemption for a State to contract with private firms to provide goods and services necessary to enable the State to conduct its lottery, including management services, as discussed herein.

/s/

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appropriated and used exclusively for the school districts of the state."); N.J. Const. art. IV, § 7, ¶ 2.C ("It shall be lawful for the Legislature to authorize the conduct of State lotteries restricted to the selling of rights to participate therein and the awarding of prizes by drawings when the entire net proceeds of any such lottery shall be for State institutions and State aid for education"); Tenn. Const. art. XI, § 5 ("[T]he legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state."); Va. Const. art. X, § 7-A ("Lottery proceeds shall be appropriated from the Fund to the Commonwealth's counties, cities and towns, and the school divisions thereof, to be expended for the purposes of public education."); Wis. Const. art. IV, § 24(6)(a) ("[N]et proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by law.").

[13] *See, e.g.*, Cal. Gov't Code § 8880.41 ("The director shall make and keep books and records that accurately and fairly reflect each day's transactions, including, but not limited to, the distribution of tickets or shares to lottery game retailers, receipt of funds, prize claims, prize disbursements or prizes liable to be paid, expenses and other financial transactions of the lottery . . . ."); *id.* § 8880.42 ("The director shall provide a monthly cumulative sales report to the commission and the Controller within 15 days after the end of each month.").