

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1928

By: Paddack

AS INTRODUCED

An Act relating to civil procedure; stating legislative findings; requiring certain jury instruction; defining terms; authorizing periodic payments of certain awards; establishing procedure for certain payments; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section 15), which relates to joint tortfeasor liability; prohibiting joint and several liability under certain circumstances; removing certain exception; amending Sections 4 and 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2005, Sections 1-1708.1D and 1-1708.1G), which relate to evidence and prejudgment interest; providing for admissibility of certain evidence; requiring certain notice; prohibiting prejudgment interest in certain actions; amending 76 O.S. 2001, Section 18, as amended by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2005, Section 18), which relates to limitation of action; requiring certain action be brought in specified time period; providing for noncodification; 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 not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Legislature finds:

1. Medical malpractice premiums for physicians insured by the primary carrier in this state rose by sixty percent (60%) in 2003, thirty-nine and five-tenths percent (39.5%) in 2004 and sixty-two and five-tenths percent (62.5%) in 2005. The primary insurer of hospitals in this state also raised premiums by thirty-seven percent (37%) in fiscal year 2003 and eventually went out of business. These rising malpractice premiums are driving physicians out of the market or causing them to cease or restrict performance of high-risk procedures, which is threatening the financial viability of

hospitals across the state. Reforms in the legal system must be made to stabilize the malpractice insurance crisis and to ensure that Oklahomans have access to health care.

2. There is a need to provide meaningful reform of the medical liability litigation system in Oklahoma. The present system is unfair because plaintiffs are often compensated twice for any injuries they may have suffered, awards are arbitrarily inflated for taxes and prejudgment interest and plaintiffs are permitted to dismiss their cases on the eve of trial when the defense has incurred great expense to prepare for the case.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 577.4 of Title 12, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, a jury in a medical liability action shall be instructed that taxation cannot be used as a consideration of damages.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Future damages" means damages that are incurred after the date of judgment for:

- a. medical, health care, or custodial care services,
- b. physical pain and mental anguish, disfigurement, or physical impairment,
- c. loss of consortium, companionship, or society, or
- d. loss of earnings;

2. "Future loss of earnings" means the following losses incurred after the date of the judgment:

- a. loss of income, wages, or earning capacity and other pecuniary losses, and
- b. loss of inheritance; and

3. "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

B. This section applies only to an action in which the present value of the award of future damages, as determined by the court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00).

C. At the request of a defendant or a plaintiff, the court shall order that medical, health care, or custodial services awarded in an action be paid in whole or in part in periodic payments rather than by a lump-sum payment.

D. At the request of a defendant or a plaintiff, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

E. The court shall make a specific finding of the dollar amount of periodic payments that will compensate the plaintiff for the future damages.

F. The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

1. Recipient of the payments;
2. Dollar amount of the payments;
3. Interval between payments; and

4. Number of payments or the period of time over which payments must be made.

G. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the plaintiff.

H. As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

I. The judgment must provide for payments to be funded by:

1. An annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;

2. An obligation of the United States;

3. Applicable and collectible liability insurance from one or more qualified insurers; or

4. Any other satisfactory form of funding approved by the court.

J. On termination of periodic payments of future damages, the court shall order the return of the security, or as much as remains, to the defendant.

K. On the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction. Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant health care provider to make further payments ends and any security given reverts to the defendant.

L. For purposes of computing the award of attorney fees when the plaintiff is awarded a recovery that will be paid in periodic payments, the court shall place a total value on the payments based on the plaintiff's projected life expectancy and reduce the amount to present value.

SECTION 4. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section 15), is amended to read as follows:

Section 15. A. Except as provided in subsections B and C of this section, in any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

B. A defendant shall be jointly and severally liable for the damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than fifty percent (50%).

~~C. If at the time the incident which gave rise to the cause of action occurred, any joint tortfeasors acted with willful and wanton conduct or with reckless disregard of the consequences of the conduct and such conduct proximately caused the damages legally recoverable by the plaintiff, the liability for damages shall be joint and several.~~

~~D. This section shall not apply to actions brought by the state or a political subdivision of the state or any action in which no comparative negligence is found to be attributable to the plaintiff.~~

~~E.~~ D. The provisions of this section shall apply to all civil actions based on fault and not arising out of contract that accrue on or after November 1, 2004.

SECTION 5. AMENDATORY Section 4, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2005, Section 1-1708.1D), is amended to read as follows:

Section 1-1708.1D A. In every medical liability action, the court shall admit evidence of payments of medical bills made to the injured party, ~~unless the court makes the finding described in paragraph B of this section~~ and any subrogation or lien interests that apply to such payments for consideration by the jury.

B. In any medical liability action, ~~upon application of a party, the court shall make a determination whether amounts claimed by a health care provider to be a payment of medical bills from a collateral source is subject to subrogation or other right of recovery. If the court makes a determination that any such payment is subject to subrogation or other right of recovery, evidence of the payment from the collateral source and subject to subrogation or other right of recovery shall not be admitted~~ the plaintiff shall,

within sixty (60) days after the commencement of the action, serve written notice to the defendant of any amount paid or payable as a medical benefit pursuant to any health, sickness or accident insurance or plan, which provides health benefits, or any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services, and shall file a copy thereof with the court or arbitrator.

SECTION 6. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2005, Section 1-1708.1G), is amended to read as follows:

Section 1-1708.1G Notwithstanding the provisions of Section 727 of Title 12 of the Oklahoma Statutes or any other provision of the Oklahoma Statutes to the contrary, there shall be no prejudgment interest awarded in a any medical liability action ~~shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year.~~

SECTION 7. AMENDATORY 76 O.S. 2001, Section 18, as amended by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2005, Section 18), is amended to read as follows:

Section 18. A. An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation.

B. Any action for damages for injury or death against any physician, health care provider, or hospital licensed under the laws of this state, based in tort and arising out of patient care, shall be brought within eight (8) years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose and all actions which are not brought within eight (8) years after the act or omission giving rise to the claim are time barred.

SECTION 8. This act shall become effective November 1, 2006.

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