

HOUSE BILL NO. 458

INTRODUCED BY J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PHYSICIAN ASSISTANTS; ~~REVISING THE NONECONOMIC DAMAGE LIMITATION APPLICABLE IN MEDICAL MALPRACTICE CASES;~~ INCLUDING "PHYSICIAN ASSISTANT" IN THE DEFINITION OF "HEALTH CARE PROVIDER"; ~~PROVIDING FOR ANNUAL INCREASES; PROVIDING APPLICABILITY TO FUTURE AND EXISTING MALPRACTICE CLAIMS;~~ AMENDING SECTION 25-9-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 25-9-411, MCA, is amended to read:

**"25-9-411. (Temporary) Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed \$250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed \$250,000. This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination

1 of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall make other  
2 reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced  
3 in the same action, future noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit,  
4 past noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000, a claimant's  
5 share of the \$250,000 must be the same percentage as the claimant's share of the combined awards before  
6 reduction.

7 (b) For each claimant, further reductions must be made in the following order:

8 (i) first, reductions under 27-1-702;

9 (ii) second, reductions under 27-1-703; and

10 (iii) third, setoffs and credits to which a defendant is entitled.

11 (3) An award of future damages for noneconomic loss may not be discounted to present value.

12 (4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

13 (5) As used in this section, the following definitions apply:

14 (a) "Claimant" includes but is not limited to:

15 (i) a person suffering bodily injury;

16 (ii) a person making a claim as a result of bodily injury to or the death of another;

17 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

18 (iv) the representative of the estate of a person who suffered bodily injury or death; or

19 (v) a person bringing a wrongful death action.

20 (b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist,  
21 chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50,  
22 chapter 5.

23 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care  
24 provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful  
25 death.

26 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

27 (i) physical and mental pain or suffering;

28 (ii) emotional distress;

(iii) inconvenience;

(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

(v) loss of society, companionship, and consortium, other than household services;

(vi) injury to reputation; and

(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

**25-9-411. (Effective on occurrence of contingency) Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed \$250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed \$250,000. This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit, past noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000, a claimant's share of the \$250,000 must be the same percentage as the claimant's share of the combined awards before reduction.

(b) For each claimant, further reductions must be made in the following order:

(i) first, reductions under 27-1-702; and

(ii) second, setoffs and credits to which a defendant is entitled.

(3) An award of future damages for noneconomic loss may not be discounted to present value.

(4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

(5) As used in this section, the following definitions apply:

(a) "Claimant" includes but is not limited to:

(i) a person suffering bodily injury;

(ii) a person making a claim as a result of bodily injury to or the death of another;

(iii) a person making a claim on behalf of someone who suffered bodily injury or death;

(iv) the representative of the estate of a person who suffered bodily injury or death; or

(v) a person bringing a wrongful death action.

(b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

(c) "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death.

(d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

(i) physical and mental pain or suffering;

(ii) emotional distress;

(iii) inconvenience;

(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

(v) loss of society, companionship, and consortium, other than household services;

(vi) injury to reputation; and

(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider."

NEW SECTION. **Section 2.** **Effective date.** [This act] is effective on passage and approval.

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