

1 ENGROSSED HOUSE  
2 BILL NO. 2128

By: Steele, Mulready, Faught  
and Sullivan of the House

3 and

4 Sykes of the Senate  
5  
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7

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; modifying definitions;  
13 eliminating establishment of a Health Care Indemnity  
14 Fund; providing scope of application; and providing  
15 an 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~~ subsection C and D of this  
section, in any civil action arising from a claimed bodily injury,

1 the amount of compensation which a trier of fact may award a  
2 plaintiff for noneconomic loss shall not exceed ~~Four Hundred~~  
3 ~~Thousand Dollars (\$400,000.00)~~ Three Hundred Fifty Thousand Dollars  
4 (\$350,000.00), regardless of the number of parties against whom the  
5 action is 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 the defendant's acts or failures to act were:~~

21 ~~a. in~~

22 ~~1. In reckless disregard for the rights of others;~~

23 ~~b. grossly~~

24 ~~2. Grossly negligent;~~

1           c. ~~fraudulent,~~

2           3. Fraudulent; or

3           d. ~~intentional~~

4           4. Intentional or with malice.

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

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

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

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

20           a. ~~in reckless disregard for the rights of others,~~

21           b. ~~grossly negligent,~~

22           c. ~~fraudulent, or~~

23           d. ~~intentional or with malice.~~

24

1       ~~E.~~ In the trial of a civil action arising from claimed bodily  
2 injury, if the verdict is for the plaintiff, the court, in a nonjury  
3 trial, shall make findings of fact, and the jury, in a trial by  
4 jury, shall return a general verdict accompanied by answers to  
5 interrogatories, which shall specify all of the following:

6           1. The total compensatory damages recoverable by the plaintiff;

7           2. That portion of the total compensatory damages representing  
8 the plaintiff's economic loss;

9           3. That portion of the total compensatory damages representing  
10 the plaintiff's noneconomic loss; and

11           4. ~~Whether the injuries for which the plaintiff has been~~  
12 ~~awarded compensation include damages for:~~

13           a. ~~permanent and substantial physical abnormality or~~  
14 ~~disfigurement, loss of use of a limb, or loss of, or~~  
15 ~~substantial impairment to, a major body organ or~~  
16 ~~system, or~~

17           b. ~~permanent physical functional injury that prevents the~~  
18 ~~injured person from being able to independently care~~  
19 ~~for himself or herself and perform life sustaining~~  
20 ~~activities; and~~

21       ~~5.~~ If alleged, whether the conduct of the defendant was or  
22 amounted to:

23           a. reckless disregard for the rights of others,

24           b. gross negligence,

1 c. fraud, or

2 d. intentional or malicious conduct.

3 ~~F.~~ E. In any civil action to recover damages arising from  
4 claimed bodily injury, after the trier of fact makes the findings  
5 required by subsection ~~E~~ D of this section, the court shall enter  
6 judgment in favor of the plaintiff for economic damages in the  
7 amount determined pursuant to paragraph 2 of subsection ~~E~~ D of this  
8 section, and subject to ~~paragraphs~~ paragraph 4 and ~~5~~ of subsection ~~E~~  
9 D of this section, the court shall enter a judgment in favor of the  
10 plaintiff for noneconomic damages. Except as provided in  
11 ~~subsections~~ subsection C and ~~D~~ of this section, in no event shall a  
12 judgment for noneconomic damages exceed the maximum recoverable  
13 amounts set forth in subsection B of this section. Subsection B of  
14 this section shall be applied in a jury trial only after the trier  
15 of fact has made its factual findings and determinations as to the  
16 amount of the plaintiff's damages.

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

22 ~~H.~~ G. This section shall not apply to actions brought under The  
23 Governmental Tort Claims Act or actions for wrongful death.

24 ~~I.~~ H. As used in this section:

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

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

5            a. all wages, salaries or other compensation lost as a  
6 result of a bodily injury that is the subject of a  
7 civil action,

8            b. all costs incurred for medical care or treatment,  
9 rehabilitation services, or other care, treatment,  
10 services, products or accommodations as a result of a  
11 bodily injury that is the subject of a civil action,  
12 or

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

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

17        4. "Gross negligence" means the want of slight care and  
18 diligence;

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

21        6. "Noneconomic damages" means nonpecuniary harm that arises  
22 from a bodily injury that is the subject of a civil action,  
23 including damages for pain and suffering, loss of society,  
24 consortium, companionship, care, assistance, attention, protection,

1 advice, guidance, counsel, instruction, training, education,  
2 disfigurement, mental anguish and any other intangible loss; and

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

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

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

1 ~~availability of Twenty Million Dollars (\$20,000,000.00) annually.~~  
2 ~~It is the intent of the Legislature that the state purchase~~  
3 ~~reinsurance of up to Twenty Million Dollars (\$20,000,000.00) to~~  
4 ~~cover judgments through such fund I. This section shall apply to~~  
5 ~~civil actions filed on or after November 1, 2011.~~

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

7 Passed the House of Representatives the 16th day of March, 2011.

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10 \_\_\_\_\_  
11 Presiding Officer of the House of  
Representatives

12 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2011.

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15 \_\_\_\_\_  
16 Presiding Officer of the Senate