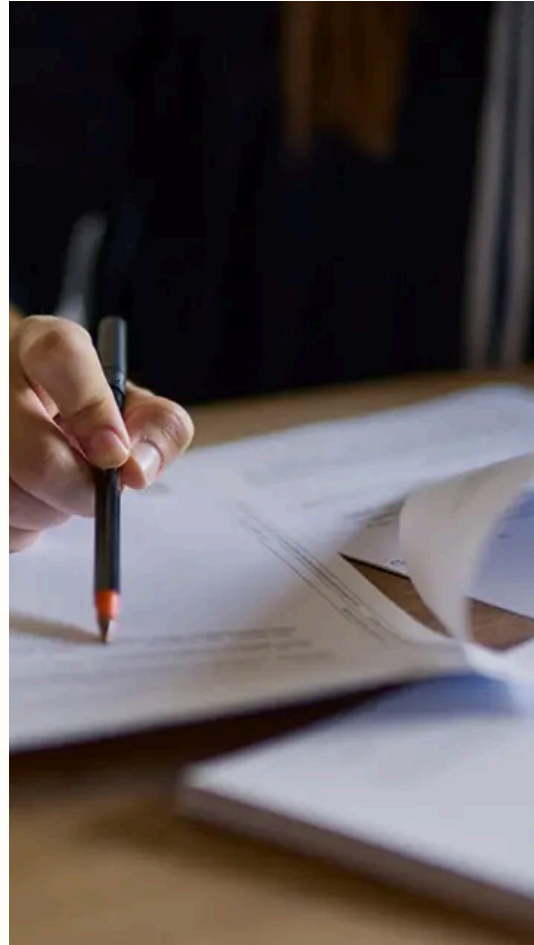

LAWSUIT REFORM: BALANCING THE SCALES OF JUSTICE

BY: CADEN TAGUE

Texas is a leading state for overinflated, “nuclear” verdicts, with over 200 verdicts totaling more than \$45 billion between 2009 and 2023. Nuclear verdicts in Texas routinely net millions of dollars for plaintiffs and their attorneys, even in cases of minor injury. While plaintiffs’ personal injury lawyers hail these verdicts as justice delivered fairly, these verdicts undoubtedly have a negative impact on people and businesses in Texas.

Because of these negative impacts, lawmakers have made it a priority to curb lawsuit abuse and nuclear verdicts in Texas. On November 12, 2024, House Bill 939 (“HB939”) was introduced by Representative Cody Vasut. HB939 proposes an amendment to the Civil Practice and Remedies Code by adding Section 41.0025, which establishes a liability limit for noneconomic damages in personal injury claims. Specifically, the bill as it is currently written posits that the civil liability of a defendant for noneconomic damages should be “limited to an amount not to exceed, for each claimant, the greater of: (1) five times the economic damages; or (2) \$5 million.”¹ As of March 6, 2025, HB939 is undergoing committee review.



On March 13, 2025, the Texas House of Representatives introduced House Bill 4806 (“HB4806”), authored by Representative Greg Bonnen, which would also limit the recovery of damages in civil actions. A companion bill, Senate Bill 30 (“SB30”), was introduced in the state Senate by Senator Charles Schwertner. Described by plaintiffs’ personal injury firms as a “wish list” for insurance companies, the bill proposes significant restrictions on plaintiffs’ recovery of damages in personal injury cases. Lieutenant Governor Dan Patrick has announced that SB30 is part of his second round of top 40 priority bills for the 89th regular legislative session, cementing SB30 as a promising avenue for tort reform in the state.

¹ LIABILITY LIMIT FOR NONECONOMIC DAMAGES, H.B. 939, Legislative Session 89 (2025).

SB30 proposes the amendment of several chapters of the Civil Practices and Remedies Code in order to impose restrictions on plaintiffs, plaintiffs' firms, and plaintiffs' medical providers. Below, we've summarized the key points of the bill after its most recent revisions:²

