

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1774

By: Roberts (Sean)

4
5 AS INTRODUCED

6 An act relating to lawsuit reform; amending Section
7 6, Chapter 390, O.S.L. 2003, as amended by Section
8 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter
9 368, O.S.L. 2004 (63 O.S. Supp. 2010, Sections 1-
10 1708.1F and 1-1708.1F-1), which relate to the
11 Affordable Access to Health Care Act; modifying
recovery limitation on certain noneconomic damages;
12 removing termination date of sections; providing
13 scope of application; and providing an effective
date.

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

15 SECTION 1. AMENDATORY Section 6, Chapter 390, O.S.L.
16 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 (63 O.S.
17 Supp. 2010, Section 1-1708.1F), is amended to read as follows:

18 Section 1-1708.1F A. Except as provided in subsection B of
19 this section, in any medical liability action in which the health
20 care services at issue were provided for:

21 1. Pregnancy or labor and delivery, including the immediate
22 post-partum period; or

1 2. Emergency care in the emergency room of a hospital or as
2 follow-up to the emergency care services provided in the emergency
3 room;
4 the amount of noneconomic damages awarded shall not exceed ~~Three~~
5 ~~Hundred Thousand Dollars (\$300,000.00)~~ Two Hundred Fifty Thousand
6 Dollars (\$250,000.00), regardless of the number of parties against
7 whom the action is brought or the number of actions brought with
8 respect to the personal injury.

9 B. Where the judge finds by clear and convincing evidence that
10 the defendant committed negligence in one of the types of cases
11 enumerated in subsection A of this section, the court shall
12 articulate its findings into the record out of the presence of the
13 jury and shall lift the noneconomic damage cap.

14 C. Nothing in this section shall apply to any nursing facility
15 or nursing home licensed pursuant to Section 1-1903 of this title or
16 the owners, operators, officers, agents or employees of such
17 entities.

18 D. Nothing in this section shall apply to a medical liability
19 action brought for wrongful death.

20 E. This section of law shall ~~terminate~~ apply to actions filed
21 on or after November 1, ~~2010~~ 2011.

22 SECTION 2. AMENDATORY Section 22, Chapter 368, O.S.L.
23 2004 (63 O.S. Supp. 2010, Section 1-1708.1F-1), is amended to read
24 as follows:

1 Section 1-1708.1F-1 A. Except as provided in subsection B or D
2 of this section, in any medical liability action not provided for in
3 Section 1-1708.1F of ~~Title 63 of the Oklahoma Statutes~~ this title,
4 the amount of noneconomic damages awarded shall not exceed the hard
5 cap amount of Three Hundred Thousand Dollars (\$300,000.00),
6 regardless of the number of actions brought with respect to the
7 personal injury, provided:

8 1. The defendant has made an offer of judgment pursuant to
9 Section 1101.1 of Title 12 of the Oklahoma Statutes; and

10 2. The amount of the verdict awarded to the plaintiff is less
11 than one and one-half (1 1/2) times the amount of the final offer of
12 judgment.

13 B. The dollar amount prescribed by subsection A of this section
14 shall be adjusted annually based upon any positive increase in the
15 Consumer Price Index that measures the average changes in prices of
16 goods and services purchased by urban wage earners and clerical
17 workers' families and single workers living alone (CPI-W) for the
18 preceding calendar year. The adjustment required by this subsection
19 shall be made on April 1 of each year or not later than thirty (30)
20 days after the date upon which the Bureau of Labor Statistics
21 releases the CPI-W inflationary data for the preceding calendar
22 year, whichever date first occurs. No adjustment to the dollar
23 amount prescribed by this section shall be made for any year in
24 which there is a decline in the Consumer Price Index.

1 C. As used in this section, "noneconomic damages" means only
2 mental pain and suffering, inconvenience, mental anguish, emotional
3 distress, loss of society and companionship, loss of consortium,
4 injury to reputation and humiliation; provided, however, noneconomic
5 damages do not include exemplary damages, as provided for in Section
6 9.1 of Title 23 of the Oklahoma Statutes.

7 D. If nine or more members of the jury find by clear and
8 convincing evidence that the defendant committed negligence or if
9 nine or more members of the jury find by a preponderance of the
10 evidence that the conduct of the defendant was willful or wanton,
11 the limits on noneconomic damages provided for in subsection A of
12 this section shall not apply; provided, however, the judge must,
13 before submitting such determination to the jury, make a threshold
14 determination that there is evidence from which the jury could
15 reasonably make the findings set forth in the case.

16 E. If the jury returns a verdict that is greater than Three
17 Hundred Thousand Dollars (\$300,000.00) and is less than one and one-
18 half (1 1/2) times the amount of the final offer of judgment, the
19 court shall submit to the jury an additional form of verdict. The
20 additional form of verdict shall be substantially as follows:

21 "1. Do you find by a preponderance of the evidence that the
22 conduct of the defendant was willful or wanton? If nine or more of
23 you answer in the affirmative, then return this verdict form in open
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1 court. If less than nine of you answer in the affirmative, then
2 answer the following question.

3 2. Do you find by clear and convincing evidence that the
4 defendant was negligent? If this question is answered
5 affirmatively, then return this verdict form in open court. If less
6 than nine of you find negligence by clear and convincing evidence,
7 then answer the following question.

8 3. Of the amount returned in the verdict, what amount of your
9 verdict is for economic damages and what amount is for noneconomic
10 damages?"

11 F. Nothing in this section shall apply to an action brought for
12 wrongful death.

13 G. The provisions of this section shall apply only to actions
14 that accrue on or after November 1, 2004.

15 H. This section of law shall ~~terminate~~ apply to actions filed
16 on or after November 1, ~~2010~~ 2011.

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

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