



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Dave Syverson

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1114 from Ch. 110, par. 2-1114
735 ILCS 5/2-1706.5 new
735 ILCS 5/2-1706.7 new

Amends the Code of Civil Procedure. Limits attorney's fees in medical malpractice actions to \$1,000,000 plus reasonable and documented expenses. Provides that the non-prevailing defendants shall pay such fees in addition to any award for economic and noneconomic damages in the case. Provides standards for determining economic and non-economic damages in medical malpractice actions. Effective January 1, 2005.

LRB093 19777 LCB 45519 b

1 AN ACT in relation to patient compensation, safety, and
2 access to health care, which may be referred to as the Fair
3 Patient Compensation and Safety Improvement Amendments of
4 2004.

5 **Be it enacted by the People of the State of Illinois,**
6 **represented in the General Assembly:**

7 Section 1. Legislative findings. The General Assembly
8 finds that:

9 (1) Illinois is in the midst of a medical malpractice
10 insurance crisis of unprecedented magnitude.

11 (2) Illinois is among the states with the highest medical
12 malpractice insurance premiums in the nation.

13 (3) Medical malpractice insurance in Illinois is
14 unavailable or unaffordable for many hospitals and physicians.

15 (4) The high and increasing cost of medical malpractice
16 insurance in Illinois is causing health care providers to
17 eliminate or reduce the provision of medical care throughout
18 the State.

19 (5) The crisis is discouraging medical students from
20 choosing Illinois as the place they will receive their medical
21 education and practice medicine.

22 (6) The increase in medical malpractice liability
23 insurance rates is forcing physicians to practice medicine
24 without professional liability insurance, to leave Illinois,
25 to not perform high-risk procedures, or to retire early from
26 the practice of medicine.

27 (7) The high and increasing cost of medical malpractice
28 insurance is due in large part to the inefficiency and
29 unpredictably of adjudicating claims.

30 (8) Much of this inefficiency stems from the time and
31 resources needlessly spent on valuing uncertain and
32 unpredictable claims of medical negligence.

33 (9) Individuals bringing malpractice claims would benefit

1 if the parties spent less time assessing the value of the
2 claimed injury.

3 (10) The public would benefit by making medical liability
4 coverage for hospitals and physicians more affordable, which
5 would make health care more available.

6 (11) The public would benefit from creating incentives for
7 hospitals to ensure that certain unacceptable events never
8 occur in hospitals.

9 (12) A fair and reasonable range for awarding non-economic
10 damages should be used to create an incentive for hospitals to
11 encourage safer hospital practice and to avoid extensively
12 debating the value of the claim of medical negligence.

13 (13) A fair and reasonable range for awarding non-economic
14 damages should account for differences in the non-economic
15 losses the plaintiff may suffer based on the type of harm or
16 medical outcome of medical negligence.

17 Section 5. The Code of Civil Procedure is amended by
18 changing Section 2-1114 and by adding Sections 2-1706.5 and
19 2-1706.7 as follows:

20 (735 ILCS 5/2-1114) (from Ch. 110, par. 2-1114)

21 Sec. 2-1114. Contingent fees for attorneys in medical
22 malpractice actions.

23 (a) In all medical malpractice actions the total contingent
24 fee for plaintiff's attorney or attorneys shall not exceed the
25 following amounts:

26 33 1/3% of the first \$150,000 of the sum recovered;

27 25% of the next \$850,000 of the sum recovered; and

28 20% of any amount recovered over \$1,000,000 of the sum
29 recovered.

30 (b) For purposes of determining any lump sum contingent
31 fee, any future damages recoverable by the plaintiff in
32 periodic installments shall be reduced to a lump sum value.

33 (c) The court may review contingent fee agreements for
34 fairness. In special circumstances, where an attorney performs

1 extraordinary services involving more than usual participation
2 in time and effort the attorney may apply to the court for
3 approval of additional compensation.

4 (d) As used in this Section, "contingent fee basis"
5 includes any fee arrangement under which the compensation is to
6 be determined in whole or in part on the result obtained.

7 (e) In any individual action, fees for all plaintiffs'
8 attorneys involved in the action may not exceed \$1,000,000 plus
9 reasonable and documented expenses. The non-prevailing
10 defendants shall pay such fees in addition to any award for
11 economic and non-economic damages in the case.

12 This amendatory Act of the 93rd General Assembly applies to
13 causes of action accruing on or after its effective date.

14 (Source: P.A. 84-7.)

15 (735 ILCS 5/2-1706.5 new)

16 Sec. 2-1706.5. Standards for economic and non-economic
17 damages.

18 (a) In any medical malpractice action in which economic and
19 non-economic damages may be awarded, the following standards
20 shall apply:

21 (1) In a case where the hospital's care of the patient
22 caused the patient's death, the total amount of
23 non-economic damages shall not exceed \$750,000 awarded to
24 all plaintiffs in any civil action arising out of the care.

25 (2) In a case where the hospital's care of the patient
26 caused the patient's catastrophic injury, the total amount
27 of non-economic damages recovered shall not exceed
28 \$1,000,000 awarded to all plaintiffs in any civil action
29 arising out of the care.