- SB30 amends § 18.001 of the Texas Civil Practices and Remedies Code to eliminate the requirement for controverting affidavits and, instead, requires simply a notice of intent to controvert the reasonableness and necessity of health care services. It further states that the plaintiff's affidavit has no effect except as proof of the authenticity of healthcare records if a notice of intent to controvert an affidavit is filed.
- SB30 provides that, if a healthcare provider states in their affidavit an intention not to testify at trial, a party may not obtain discovery on the reasonableness and necessity of the services, and the court must exclude any trial testimony of the facility or provider, except for good cause, if the testimony will not unfairly surprise or prejudice a party, and if the party opposing admission is given a reasonable opportunity to conduct discovery.
- SB30 would prohibit parties from controverting bills already paid or amounts that do not exceed 300% of the Medicare fee scheduled for each service provided.
- SB30 redefines multiple categories of damages, creating more stringent requirements for plaintiffs' claims of damages. For example, "future damages" has been redefined such that the future damages must be, in reasonable probability, expected to be incurred after the date of the judgment. "Future loss of earnings" has been redefined such that the reductions in income, wages, or earning capacity must be, in reasonable probability, expected to be incurred after the date of the judgment. SB30 now defines "mental or emotional pain or anguish" to mean "grievous and debilitating angst, distress, torment, or emotion suffering that causes a substantial disruption of the claimant's daily routine," including pain or anguish arising from loss of consortium, loss of companionship and society, loss of enjoyment of life, disfigurement, and physical impairment. Lastly, SB30 redefines "physical pain and suffering" to mean "a painful or distressing sensation associated with an injury to a part of the body that is consciously felt, significant in magnitude, and arises from an observable injury or impairment or is shown to exist through objectively verifiable medical evaluation or testing."
- SB30 limits evidence of economic damages for healthcare expenses to evidence of: (1) amounts paid by third-party payors to providers; (2) amounts paid by the injured individual or on the individual's behalf by non-third-party payors without a formal or informal agreement for the provider to refund, rebate, or remit money to the payor, injured individual, claimant, or claimant's attorney or anyone associated therewith; and (3) if (1) and (2) do not apply, 150% of the median amount paid by nongovernmental third-party payors to providers for the same type of services during the same month in which the services were provided.

² Relating to recovery of damages in civil actions, S.B. 30, Legislative Session 89 (2025).

- SB30 will limit the rate of future medical damages to the reasonable value of necessary services with reference to the Texas All Claims Database for the month preceding the date trial commences.
- SB30 will require provider statements or invoices to comply with the clean claim requirements of Chapter 1301 of the Texas Insurance Code, such that there shall be no award for that service if the service does not have an industry-recognized billing code.
- SB30 requires a claimant to disclose the following to each party: provider statements; letters of protection; and any written agreement under which a provider may refund, rebate, or remit money to a payor, injured individual, claimant, claimant's attorney, or a person associated therewith.
- SB30 requires a claimant to identify: all medical providers and authorize other parties to obtain from each provider the injured individual's medical records; any third-party payor that may have had a legal or contractual obligation to pay for health care services to the individual; any unwritten agreement to refund any money to the above persons; and, if the claimant was referred to a provider, the name and contact information of each person who made the referral and that person's relation to the injured individual. It further requires disclosure of **all** referrals to each healthcare provider by the claimant's attorney in the preceding year, each person on whose behalf a payment was made, and other aspects of any financial relationship between the attorney and the provider. Information disclosed pertaining to a claimant that was referred to a provider by their attorney will be admissible into evidence.
- SB30 requires an award of noneconomic damages to be based on evidence of nature, duration, and severity of the injury and reflect a rational connection, grounded in evidence, between the injury suffered and dollar amount necessary to provide fair and reasonable compensation.
- SB30 prohibits an award from being used to punish or penalize a defendant, make an example of the defendant to others, or serve as a social good.
- SB30 prohibits the practice of "jury anchoring," in which a plaintiff's attorney asks a jury to determine the amount of damages to award to a claimant for physical pain and suffering or mental or emotional pain or anguish by referring to objects, values, units of time, or repeating metrics which have no rational connection to the facts of the case. Such practice will be considered reversible error.
- SB30 requires statutorily prescribed jury instructions.
- SB30 amends § 304.102 of the Texas Finance Code such that prejudgment interest is limited to awards for economic losses, calculated from the date that the healthcare expenses were actually paid or other economic losses were actually suffered by the claimant.

On April 22, 2025, after the above revisions, SB30 was reported favorably by the Senate State Affairs Committee and passed the Senate (20-11). SB30 was referred to the House Judiciary & Civil Jurisprudence Committee and is currently pending. If enacted, SB30 would take effect on September 1, 2025.
