



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by David Luechtefeld, Frank C. Watson,
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SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1706.5 new

Amends the Code of Civil Procedure. Provides standards for determining economic and non-economic damages in medical malpractice actions. Effective July 1, 2004.

LRB093 21102 LCB 47151 b

1 AN ACT concerning civil procedure.

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

4 Section 1. Legislative findings. The General Assembly
5 finds that:

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

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

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

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

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

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

24 (7) The high and increasing cost of medical malpractice
25 insurance is due in large part to the inefficiency and
26 unpredictability of adjudicating claims.

27 (8) Much of this inefficiency stems from the time and
28 resources needlessly spent on valuing uncertain and
29 unpredictable claims of medical negligence.

30 (9) Individuals bringing malpractice claims would benefit
31 if the parties spent less time assessing the value of the
32 claimed injury.

33 (10) The public would benefit by making medical liability

1 coverage for hospitals and physicians more affordable, which
2 would make health care more available.

3 (11) The public would benefit from creating incentives for
4 hospitals to ensure that certain unacceptable events never
5 occur in hospitals.

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

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

14 Section 5. The Code of Civil Procedure is amended by adding
15 Sections 2-1706.5 and 2-1706.7 as follows:

16 (735 ILCS 5/2-1706.5 new)

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

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

22 (1) In a case where the hospital's care of the patient
23 caused the patient's death, the total amount of
24 non-economic damages shall not exceed \$1,500,000 for each
25 hospital defendant and awarded to each plaintiff in any
26 civil action arising out of the care.

27 (2) In a case where the hospital's care of the patient
28 caused the patient's catastrophic injury, the total amount
29 of non-economic damages recovered shall not exceed
30 \$2,000,000 for each hospital defendant and awarded to each
31 plaintiff in any civil action arising out of the care.

32 (3) Notwithstanding subdivisions (1) and (2) of this
33 subsection, in a case where the hospital's care of the
34 patient caused the patient's death or catastrophic injury

1 and the hospital is found liable under the doctrine of "res
2 ipsa loquitur", as defined by Section 2-1113 of the Code of
3 Civil Procedure, the total amount of non-economic damages
4 shall not exceed \$3,000,000 for each hospital defendant and
5 awarded to each plaintiff in any civil action arising out
6 of the care.

7 (4) In any case not covered by subdivision (1), (2), or
8 (3) of this subsection, the total amount of non-economic
9 damages shall not exceed \$1,000,000 for each hospital
10 defendant and awarded to each plaintiff in any civil action
11 arising out of care that caused harm to the plaintiff.

12 (5) In a case where the physician's care of the patient
13 caused the patient's death or other injury, the total
14 amount of non-economic damages shall not exceed \$500,000
15 for each physician defendant and awarded to each plaintiff
16 in any civil action arising out of the care.

17 (6) In awarding damages in a medical malpractice case,
18 the finder of fact shall render verdicts with specific
19 award of damages for economic loss, if any, and specific
20 award of damages for non-economic loss, if any.

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

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

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

36 (b) As used in this Section, the following terms have the

1 meanings ascribed to them as follows:

2 "Birth-related injury" means any permanent, disabling
3 damage to the brain or spine caused by oxygen deprivation or
4 mechanical injury to an infant during labor, delivery, or
5 resuscitation.

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

8 (1) the patient is hemiplegic, paraplegic, or
9 quadriplegic resulting in a total permanent functional
10 loss of one or more limbs caused by injury to the brain or
11 spinal cord or both;

12 (2) the patient has total permanent functional loss of
13 sight, hearing, or one or more limbs unrelated to the
14 natural course of the patient's illness or underlying
15 condition;

16 (3) the patient has permanently impaired cognitive
17 capacity rendering him or her incapable of making
18 independent, responsible life decisions and permanently
19 incapable of independently performing the activities of
20 normal daily living;

21 (4) the patient's reproductive organ has been
22 permanently damaged resulting in an inability to
23 procreate; or

24 (5) a birth-related injury.

25 "Economic damages" means all damages that are tangible,
26 such as damages for past and future medical expenses and loss
27 of income or earnings.

28 "Hospital" means a hospital licensed under the Hospital
29 Licensing Act and all of its corporate affiliates, employees,
30 agents, and apparent agents and a hospital licensed under the
31 University of Illinois Hospital Act and all of its employees,
32 agents, and apparent agents.

33 "Medical malpractice action" means any civil action in
34 tort, contract, or otherwise, in which the plaintiff seeks
35 damages for injuries or death arising out of the action or
36 inaction of a hospital in rendering health care services to a

1 patient inside the hospital or arising out of the action or
2 inaction of a physician.

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

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

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

18 Section 99. Effective date. This Act takes effect July 1,
19 2004.