

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1475

By: Cox

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7 COMMITTEE SUBSTITUTE

8 An Act relating to medical liability actions;
9 amending Section 6, Chapter 390, O.S.L. 2003, as
10 amended by Section 21, Chapter 368, O.S.L. 2004 (63
O.S. Supp. 2006, Section 1-1708.1F), which relates to
11 noneconomic damages in certain medical liability
actions; expanding scope of limitation to apply to
12 all medical liability actions; eliminating the
ability of the court to lift the noneconomic damage
13 cap; eliminating certain exclusion; eliminating
termination date; providing that provisions apply to
14 medical liability actions filed on or after a certain
date; amending 23 O.S. 2001, Section 9.1, as amended
15 by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp.
2006, Section 9.1), which relates to punitive
16 damages; establishing a cap for punitive damages for
certain actions; providing for several liability in
17 medical liability actions; providing that provisions
apply to medical liability actions filed on or after
18 a certain date; repealing Section 22, Chapter 368,
O.S.L. 2004 (63 O.S. Supp. 2006, Section 1-1708.1F-
19 1), which relates to noneconomic damages in certain
medical liability actions; providing for
20 codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY Section 6, Chapter 390, O.S.L.
2 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 (63 O.S.
3 Supp. 2006, Section 1-1708.1F), is amended to read as follows:

4 Section 1-1708.1F A. Except as provided in subsection B of
5 this section, in any medical liability action ~~in which the health~~
6 ~~care services at issue were provided for:~~

7 ~~1. Pregnancy or labor and delivery, including the immediate~~
8 ~~post partum period; or~~

9 ~~2. Emergency care in the emergency room of a hospital or as~~
10 ~~follow up to the emergency care services provided in the emergency~~
11 ~~room;~~

12 the amount of noneconomic damages awarded shall not exceed Three
13 Hundred Thousand Dollars (\$300,000.00), regardless of the number of
14 parties against whom the action is brought or the number of actions
15 brought with respect to the personal injury.

16 B. ~~Where the judge finds by clear and convincing evidence that~~
17 ~~the defendant committed negligence in one of the types of cases~~
18 ~~enumerated in subsection A of this section, the court shall~~
19 ~~articulate its findings into the record out of the presence of the~~
20 ~~jury and shall lift the noneconomic damage cap.~~

21 C. ~~Nothing in this section shall apply to any nursing facility~~
22 ~~or nursing home licensed pursuant to Section 1-1903 of this title or~~
23 ~~the owners, operators, officers, agents or employees of such~~
24 ~~entities.~~

1 ~~D.~~ Nothing in this section shall apply to a medical liability
2 action brought for wrongful death.

3 ~~E. C.~~ This section ~~of law shall terminate on November 1, 2010~~
4 shall apply to all medical liability actions filed on or after
5 November 1, 2007.

6 SECTION 2. AMENDATORY 23 O.S. 2001, Section 9.1, as
7 amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2006,
8 Section 9.1), is amended to read as follows:

9 Section 9.1 A. In an action for the breach of an obligation
10 not arising from contract, the jury, in addition to actual damages,
11 may, subject to the provisions and limitations in subsections B, C
12 and D of this section, award punitive damages for the sake of
13 example and by way of punishing the defendant based upon the
14 following factors:

- 15 1. The seriousness of the hazard to the public arising from the
16 defendant's misconduct;
- 17 2. The profitability of the misconduct to the defendant;
- 18 3. The duration of the misconduct and any concealment of it;
- 19 4. The degree of the defendant's awareness of the hazard and of
20 its excessiveness;
- 21 5. The attitude and conduct of the defendant upon discovery of
22 the misconduct or hazard;

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1 6. In the case of a defendant which is a corporation or other
2 entity, the number and level of employees involved in causing or
3 concealing the misconduct; and

4 7. The financial condition of the defendant.

