

By the Committee on Judiciary; and Senators Yarborough, Burgess, Book, Hutson, Perry, and Stewart

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1 A bill to be entitled
2 An act relating to medical negligence; amending ss.
3 400.023, 400.0235, and 429.295, F.S.; conforming
4 provisions to changes made by the act; amending s.
5 766.118, F.S.; deleting the definition of the term
6 "catastrophic injury"; revising the limits on
7 noneconomic damages for personal injury or wrongful
8 death arising from medical negligence; making
9 technical changes; amending s. 768.21, F.S.; deleting
10 a provision that prohibits adult children and parents
11 of adult children from recovering certain damages in
12 medical negligence suits; requiring that medical
13 malpractice insurer rate filings reflect certain
14 changes in costs and expenses; requiring the Office of
15 Insurance Regulation to consider such changes in its
16 review of rate filings; authorizing the Office of
17 Insurance Regulation to develop certain methodology
18 and data in reviewing rate filings by medical
19 malpractice insurers; requiring the Office of Program
20 Policy Analysis and Government Accountability to study
21 the efficacy of caps on noneconomic damages and to
22 report its findings and recommendations to the
23 Governor and the Legislature by a specified date;
24 reenacting s. 766.209(3)(a), F.S., relating to effects
25 of failure to offer or accept voluntary binding
26 arbitration, to incorporate the amendment made to s.
27 766.118, F.S., in a reference thereto; providing
28 applicability; providing an effective date.
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30 WHEREAS, the Legislature finds that expanding the right to
31 recover noneconomic damages for wrongful death caused by medical
32 negligence furthers an important state interest of promoting
33 accountability and adherence to the applicable standards of
34 care, and

35 WHEREAS, the Legislature further recognizes that the
36 expansion of the right to recover damages must be balanced
37 against the important state interests of minimizing increases in
38 the cost of malpractice insurance and promoting the availability
39 of quality health care services, and

40 WHEREAS, the Legislature finds that limitations on
41 noneconomic damages in medical negligence cases further the
42 critical state interest in promoting the affordability and
43 availability of health care services, and

44 WHEREAS, the Legislature finds that the cases of *Estate of*
45 *McCall v. United States*, 134 So. 3d 894 (Fla. 2014) and *North*
46 *Broward Hospital District v. Kalitan*, 219 So. 3d 49 (Fla. 2017),
47 which invalidated limits on noneconomic damages, were decided
48 contrary to legislative intent and prior case law interpreting
49 the equal protection clauses of the United States Constitution
50 and the State Constitution, and

51 WHEREAS, the cases of *Estate of McCall v. United States* and
52 *North Broward Hospital District v. Kalitan* are inconsistent with
53 the decisions of other courts addressing limits on damages, and

54 WHEREAS, the Legislature finds that the state has the
55 highest medical malpractice insurance premiums in the nation and
56 is in a sustained and continuing crisis of affordability with
57 respect to the price of medical malpractice insurance, and

58 WHEREAS, the Legislature finds that having the highest

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59 medical malpractice insurance premiums in the nation is causing
60 physicians to practice medicine without malpractice insurance,
61 begin medical careers in other states, pursue opportunities to
62 practice in other states, abstain from performing high-risk
63 procedures in this state, or retire early from the practice of
64 medicine, and

65 WHEREAS, the Legislature finds that the crisis of having
66 the highest medical malpractice insurance premiums in the nation
67 threatens the quality and availability of health care services
68 for everyone in this state, and

69 WHEREAS, the Legislature finds that the rapidly growing
70 population and the changing demographics of this state make it
71 imperative for the state to have a legal environment that helps
72 to attract and retain physicians, and

73 WHEREAS, the Legislature finds that there is an
74 overpowering public necessity to ensure that physicians practice
75 medicine in this state, and

76 WHEREAS, the Legislature finds that there is also an
77 overpowering public necessity to enact policies that prevent
78 medical malpractice insurance premiums from being unaffordable
79 and continuing at crisis levels, and

80 WHEREAS, the Legislature finds that limitations on
81 noneconomic damages in medical negligence cases further the
82 public necessities of making quality health care available to
83 the residents of this state, ensuring that physicians practice
84 medicine in this state, and ensuring that those physicians have
85 the opportunity to purchase affordable medical malpractice
86 insurance, NOW, THEREFORE,

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88 Be It Enacted by the Legislature of the State of Florida:

90 Section 1. Subsection (9) of section 400.023, Florida
91 Statutes, is amended to read:

92 400.023 Civil enforcement.—

93 (9) An action under this part for a violation of rights or
94 negligence recognized herein is not a claim for medical
95 malpractice, and s. 768.21(8) does not apply to a claim alleging
96 death of the resident.

