

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2726

By: Sherrer

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5  
6 AS INTRODUCED

7 An Act relating to damages; amending Section 24,  
8 Chapter 228, O.S.L. 2009 (23 O.S. Supp. 2009, Section  
9 61.2), which relates to limitation of damages for  
10 bodily injury; prohibiting the Legislature from  
11 appropriating funds to purchase reinsurance for  
12 certain purpose; and providing an effective date.

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

14 SECTION 1. AMENDATORY Section 24, Chapter 228, O.S.L.  
15 2009 (23 O.S. Supp. 2009, Section 61.2), is amended to read as  
16 follows:

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

21 B. Except as provided in subsections C and D of this section,  
22 in any civil action arising from a claimed bodily injury, the amount  
23 of compensation which a trier of fact may award a plaintiff for  
24 noneconomic loss shall not exceed Four Hundred Thousand Dollars

1 (\$400,000.00), regardless of the number of parties against whom the  
2 action is brought or the number of actions brought.

3 C. Notwithstanding subsection B of this section, there shall be  
4 no limit on the amount of noneconomic damages which the trier of  
5 fact may award the plaintiff in a civil action arising from a  
6 claimed bodily injury resulting from professional negligence against  
7 a physician if the judge and jury finds, by clear and convincing  
8 evidence, that:

9 1. The plaintiff or injured person has suffered permanent and  
10 substantial physical abnormality or disfigurement, loss of use of a  
11 limb, or loss of, or substantial impairment to, a major body organ  
12 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 D. Notwithstanding subsection B of this section, there shall be  
23 no limit on the amount of noneconomic damages which the trier of  
24 fact may award the plaintiff in a civil action arising from claimed

1 | bodily injury not resulting from professional negligence against a  
2 | physician if the trier of fact finds, by a preponderance of the  
3 | evidence, that:

4 |       1. The plaintiff or injured person has suffered permanent and  
5 | substantial physical abnormality or disfigurement, loss of use of a  
6 | limb, or loss of, or substantial impairment to, a major body organ  
7 | or system; or

8 |       2. The plaintiff or injured person has suffered permanent  
9 | physical functional injury which prevents them from being able to  
10 | independently care for themselves and perform life sustaining  
11 | activities; or

12 |       3. The defendant's acts or failures to act were:

- 13 |           a. in reckless disregard for the rights of others,
- 14 |           b. grossly negligent,
- 15 |           c. fraudulent, or
- 16 |           d. intentional or with malice.

17 |       E. In the trial of a civil action arising from claimed bodily  
18 | injury, if the verdict is for the plaintiff, the court, in a nonjury  
19 | trial, shall make findings of fact, and the jury, in a trial by  
20 | jury, shall return a general verdict accompanied by answers to  
21 | interrogatories, which shall specify all of the following:

- 22 |           1. The total compensatory damages recoverable by the plaintiff;
- 23 |           2. That portion of the total compensatory damages representing  
24 | the plaintiff's economic loss;

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

3 4. Whether the injuries for which the plaintiff has been  
4 awarded compensation include damages for:

5 a. permanent and substantial physical abnormality or  
6 disfigurement, loss of use of a limb, or loss of, or  
7 substantial impairment to, a major body organ or  
8 system, or

9 b. permanent physical functional injury that prevents the  
10 injured person from being able to independently care  
11 for himself or herself and perform life sustaining  
12 activities; and

13 5. If alleged, whether the conduct of the defendant was or  
14 amounted to:

15 a. reckless disregard for the rights of others,

16 b. gross negligence,

17 c. fraud, or

18 d. intentional or malicious conduct.

19 F. In any civil action to recover damages arising from claimed  
20 bodily injury, after the trier of fact makes the findings required  
21 by subsection E of this section, the court shall enter judgment in  
22 favor of the plaintiff for economic damages in the amount determined  
23 pursuant to paragraph 2 of subsection E of this section, and subject  
24 to paragraphs 4 and 5 of subsection E of this section, the court

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

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

13 H. This section shall not apply to actions brought under The  
14 Governmental Tort Claims Act or actions for wrongful death.

15 I. As used in this section:

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

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

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

23 b. all costs incurred for medical care or treatment,  
24 rehabilitation services, or other care, treatment,

1 services, products or accommodations as a result of a  
2 bodily injury that is the subject of a civil action,  
3 or

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

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

8 4. "Gross negligence" means the want of slight care and  
9 diligence;

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

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

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

21 8. "Reckless disregard of another's rights" shall have the same  
22 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 would

1 cause serious injury to others. In order for the conduct to be in  
2 reckless disregard of another's rights, it must have been  
3 unreasonable under the circumstances and there must have been a high  
4 probability that the conduct would cause serious harm to another  
5 person.

6 J. Upon establishment of a Health Care Indemnity Fund, any  
7 damages awarded pursuant to subsection C of this section that exceed  
8 the limitation established by subsection B of this section shall be  
9 paid by such fund. The provisions of this section shall not apply  
10 to any action that accrues before the date of enactment of the  
11 Health Care Indemnity Fund established pursuant to the  
12 recommendations of the Task Force created in Section ~~25~~ 2211 of ~~this~~  
13 ~~act~~ Title 36 of the Oklahoma Statutes; provided, such fund shall  
14 include professional liability insurance coverage requirements in an  
15 amount of not less than One Million Dollars (\$1,000,000.00) for  
16 physicians, and shall maintain availability of Twenty Million  
17 Dollars (\$20,000,000.00) annually. ~~It is the intent of the~~  
18 ~~Legislature that the state purchase reinsurance of up to Twenty~~  
19 ~~Million Dollars (\$20,000,000.00)~~ The Legislature shall not  
20 appropriate funds for the purchase of reinsurance to cover judgments  
21 through ~~such~~ the fund.

22 SECTION 2. This act shall become effective November 1, 2010.

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24 52-2-8967 EK 12/23/09