5 B. Category I. Where the jury finds by clear and convincing
6 evidence that:

7 1. The defendant has been guilty of reckless disregard for the
8 rights of others; or

9 2. An insurer has recklessly disregarded its duty to deal
10 fairly and act in good faith with its insured; the jury, in a
11 separate proceeding conducted after the jury has made such finding
12 and awarded actual damages, may award punitive damages in an amount
13 not to exceed the greater of:

14 a. One Hundred Thousand Dollars (\$100,000.00), or

15 b. the amount of the actual damages awarded.

16 Any award of punitive damages under this subsection awarded in any
17 manner other than as required in this subsection shall be void and
18 reversible error.

19 C. Category II. Where the jury finds by clear and convincing
20 evidence that:

21 1. The defendant has acted intentionally and with malice
22 towards others; or

23 2. An insurer has intentionally and with malice breached its
24 duty to deal fairly and act in good faith with its insured;

1 the jury, in a separate proceeding conducted after the jury has made
2 such finding and awarded actual damages, may award punitive damages
3 in an amount not to exceed the greatest of:

- 4 a. Five Hundred Thousand Dollars (\$500,000.00),
- 5 b. twice the amount of actual damages awarded, or
- 6 c. the increased financial benefit derived by the
7 defendant or insurer as a direct result of the conduct
8 causing the injury to the plaintiff and other persons
9 or entities.

10 The trial court shall reduce any award for punitive damages awarded
11 pursuant to the provisions of subparagraph c of this paragraph by
12 the amount it finds the defendant or insurer has previously paid as
13 a result of all punitive damage verdicts entered in any court of
14 this state for the same conduct by the defendant or insurer. Any
15 award of punitive damages under this subsection awarded in any
16 manner other than as required in this subsection shall be void and
17 reversible error.

18 D. Category III. Where the jury finds by clear and convincing
19 evidence that:

20 1. The defendant has acted intentionally and with malice
21 towards others; or

22 2. An insurer has intentionally and with malice breached its
23 duty to deal fairly and act in good faith with its insured; and the
24 court finds, on the record and out of the presence of the jury, that

1 there is evidence beyond a reasonable doubt that the defendant or
2 insurer acted intentionally and with malice and engaged in conduct
3 life-threatening to humans,
4 the jury, in a separate proceeding conducted after the jury has made
5 such finding and awarded actual damages, may award punitive damages
6 in any amount the jury deems appropriate, without regard to the
7 limitations set forth in subsections B and C of this section. Any
8 award of punitive damages under this subsection awarded in any
9 manner other than as required in this subsection shall be void and
10 reversible error.

11 E. In determining the amount, if any, of punitive damages to be
12 awarded under either subsection B, C or D of this section, the jury
13 shall make the award based upon the factors set forth in subsection
14 A of this section.

15 F. The provisions of this section are severable, and if any
16 part or provision thereof shall be held void, the decision of the
17 court shall not affect or impair any of the remaining parts or
18 provisions thereof.

19 G. In any medical liability action, as defined by Section 1-
20 1708.1C of Title 63 of the Oklahoma Statutes, the amount of punitive
21 damages that may be awarded shall not exceed Three Hundred Thousand
22 Dollars (\$300,000.00).

23 H. This Subsections A, B, C, D, E and F of this section shall
24 apply to all civil actions filed after the effective date of this

1 ~~act~~ July 1, 2002. Subsection G of this section shall apply to all
2 medical liability actions filed on or after November 1, 2007.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-1708.1J of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. In any medical liability action, as defined in Section 1-
7 1708.1C of Title 63 of the Oklahoma Statutes, the liability for
8 damages caused by two or more persons shall be several only and a
9 joint tortfeasor shall be liable only for the amount of damages
10 allocated to that tortfeasor.

11 B. The provisions of this section shall apply to all medical
12 liability actions that accrue on or after November 1, 2007.

13 SECTION 4. REPEALER Section 22, Chapter 368, O.S.L. 2004
14 (63 O.S. Supp. 2006, Section 1-1708.1F-1), is hereby repealed.

15 SECTION 5. This act shall become effective November 1, 2007.

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