

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1602

By: Anderson

AS INTRODUCED

An Act relating to damages; defining terms; applying specified limitations to recovery of damages in certain actions; prohibiting consideration of certain evidence; requiring certain findings; requiring entry of certain judgment under specified circumstances; prohibiting certain jurisdiction and jury instruction; prohibiting reallocation of certain damage award; repealing Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Sections 1-1708.1F and 1-1708.1F-1), which relate to damages in medical liability actions; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section:

1. "Economic loss" means any of the following types of pecuniary harm:

- a. all wages, salaries or other compensation lost as a result of an injury or loss to person or property that is a subject of a tort action,
- b. all expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations as a result of an injury or loss to person or property that is a subject of a tort action, and
- c. any other expenditures incurred as a result of an injury or loss to person or property that is a subject

of a tort action, other than attorney fees incurred in connection with that action;

2. "Noneconomic loss" means nonpecuniary harm that results from an injury or loss to person or property that is a subject of a tort action including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; disfigurement; mental anguish; and any other intangible loss;

3. "Occurrence" means all claims resulting from or arising out of any one person's bodily injury; and

4. "Tort action" means a civil action for damages for injury or loss to person or property, including a product liability or medical claim, but not including a civil action for damages for a breach of contract or another agreement between persons.

B. In a tort action to recover damages for injury or loss to person or property, all of the following apply:

1. There shall not be any limitation on the amount of compensatory damages that represents economic loss of the person who is awarded the damages in the tort action;

2. Except as provided in paragraph 3 of this subsection, the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action to recover damages for injury or loss to person or property shall not exceed the greater of Five Hundred Thousand Dollars (\$500,000.00) or an amount that is equal to three times the economic loss, as determined by the trier of fact, of the plaintiff in such action; and

3. There shall not be any limitation on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action to recover damages for injury or loss to person if the noneconomic losses of the plaintiff are for:

- a. death,
- b. permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or
- c. permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.

C. In determining an award of compensatory damages for noneconomic loss in a tort action, the trier of fact shall not consider evidence:

1. Of a defendant's alleged wrongdoing, misconduct, or guilt;
2. Of the defendant's wealth or financial resources; or
3. That is offered for the purpose of punishing the defendant, rather than offered for a compensatory purpose.

D. If a trial is conducted in a tort action to recover damages for injury or loss to person or property and a plaintiff prevails in that action, the court in a nonjury trial shall make findings of fact, and the jury in a jury trial shall return a general verdict accompanied by answers to interrogatories, that shall specify:

1. The total compensatory damages recoverable by the plaintiff;
2. The portion of the total compensatory damages that represents damages for economic loss; and
3. The portion of the total compensatory damages that represents damages for noneconomic loss.

E. 1. After the trier of fact in a tort action to recover damages for injury or loss to person or property complies with subsection D of this section, the court shall enter a judgment in favor of the plaintiff for compensatory damages for economic loss in the amount determined pursuant to paragraph 2 of subsection D of this section, and subject to subsection F of this section, the court shall enter a judgment in favor of the plaintiff for compensatory damages for noneconomic loss. Except as provided in paragraph 3 of

subsection D of this section, in no event shall a judgment for compensatory damages for noneconomic loss exceed the maximum recoverable amount that represents damages for noneconomic loss as provided in paragraph 2 of subsection B of this section. Subsection B of this section shall be applied in a jury trial only after the jury has made its factual findings and determinations as to damages.

2. Prior to the trial in the tort action described in subsection D of this section, any party may seek summary judgment with respect to the nature of the alleged injury or loss to person or property, seeking a determination of the damages as described in paragraph 2 of subsection B of this section.

F. 1. A district court has no jurisdiction to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits set forth in this section.

2. If the trier of fact is a jury, the court shall not instruct the jury with respect to the limit on compensatory damages for noneconomic loss described in paragraph 2 of subsection B of this section, and neither counsel for any party nor any witness may inform the jury or potential jurors of that limit.

G. With respect to a tort action to which paragraph 2 of subsection B of this section applies, any excess amount of compensatory damages for noneconomic loss that is greater than the applicable amount specified in such paragraph shall not be reallocated to any other tortfeasor beyond the amount of compensatory damages that the tortfeasor would otherwise be responsible for under the laws of this state.

H. This section shall not apply to tort actions that are brought against the state or its political subdivisions or to wrongful death actions.

SECTION 2. REPEALER Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Section 1-1708.1F), is hereby repealed.

SECTION 3. REPEALER Section 22, Chapter 368, O.S.L. 2004  
(63 O.S. Supp. 2005, Section 1-1708.1F-1), is hereby repealed.

SECTION 4. This act shall become effective November 1, 2006.

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