

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 HOUSE BILL 1018

By: Perryman

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5
6 AS INTRODUCED

7 An Act relating to damages; repealing 23 O.S. 2011,
8 Section 61.2, which relates to economic and
9 noneconomic damages; providing for compensation in
10 civil actions arising from claims of bodily injury;
11 providing that economic damages shall not be subject
12 to limitation; providing limit on amount of
13 noneconomic damages, with exceptions; providing there
14 shall be no limit on noneconomic damages in certain
15 circumstances; requiring the jury to return a general
16 verdict accompanied by specific answers to
17 interrogatories; providing procedures for entering
18 judgments; providing procedures regarding
19 determination of noneconomic damages; providing
20 exclusion for actions brought under The Governmental
21 Tort Claims Act and for wrongful death actions;
22 defining terms; providing for codification; and
23 declaring an emergency.
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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. REPEALER 23 O.S. 2011, Section 61.2, is
20 hereby repealed.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 61.3 of Title 23, unless there
23 is created a duplication in numbering, reads as follows
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1 A. In any civil action arising from a claimed bodily injury,
2 the amount of compensation which the trier of fact may award a
3 plaintiff for economic loss shall not be subject to any limitation.

4 B. Except as provided in subsections C and D of this section,
5 in any civil action arising from a claimed bodily injury, the amount
6 of compensation which a trier of fact may award a plaintiff for
7 noneconomic loss shall not exceed Four Hundred Fifty Thousand
8 Dollars (\$450,000.00), regardless of the number of parties against
9 whom the action is brought or the number of actions brought.

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

16 1. The plaintiff or injured person has suffered permanent and
17 substantial physical abnormality or disfigurement, loss of use of a
18 limb, or loss of, or substantial impairment to, a major body organ
19 or system; or

20 2. The plaintiff or injured person has suffered permanent
21 physical functional injury which prevents that person from being
22 able to independently care for himself or herself and perform life-
23 sustaining activities; or

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

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

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

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

2. The plaintiff or injured person has suffered permanent physical functional injury which prevents that person from being able to independently care for himself or herself and perform life-sustaining activities; or

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

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

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;

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

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

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

23 I. As used in this section:
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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 or education;
2 disfigurement; mental anguish and any other intangible loss;

3 7. "Physician" means a doctor of medicine and surgery, doctor
4 of osteopathic medicine or 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 SECTION 3. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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20 54-1EX-50040 SD 09/03/13

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