97 Section 2. Section 400.0235, Florida Statutes, is amended
98 to read:

99 400.0235 Certain provisions not applicable to actions under
100 this part.—An action under this part for a violation of rights
101 or negligence recognized under this part is not a claim for
102 medical malpractice, and the provisions of s. 768.21(8) do not
103 apply to a claim alleging death of the resident.

104 Section 3. Section 429.295, Florida Statutes, is amended to
105 read:

106 429.295 Certain provisions not applicable to actions under
107 this part.—An action under this part for a violation of rights
108 or negligence recognized herein is not a claim for medical
109 malpractice, and the provisions of s. 768.21(8) do not apply to
110 a claim alleging death of the resident.

111 Section 4. Section 766.118, Florida Statutes, is amended to
112 read:

113 766.118 Determination of noneconomic damages.—

114 (1) DEFINITIONS.—As used in this section, the term:

115 (a) “Catastrophic injury” means a permanent impairment
116 constituted by:

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117 1. Spinal cord injury involving severe paralysis of an arm,
118 a leg, or the trunk;
119 2. Amputation of an arm, a hand, a foot, or a leg involving
120 the effective loss of use of that appendage;
121 3. Severe brain or closed head injury as evidenced by:
122 a. Severe sensory or motor disturbances;
123 b. Severe communication disturbances;
124 c. Severe complex integrated disturbances of cerebral
125 function;
126 d. Severe episodic neurological disorders; or
127 e. Other severe brain and closed head injury conditions at
128 least as severe in nature as any condition provided in sub-
129 subparagraphs a.-d.;
130 4. Second degree or third degree burns of 25 percent or
131 more of the total body surface or third degree burns of 5
132 percent or more to the face and hands;
133 5. Blindness, defined as a complete and total loss of
134 vision; or
135 6. Loss of reproductive organs which results in an
136 inability to procreate.

137 (b) "Noneconomic damages" means noneconomic damages as
138 defined in s. 766.202(8).

139 (b) ~~(e)~~ "Practitioner" means any person licensed under
140 chapter 458, chapter 459, chapter 460, chapter 461, chapter 462,
141 chapter 463, chapter 466, chapter 467, chapter 486, or s.
142 464.012 or registered under s. 464.0123. "Practitioner" also
143 means any association, corporation, firm, partnership, or other
144 business entity under which such practitioner practices or any
145 employee of such practitioner or entity acting in the scope of

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146 his or her employment. For the purpose of determining the
147 limitations on noneconomic damages set forth in this section,
148 the term "practitioner" includes any person or entity for whom a
149 practitioner is vicariously liable and any person or entity
150 whose liability is based solely on such person or entity being
151 vicariously liable for the actions of a practitioner.

152 (2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
153 PRACTITIONER PRACTITIONERS.—

154 (a) With respect to a cause of action for personal injury
155 or wrongful death arising from medical negligence of a
practitioner practitioners, regardless of the number of such
practitioner defendants, noneconomic damages may shall not
158 exceed \$500,000 per claimant. No practitioner shall be liable
159 for more than \$500,000 in noneconomic damages, regardless of the
160 number of practitioners who are liable for a claimant's damages
161 claimants.

162 (b) Notwithstanding paragraph (a), if the negligence
163 resulted in a permanent vegetative state or death, the total
164 noneconomic damages recoverable from all practitioners,
165 regardless of the number of claimants, under this paragraph
166 shall not exceed \$1 million. In cases that do not involve death
167 or permanent vegetative state, the patient injured by medical
168 negligence may recover noneconomic damages not to exceed \$1
169 million if:

170 1. The trial court determines that a manifest injustice
171 would occur unless increased noneconomic damages are awarded,
172 based on a finding that because of the special circumstances of
173 the case, the noneconomic harm sustained by the injured patient
174 was particularly severe; and

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175 2. The trier of fact determines that the defendant's
176 negligence caused a catastrophic injury to the patient.

177 (e) The total noneconomic damages recoverable by all
178 claimants from all practitioner defendants under this subsection
179 shall not exceed \$1 million in the aggregate.

180 (3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
181 NONPRACTITIONER DEFENDANTS.—

182 (a) With respect to a cause of action for personal injury
183 or wrongful death arising from medical negligence of a
184 nonpractitioner nonpractitioners, regardless of the number of
185 such nonpractitioner defendants, noneconomic damages may shall
186 not exceed \$750,000 per claimant, regardless of the number of
187 nonpractitioners who are liable for a claimant's damages.

