

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2128

6 By: Steele

7 COMMITTEE SUBSTITUTE

8 An Act relating to damages; amending Section 24,
9 Chapter 228, O.S.L. 2009 (23 O.S. Supp. 2010, Section
10 61.2), which relates to limitations on damages for
11 bodily injury; modifying recovery limitation on
12 certain noneconomic damages; eliminating
13 establishment of a Health Care Indemnity Fund;
14 providing scope of application; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY Section 24, Chapter 228, O.S.L.
18 2009 (23 O.S. Supp. 2010, Section 61.2), is amended to read as
19 follows:

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

24 B. Except as provided in subsections C and D of this section,
in any civil action arising from a claimed bodily injury, the amount

1 of compensation which a trier of fact may award a plaintiff for
2 noneconomic loss shall not exceed ~~Four Hundred Thousand Dollars~~
3 ~~(\$400,000.00)~~ Three Hundred Thousand Dollars (\$300,000.00),
4 regardless of the number of parties against whom the action is
5 brought or the number of actions brought.

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

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

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

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

- 21 a. in reckless disregard for the rights of others,
- 22 b. grossly negligent,
- 23 c. fraudulent, or
- 24 d. intentional or with malice.

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

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

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

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

- 16 a. in reckless disregard for the rights of others,
17 b. grossly negligent,
18 c. fraudulent, or
19 d. intentional or with malice.

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

- 1 1. The total compensatory damages recoverable by the plaintiff;
- 2 2. That portion of the total compensatory damages representing
- 3 the plaintiff's economic loss;
- 4 3. That portion of the total compensatory damages representing
- 5 the plaintiff's noneconomic loss;
- 6 4. Whether the injuries for which the plaintiff has been
- 7 awarded compensation include damages for:
 - 8 a. permanent and substantial physical abnormality or
 - 9 disfigurement, loss of use of a limb, or loss of, or
 - 10 substantial impairment to, a major body organ or
 - 11 system, or
 - 12 b. permanent physical functional injury that prevents the
 - 13 injured person from being able to independently care
 - 14 for himself or herself and perform life sustaining
 - 15 activities; and
- 16 5. If alleged, whether the conduct of the defendant was or
- 17 amounted to:
 - 18 a. reckless disregard for the rights of others,
 - 19 b. gross negligence,
 - 20 c. fraud, or
 - 21 d. intentional or malicious conduct.
- 22 F. In any civil action to recover damages arising from claimed
- 23 bodily injury, after the trier of fact makes the findings required
- 24 by subsection E of this section, the court shall enter judgment in

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

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

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

18 I. As used in this section:

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

21 2. "Economic damages" means any type of pecuniary harm
22 including, but not limited to:
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1 a. all wages, salaries or other compensation lost as a
2 result of a bodily injury that is the subject of a
3 civil action,

4 b. all costs incurred for medical care or treatment,
5 rehabilitation services, or other care, treatment,
6 services, products or accommodations as a result of a
7 bodily injury that is the subject of a civil action,
8 or

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

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

13 4. "Gross negligence" means the want of slight care and
14 diligence;

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

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

1 7. "Physician" means a doctor of medicine and surgery, doctor
2 of osteopathic medicine and a doctor of allopathic medicine, each
3 duly licensed by this state; and

4 8. "Reckless disregard of another's rights" shall have the same
5 meaning as willful and wanton conduct and shall mean that the
6 defendant was either aware, or did not care, that there was a
7 substantial and unnecessary risk that his, her or its conduct would
8 cause serious injury to others. In order for the conduct to be in
9 reckless disregard of another's rights, it must have been
10 unreasonable under the circumstances and there must have been a high
11 probability that the conduct would cause serious harm to another
12 person.

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

1 ~~reinsurance of up to Twenty Million Dollars (\$20,000,000.00) to~~
2 ~~cover judgments through such fund~~ This section shall apply to civil
3 actions filed on or after November 1, 2011.

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

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6 53-1-6964 EK 03/01/11
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