30 (3) Notwithstanding subdivisions (1) and (2) of this
31 subsection, in a case where the hospital's care of the
32 patient caused the patient's death or catastrophic injury
33 and the hospital is found liable under the doctrine of "res
34 ipsa loquitur", as defined by Section 2-1113 of the Code of
35 Civil Procedure, the total amount of non-economic damages

1 shall not exceed \$2,000,000 awarded to all plaintiffs in
2 any civil action arising out of the care.

3 (4) In any case not covered by subdivision (1), (2), or
4 (3) of this subsection, the total amount of non-economic
5 damages shall not exceed \$500,000 awarded to all plaintiffs
6 in any civil action arising out of care that caused harm to
7 the plaintiff.

8 (5) In a case where the physician's care of the patient
9 caused the patient's death or other injury, the total
10 amount of non-economic damages shall not exceed \$250,000
11 awarded to all plaintiffs in any civil action arising out
12 of the care.

13 (6) In awarding damages in a medical malpractice case,
14 the finder of fact shall render verdicts with specific
15 award of damages for economic loss, if any, and specific
16 award of damages for non-economic loss, if any.

17 (7) In any medical malpractice action where an
18 individual plaintiff earns less than the annual average
19 weekly wage, as determined by the Industrial Commission, at
20 the time the action is filed, any award for economic and
21 non-economic damages must include an amount equal to this
22 wage amount multiplied by the plaintiff's life expectancy
23 in total weeks as if the plaintiff was earning this wage at
24 the time of the injury that gave rise to the action.

25 (8) Any party in a medical malpractice case may
26 introduce annuity evidence to inform the fact finder about
27 the time value of an award and its ability to cover the
28 plaintiff's damages over time.

29 (9) The finder of fact shall take into account and be
30 aware of the extent to which the award is subject to
31 federal and State income tax laws.

32 (10) The finder of fact shall take into account and be
33 made aware that the plaintiff's attorneys' fees in the case
34 may not be paid out of any amounts awarded for economic or
35 non-economic damages in the case.

36 (11) The defendants in a medical malpractice action

1 shall pay the plaintiff's attorneys' fees as a separate
2 item of damages based upon the contingency fee provisions
3 of Section 2-1114 of the Code of Civil Procedure in
4 addition to the award of any economic or non-economic
5 damages recovered by the plaintiff.

6 (b) As used in this Section, the following terms have the
7 meanings ascribed to them as follows:

8 "Birth-related injury" means any permanent, disabling
9 damage to the brain or spine caused by oxygen deprivation or
10 mechanical injury to an infant during labor, delivery, or
11 resuscitation.

12 "Catastrophic injury" means one of the following outcomes
13 caused by negligence in a hospital:

14 (1) the patient is hemiplegic, paraplegic, or
15 quadriplegic resulting in a total permanent functional
16 loss of one or more limbs caused by injury to the brain or
17 spinal cord or both;

18 (2) the patient has total permanent functional loss of
19 sight, hearing, or one or more limbs unrelated to the
20 natural course of the patient's illness or underlying
21 condition;

22 (3) the patient has permanently impaired cognitive
23 capacity rendering him or her incapable of making
24 independent, responsible life decisions and permanently
25 incapable of independently performing the activities of
26 normal daily living;

27 (4) the patient's reproductive organ has been
28 permanently damaged resulting in an inability to
29 procreate; or

30 (5) a birth-related injury.

31 "Economic damages" means all damages which are tangible,
32 such as damages for past and future medical expenses and loss
33 of income or earnings.

34 "Hospital" means a hospital licensed under the Hospital
35 Licensing Act and all of its corporate affiliates, employees,
36 agents, and apparent agents and a hospital licensed under the

1 University of Illinois Hospital Act and all of its employees,
2 agents, and apparent agents.

3 "Medical malpractice action" means any civil action in
4 tort, contract, or otherwise, in which the plaintiff seeks
5 damages for injuries or death arising out of the action or
6 inaction of a hospital in rendering health care services to a
7 patient inside the hospital or arising out of the action or
8 inaction of a physician.

9 "Non-economic damages" mean subjective, non-pecuniary
10 damages arising from death, pain, suffering, disfigurement,
11 inconvenience, mental anguish, worry, emotional distress, loss
12 of society and companionship, loss of consortium, physical
13 impairment, injury to reputation, humiliation, embarrassment,
14 loss of enjoyment of life, hedonic damages, increased risk of
15 future injury, other non-pecuniary damages, and any other
16 theory of damages such as fear of loss, illness, injury, or
17 future loss.

18 "Physician" means a physician licensed to practice
19 medicine in all of its branches under the Medical Practice Act
20 of 1987 and any physician-owned legal entity.

21 (c) This amendatory Act of the 93rd General Assembly
22 applies to causes of action accruing on or after its effective
23 date.

24 (735 ILCS 5/2-1706.7 new)

25 Sec. 2-1706.7. Invalidity. If subdivisions (a)(1), (a)(2),
26 (a)(3), or (a)(4) of Section 2-1706.5 are found to be
27 unconstitutional or invalid for any reason, the total amount of
28 non-economic damages recovered for any injury or death
29 resulting primarily from medical malpractice shall not exceed
30 \$2,000,000 for all hospital defendants and awarded to all
31 plaintiffs in any civil action arising out of the malpractice.

32 This amendatory Act of the 93rd General Assembly applies to
33 causes of action accruing on or after its effective date

34 Section 99. Effective date. This Act takes effect January

1 1, 2005.