188 (b) Notwithstanding paragraph (a), if the negligence
189 resulted in a permanent vegetative state or death, the total
190 noneconomic damages recoverable by such claimant from all
191 nonpractitioner defendants under this paragraph shall not exceed
192 \$1.5 million. The patient injured by medical negligence of a
193 nonpractitioner defendant may recover noneconomic damages not to
194 exceed \$1.5 million if:

195 1. The trial court determines that a manifest injustice
196 would occur unless increased noneconomic damages are awarded,
197 based on a finding that because of the special circumstances of
198 the case, the noneconomic harm sustained by the injured patient
199 was particularly severe; and

200 2. The trier of fact determines that the defendant's
201 negligence caused a catastrophic injury to the patient.

202 (e) A nonpractitioner is defendants are subject to the cap
203 on noneconomic damages provided in this subsection regardless of

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204 the theory of liability, including vicarious liability.

205 ~~(d) The total noneconomic damages recoverable by all
206 claimants from all nonpractitioner defendants under this
207 subsection shall not exceed \$1.5 million in the aggregate.~~

208 (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
209 PRACTITIONER PRACTITIONERS PROVIDING EMERGENCY SERVICES AND
210 CARE.—Notwithstanding subsections (2) and (3), with respect to a
211 cause of action for personal injury or wrongful death arising
212 from medical negligence of a practitioner who provided
213 practitioners providing emergency services and care, as defined
214 in s. 395.002(9), or provided providing services as provided in
215 s. 401.265, or provided providing services pursuant to
216 obligations imposed by 42 U.S.C. s. 1395dd to a person persons
217 with whom the practitioner did does not have a then-existing
218 health care patient-practitioner relationship for that medical
219 condition:

220 ~~(a) Regardless of the number of such practitioner~~
221 ~~defendants, noneconomic damages may~~ shall not exceed \$150,000
222 per claimant, regardless of the number of practitioners who are
223 liable for a claimant's damages.

224 ~~(b) Notwithstanding paragraph (a), the total noneconomic~~
225 ~~damages recoverable by all claimants from all such practitioners~~
226 ~~shall not exceed \$300,000.~~ The limitation provided by this
227 subsection applies only to noneconomic damages awarded as a
228 result of any act or omission of providing medical care or
229 treatment, including diagnosis that occurs prior to the time the
230 patient is stabilized and is capable of receiving medical
231 treatment as a nonemergency patient, unless surgery is required
232 as a result of the emergency within a reasonable time after the

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233 patient is stabilized, in which case the limitation provided by
234 this subsection applies to any act or omission of providing
235 medical care or treatment which occurs prior to the
236 stabilization of the patient following the surgery.

237 (5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
238 NONPRACTITIONER DEFENDANTS PROVIDING EMERGENCY SERVICES AND
239 CARE.—Notwithstanding subsections (2) and (3), with respect to a
240 cause of action for personal injury or wrongful death arising
241 from medical negligence of a nonpractitioner defendants other
242 than a practitioner who provided practitioners providing
243 emergency services and care pursuant to obligations imposed by
244 s. 395.1041 or s. 401.45, or obligations imposed by 42 U.S.C. s.
245 1395dd to a person persons with whom the practitioner did does
246 not have a then-existing health care patient-practitioner
247 relationship for that medical condition:

248 (a) Regardless of the number of such nonpractitioner
249 defendants, Noneconomic damages may shall not exceed \$750,000
250 per claimant, regardless of the number of nonpractitioners who
251 are liable for a claimant's damages.

252 (b) Notwithstanding paragraph (a), the total noneconomic
253 damages recoverable by all claimants from all such
254 nonpractitioner defendants shall not exceed \$1.5 million.

255 (e) A nonpractitioner defendants may receive a full setoff
256 for payments made by a practitioner defendants.

257
258 The limitation provided by this subsection applies only to
259 noneconomic damages awarded as a result of any act or omission
260 of providing medical care or treatment, including a diagnosis
261 that occurs before prior to the time the patient is stabilized

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262 and is capable of receiving medical treatment as a nonemergency
263 patient, unless surgery is required as a result of the emergency
264 within a reasonable time after the patient is stabilized, in
265 which case the limitation provided by this subsection applies to
266 any act or omission of providing medical care or treatment which
267 occurs before prior to the stabilization of the patient
268 following the surgery.

