

SB 866

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THE STATE SENATE
Tuesday, February 8, 2011

Senate Bill No. 866
As Amended

SENATE BILL NO. 866 - By: Sykes of the Senate and Sullivan of the House.

An Act relating to compensation for future damages; defining terms; stating applicability of provisions; providing for periodic payment of certain damages; requiring court to make specific findings; stating result of entry of certain order; requiring evidence of financial responsibility for certain defendants; requiring certain order upon termination of periodic payments; providing procedures upon death of recipient of periodic payments; establishing computation for attorney fees; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

- 1. "Future damages" means damages that are incurred after the date of judgment for:
 - a. medical, health care, or custodial care services,
 - b. physical pain and mental anguish, disfigurement, or physical impairment,
 - c. loss of consortium, companionship, or society, or
 - d. loss of earnings;

1 2. "Future loss of earnings" means the following losses
2 incurred after the date of the judgment:

- 3 a. loss of income, wages, or earning capacity and other
4 pecuniary losses, or
5 b. loss of inheritance; and

6 3. "Periodic payments" means the payment of money or its
7 equivalent to the recipient of future damages at defined intervals.

8 B. This section shall apply only to an action in which the
9 present value of the award of future damages, as determined by the
10 court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00).

11 C. Upon request of a party, the court shall order that medical,
12 health care, or custodial services awarded in an action be paid in
13 whole or in part in periodic payments rather than by a lump-sum
14 payment. Upon request of a party, the court may order that future
15 damages other than medical, health care, or custodial services
16 awarded in a health care liability action be paid in whole or in
17 part in periodic payments rather than by a lump-sum payment.

18 D. The court shall make a specific finding of the dollar amount
19 of periodic payments that will compensate the plaintiff for the
20 future damages. The court shall specify in its judgment ordering
21 the payment of future damages by periodic payments the:

- 22 1. Recipient of the payments;
23 2. Dollar amount of the payments;

1 3. Interval between payments; and

2 4. Number of payments or the period of time over which payments
3 must be made.

4 E. The entry of an order for the payment of future damages by
5 periodic payments constitutes a release of the health care liability
6 claim filed by the plaintiff.

7 F. As a condition to authorizing periodic payments of future
8 damages, the court shall require a defendant who is not adequately
9 insured to provide evidence of financial responsibility in an amount
10 adequate to assure full payment of damages awarded by the judgment.
11 The judgment shall provide for payments to be funded by:

12 1. An annuity contract issued by a company licensed to do
13 business as an insurance company, including an assignment within the
14 meaning of Section 130, Internal Revenue Code of 1986, as amended;

15 2. An obligation of the United States;

16 3. Applicable and collectible liability insurance from one or
17 more qualified insurers; or

18 4. Any other satisfactory form of funding approved by the
19 court.

20 G. On termination of periodic payments of future damages, the
21 court shall order the return of the security, or as much as remains,
22 to the defendant.

1 H. On the death of the recipient, money damages awarded for
2 loss of future earnings shall continue to be paid to the estate of
3 the recipient of the award without reduction. Following the
4 satisfaction or termination of any obligations specified in the
5 judgment for periodic payments, any obligation of the defendant
6 health care provider to make further payments ends and any security
7 given reverts to the defendant.

8 I. For purposes of computing the award of attorney fees when
9 the plaintiff is awarded a recovery that will be paid in periodic
10 payments, the court shall place a total value on the payments based
11 on the plaintiff's projected life expectancy and reduce the amount
12 to present value.

13 **J. Each periodic payment shall include the principal owed to**
14 **the party plus interest at the rate applicable for postjudgment**
15 **interest as provided by law.**

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

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-8-11 - DO PASS,
18 As Amended and Coauthored.