

SENATE FLOOR VERSION

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March 28, 2011

ENGROSSED HOUSE

BILL NO. 2128 By: Steele, Mulready, Faught and
Sullivan of the House

and

Sykes of the Senate

An Act relating to damages; amending Section 24,
Chapter 228, O.S.L. 2009 (23 O.S. Supp. 2010, Section
61.2), which relates to limitations on damages for
bodily injury; modifying recovery limitation on
certain noneconomic damages; modifying definitions;
eliminating establishment of a Health Care Indemnity
Fund; providing scope of application; and providing
an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 24, Chapter 228,
O.S.L. 2009 (23 O.S. Supp. 2010, Section 61.2), is amended to read
as follows:

Section 61.2 A. In any civil action arising from a claimed
bodily injury, the amount of compensation which the trier of fact
may award a plaintiff for economic loss shall not be subject to
any limitation.

B. Except as provided in ~~subsections~~ subsection C ~~and~~
~~D~~] of this section, in any civil action arising from a claimed

1 bodily injury, the amount of compensation which a trier of fact
 2 may award a plaintiff for noneconomic loss shall not exceed [~~Four~~
 3 ~~Hundred Thousand Dollars (\$400,000.00)~~] Three Hundred Fifty
 4 Thousand Dollars (\$350,000.00), regardless of the number of
 5 parties against whom the action is brought or the number of
 6 actions brought.

7 C. Notwithstanding subsection B of this section, there
 8 shall be no limit on the amount of noneconomic damages which the
 9 trier of fact may award the plaintiff in a civil action arising
 10 from a claimed bodily injury resulting from [~~professional~~]
 11 negligence [~~against a physician~~] if the judge and jury finds, by
 12 clear and convincing evidence, that[+]

13 [~~1. The plaintiff or injured person has suffered permanent~~
 14 ~~and substantial physical abnormality or disfigurement, loss of use~~
 15 ~~of a limb, or loss of, or substantial impairment to, a major body~~
 16 ~~organ or system; or]~~

17 [~~2. The plaintiff or injured person has suffered permanent~~
 18 ~~physical functional injury which prevents them from being able to~~
 19 ~~independently care for themselves and perform life sustaining~~
 20 ~~activities; or]~~

21 [~~3. The~~] the defendant's acts or failures to act were:

22 [~~a.~~] [~~in~~]

23 1. In reckless disregard for the rights of others[~~7~~];

24 [~~b.~~] [~~grossly~~]

25 2. Grossly negligent[~~7~~];

26 [~~c.~~] [~~fraudulent,~~]

27 3. Fraudulent; or

1 ~~[d.] [intentional]~~

2 4. Intentional or with malice.

3 D. ~~[Notwithstanding subsection B of this section, there~~
4 ~~shall be no limit on the amount of noneconomic damages which the~~
5 ~~trier of fact may award the plaintiff in a civil action arising~~
6 ~~from claimed bodily injury not resulting from professional~~
7 ~~negligence against a physician if the trier of fact finds, by a~~
8 ~~preponderance of the evidence, that:]~~

9 ~~[1. The plaintiff or injured person has suffered permanent~~
10 ~~and substantial physical abnormality or disfigurement, loss of use~~
11 ~~of a limb, or loss of, or substantial impairment to, a major body~~
12 ~~organ or system; or]~~

13 ~~[2. The plaintiff or injured person has suffered permanent~~
14 ~~physical functional injury which prevents them from being able to~~
15 ~~independently care for themselves and perform life sustaining~~
16 ~~activities; or]~~

17 ~~[3. The defendant's acts or failures to act were:]~~

18 ~~[a.] [in reckless disregard for the rights of others,]~~

19 ~~[b.] [grossly negligent,]~~

20 ~~[c.] [fraudulent, or]~~

21 ~~[d.] [intentional or with malice.]~~

22 ~~[E.]~~ In the trial of a civil action arising from claimed
23 bodily injury, if the verdict is for the plaintiff, the court, in
24 a nonjury trial, shall make findings of fact, and the jury, in a
25 trial by jury, shall return a general verdict accompanied by
26 answers to interrogatories, which shall specify all of the
27 following:

1 1. The total compensatory damages recoverable by the
2 plaintiff;

3 2. That portion of the total compensatory damages
4 representing the plaintiff's economic loss;

5 3. That portion of the total compensatory damages
6 representing the plaintiff's noneconomic loss; and

7 4. ~~[Whether the injuries for which the plaintiff has been~~
8 ~~awarded compensation include damages for:]~~

9 ~~[a.] [permanent and substantial physical abnormality or~~
10 ~~disfigurement, loss of use of a limb, or loss of, or substantial~~
11 ~~impairment to, a major body organ or system, or]~~

12 ~~[b.] [permanent physical functional injury that prevents~~
13 ~~the injured person from being able to independently care for~~
14 ~~himself or herself and perform life sustaining activities; and]~~

15 ~~[5.]~~ If alleged, whether the conduct of the defendant was or
16 amounted to:

17 a. reckless disregard for the rights of others,

18 b. gross negligence,

19 c. fraud, or

20 d. intentional or malicious conduct.

