

1 THE STATE SENATE
2 Tuesday, February 8, 2011

3 Senate Bill No. 863

4 SENATE BILL NO. 863 - By: Sykes of the Senate and Sullivan of the
5 House.

6 An Act relating to compensation for noneconomic damages;
7 amending Section 24, Chapter 228, O.S.L. 2009 (23 O.S. Supp.
8 2010, Section 61.2), which relates to economic and
9 noneconomic loss compensation; modifying limit to certain
10 damage awards; modifying finding required to remove certain
11 limitation; modifying applicability to certain actions;
12 modifying definitions; deleting requirements related to
13 certain Fund; repealing Section 25, Chapter 228, O.S.L. 2009
14 (36 O.S. Supp. 2010, Section 2211), which relates to the
15 Health Care Indemnity Fund Task Force; and providing an
16 effective date.

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

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

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

25 B. Except as provided in ~~subsections~~ subsection C and D of this
26 section, in any ~~civil~~ action not arising ~~from a claimed bodily~~
27 ~~injury~~ out of contract, the amount of compensation which a trier of
28 fact may award a plaintiff for noneconomic ~~loss~~ damages shall not
29 exceed ~~Four Hundred Thousand Dollars (\$400,000.00)~~ Two Hundred Fifty

1 Thousand Dollars (\$250,000.00), regardless of the number of parties
2 against whom the 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~~

1 ~~fact may award the plaintiff in a civil action arising from claimed~~
2 ~~bodily injury not resulting from professional negligence against a~~
3 ~~physician if the trier of fact finds, by a preponderance of the~~
4 ~~evidence, that:~~

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

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

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

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

15 b. ~~grossly negligent,~~

16 c. ~~fraudulent, or~~

17 d. ~~intentional or with malice.~~

18 E. In the trial of a civil action not arising ~~from claimed~~
19 ~~bodily injury~~ out of contract, if the verdict is for the plaintiff,
20 the court, in a nonjury trial, shall make findings of fact, and the
21 jury, in a trial by jury, shall return a general verdict accompanied
22 by answers to interrogatories, which shall specify all of the
23 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; and
- 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.
- 22 b. intentional or malicious conduct.

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

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

19 H. D. If the jury finds by clear and convincing evidence that
20 the acts of the party which caused the damages were grossly
21 negligent or committed intentionally or with malice, and the court
22 finds, on the record and out of the presence of the jury, clear and
23 convincing evidence that the defendant was grossly negligent or

1 acted intentionally or with malice, the jury may award noneconomic
2 damages in an amount the jury deems appropriate without regard to
3 the limitation set forth in subsection B of this section.

4 E. This section shall not apply to actions brought ~~under The~~
5 ~~Governmental Tort Claims Act or actions~~ for wrongful death.

6 ~~F.~~ F. As used in this section:

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

9 2. ~~"Economic damages" means any type of pecuniary harm~~
10 ~~including, but not limited to:~~

11 a. ~~all wages, salaries or other compensation lost as a~~
12 ~~result of a bodily injury that is the subject of a~~
13 ~~civil action,~~

14 b. ~~all costs incurred for medical care or treatment,~~
15 ~~rehabilitation services, or other care, treatment,~~
16 ~~services, products or accommodations as a result of a~~
17 ~~bodily injury that is the subject of a civil action,~~
18 ~~or~~

19 c. ~~any other costs incurred as a result of a bodily~~
20 ~~injury that is the subject of a civil action;~~

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

1 ~~4.~~ "Gross negligence" means the want of slight care and
2 diligence;

3 ~~5.~~ 2. "Malice" involves hatred, spite or ill will, or the doing
4 of a wrongful act intentionally without just cause or excuse; and

5 ~~6.~~ 3. "Noneconomic damages" means ~~nonpecuniary harm that arises~~
6 ~~from a bodily injury that is the subject of a civil action,~~ all
7 subjective, nonmonetary losses including, but not limited to,
8 damages for pain and suffering, inconvenience, emotional distress,
9 injury to reputation and humiliation, loss of society, consortium,
10 companionship, ~~care, assistance, attention, protection, advice,~~
11 ~~guidance, counsel, instruction, training, education, disfigurement,~~
12 and mental anguish and any other intangible loss; provided, however,
13 noneconomic damages do not include exemplary damages as provided for
14 in Section 9.1 of this title.

15 ~~7.~~ "Physician" ~~means a doctor of medicine and surgery, doctor~~
16 ~~of osteopathic medicine and a doctor of allopathic medicine, each~~
17 ~~duly licensed by this state; and~~

18 ~~8.~~ "Reckless disregard of another's rights" ~~shall have the same~~
19 ~~meaning as willful and wanton conduct and shall mean that the~~
20 ~~defendant was either aware, or did not care, that there was a~~
21 ~~substantial and unnecessary risk that his, her or its conduct would~~
22 ~~cause serious injury to others. In order for the conduct to be in~~
23 ~~reckless disregard of another's rights, it must have been~~

1 ~~unreasonable under the circumstances and there must have been a high~~
2 ~~probability that the conduct would cause serious harm to another~~
3 ~~person.~~

4 ~~J. Upon establishment of a Health Care Indemnity Fund, any~~
5 ~~damages awarded pursuant to subsection C of this section that exceed~~
6 ~~the limitation established by subsection B of this section shall be~~
7 ~~paid by such fund.~~

8 G. ~~The provisions of this section shall not apply to any action~~
9 ~~that accrues before the date of enactment of the Health Care~~
10 ~~Indemnity Fund established pursuant to the recommendations of the~~
11 ~~Task Force created in Section 25 of this act; provided, such fund~~
12 ~~shall include professional liability insurance coverage requirements~~
13 ~~in an amount of not less than One Million Dollars (\$1,000,000.00)~~
14 ~~for physicians, and shall maintain availability of Twenty Million~~
15 ~~Dollars (\$20,000,000.00) annually. It is the intent of the~~
16 ~~Legislature that the state purchase reinsurance of up to Twenty~~
17 ~~Million Dollars (\$20,000,000.00) to cover judgments through such~~
18 ~~fund~~ November 1, 2011.

19 SECTION 2. REPEALER Section 25, Chapter 228, O.S.L. 2009
20 (36 O.S. Supp. 2010, Section 2211), is hereby repealed.

21 SECTION 3. This act shall become effective November 1, 2011.

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-8-11 - DO PASS,
23 As Coauthored.