21 ~~[F.]~~ E. D. In any civil action to recover damages arising
22 from claimed bodily injury, after the trier of fact makes the
23 findings required by subsection ~~[E]~~ D of this section, the court
24 shall enter judgment in favor of the plaintiff for economic
25 damages in the amount determined pursuant to paragraph 2 of
26 subsection ~~[E]~~ D of this section, and subject to ~~[paragraphs]~~

27 paragraph 4 [~~and 5~~] of subsection [~~E~~] D of this section, the

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1 court shall enter a judgment in favor of the plaintiff for
2 noneconomic damages. Except as provided in [~~subsections~~]
3 subsection C [~~and D~~] of this section, in no event shall a
4 judgment for noneconomic damages exceed the maximum recoverable
5 amounts set forth in subsection B of this section. Subsection B
6 of this section shall be applied in a jury trial only after the
7 trier of fact has made its factual findings and determinations as
8 to the amount of the plaintiff's damages.

9 [~~G.~~] F. In any civil action arising from claimed bodily
10 injury which is tried to a jury, the jury shall not be instructed
11 with respect to the limit on noneconomic damages set forth in
12 subsection B of this section, nor shall counsel for any party nor
13 any witness inform the jury or potential jurors of such
14 limitations.

15 [~~H.~~] G. This section shall not apply to actions brought
16 under The Governmental Tort Claims Act or actions for wrongful
17 death.

18 [~~I.~~] H. As used in this section:

19 1. "Bodily injury" means actual physical injury to the body
20 of a person and sickness or disease resulting therefrom;

21 2. "Economic damages" means any type of pecuniary harm
22 including, but not limited to:

23 a. all wages, salaries or other compensation lost as a
24 result of a bodily injury that is the subject of a civil action,

25 b. all costs incurred for medical care or treatment,
26 rehabilitation services, or other care, treatment, services,

27 products or accommodations as a result of a bodily injury that is

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1 the subject of a civil action, or

2 c. any other costs incurred as a result of a bodily
3 injury that is the subject of a civil action;

4 3. "Fraudulent" or "fraud" means "actual fraud" as defined
5 pursuant to Section 58 of Title 15 of the Oklahoma Statutes;

6 4. "Gross negligence" means the want of slight care and
7 diligence;

8 5. "Malice" involves hatred, spite or ill will, or the
9 doing of a wrongful act intentionally without just cause or
10 excuse;

11 6. "Noneconomic damages" means nonpecuniary harm that
12 arises from a bodily injury that is the subject of a civil action,
13 including damages for pain and suffering, loss of society,
14 consortium, companionship, care, assistance, attention,
15 protection, advice, guidance, counsel, instruction, training,
16 education, disfigurement, mental anguish and any other intangible
17 loss; and

18 7. "~~Physician" means a doctor of medicine and surgery,~~
19 ~~doctor of osteopathic medicine and a doctor of allopathic~~
20 ~~medicine, each duly licensed by this state; and]~~

21 [~~8.~~] "Reckless disregard of another's rights" shall have the
22 same meaning as willful and wanton conduct and shall mean that the
23 defendant was either aware, or did not care, that there was a
24 substantial and unnecessary risk that his, her or its conduct
25 would cause serious injury to others. In order for the conduct to

26 be in reckless disregard of another's rights, it must have been
27 unreasonable under the circumstances and there must have been a

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1 high probability that the conduct would cause serious harm to
2 another person.

3 ~~[J. Upon establishment of a Health Care Indemnity Fund, any~~
4 ~~damages awarded pursuant to subsection C of this section that~~
5 ~~exceed the limitation established by subsection B of this section~~
6 ~~shall be paid by such fund. The provisions of this section shall~~
7 ~~not apply to any action that accrues before the date of enactment~~
8 ~~of the Health Care Indemnity Fund established pursuant to the~~
9 ~~recommendations of the Task Force created in Section 25 of this~~
10 ~~act; provided, such fund shall include professional liability~~
11 ~~insurance coverage requirements in an amount of not less than One~~
12 ~~Million Dollars (\$1,000,000.00) for physicians, and shall maintain~~
13 ~~availability of Twenty Million Dollars (\$20,000,000.00) annually.~~
14 ~~It is the intent of the Legislature that the state purchase~~
15 ~~reinsurance of up to Twenty Million Dollars (\$20,000,000.00) to~~
16 ~~cover judgments through such fund] I. This section shall apply~~
17 ~~to civil actions filed on or after November 1, 2011.~~

18 SECTION 2. This act shall become effective November 1,
19 2011.

20 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 3-23-11 - DO
21 PASS.

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23 (Bold face denotes Committee Amendments)