269 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
270 PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID
271 RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with
272 respect to a cause of action for personal injury or wrongful
273 death arising from medical negligence of a practitioner
274 committed in the course of providing medical services and
275 medical care to a Medicaid recipient, ~~regardless of the number~~
~~of such practitioner defendants providing the services and care,~~
277 noneconomic damages may not exceed \$300,000 per claimant,
278 regardless of the number of practitioners who are liable for a
claimant's damages, unless the claimant pleads and proves, by
279 clear and convincing evidence, that the practitioner acted in a
280 wrongful manner. ~~A practitioner providing medical services and~~
~~medical care to a Medicaid recipient is not liable for more than~~
282 ~~\$200,000 in noneconomic damages, regardless of the number of~~
283 ~~claimants,~~ unless the claimant pleads and proves, by clear and
284 ~~convincing evidence,~~ that the practitioner acted in a wrongful
285 ~~manner.~~ The fact that a claimant proves that a practitioner
286 acted in a wrongful manner does not preclude the application of
287 the limitation on noneconomic damages prescribed elsewhere in
288 this section. For purposes of this subsection:
289

290 (a) The terms "medical services," "medical care," and

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291 "Medicaid recipient" have the same meaning as provided in s.
292 409.901.

293 (b) The term "practitioner," in addition to the meaning
294 prescribed in subsection (1), includes any hospital or
295 ambulatory surgical center as defined and licensed under chapter
296 395.

297 (c) The term "wrongful manner" means in bad faith or with
298 malicious purpose or in a manner exhibiting wanton and willful
299 disregard of human rights, safety, or property, and shall be
300 construed in conformity with the standard set forth in s.
301 768.28(9)(a).

302 (7) SETOFF.—In any case in which the jury verdict for
303 noneconomic damages exceeds the limits established by this
304 section, the trial court shall reduce the award for noneconomic
305 damages within the same category of defendants in accordance
306 with this section after making any reduction for comparative
307 fault as required by s. 768.81 but before application of a
308 setoff in accordance with ss. 46.015 and 768.041. In the event
309 of a prior settlement or settlements involving one or more
310 defendants subject to the limitations of the same subsection
311 applicable to a defendant remaining at trial, the court shall
312 make such reductions within the same category of defendants as
313 are necessary to ensure that the ~~total amount of~~ noneconomic
314 damages recovered by the claimant do ~~does~~ not exceed the
315 aggregate limit established by the applicable subsection. This
316 subsection is not intended to change current law relating to the
317 setoff of economic damages.

318 (8) ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW.—This
319 section does ~~shall~~ not apply to actions governed by s. 768.28.

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320 Section 5. Subsection (8) of section 768.21, Florida
321 Statutes, is amended, and subsections (3) and (4) of that
322 section are republished, to read:

323 768.21 Damages.—All potential beneficiaries of a recovery
324 for wrongful death, including the decedent's estate, shall be
325 identified in the complaint, and their relationships to the
326 decedent shall be alleged. Damages may be awarded as follows:

327 (3) Minor children of the decedent, and all children of the
328 decedent if there is no surviving spouse, may also recover for
329 lost parental companionship, instruction, and guidance and for
330 mental pain and suffering from the date of injury. For the
331 purposes of this subsection, if both spouses die within 30 days
332 of one another as a result of the same wrongful act or series of
333 acts arising out of the same incident, each spouse is considered
334 to have been predeceased by the other.

335 (4) Each parent of a deceased minor child may also recover
336 for mental pain and suffering from the date of injury. Each
337 parent of an adult child may also recover for mental pain and
338 suffering if there are no other survivors.

339 ~~(8) The damages specified in subsection (3) shall not be~~
340 ~~recoverable by adult children and the damages specified in~~
341 ~~subsection (4) shall not be recoverable by parents of an adult~~
342 ~~child with respect to claims for medical negligence as defined~~
343 ~~by s. 766.106(1).~~

344 Section 6. (1) Every medical malpractice insurer and every
345 medical malpractice insurer rate filing made with the Office of
346 Insurance Regulation on or after January 1, 2025, must reflect
347 the projected changes in claim frequency, claim severity, and
348 loss adjustment expenses, including for attorney fees, and any

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349 other change actuarially indicated, due to the combined effect
350 of the applicable provisions of this act in order to ensure that
351 rates for such insurance accurately reflect the risk of
352 providing such insurance.

353 (2) The Office of Insurance Regulation shall consider in
354 its review of rate filings made on or after January 1, 2025, the
355 projected changes in costs associated with the amendments to ss.
356 766.118 and 768.21(8), Florida Statutes, by this act. The office
357 may develop methodology and data that incorporate generally
358 accepted actuarial techniques and standards to be used in its
359 review of rate filings governed by this section. The methodology
360 must account for the expected losses, by class, of insureds
361 covered by a medical malpractice insurance, provided the
362 methodology is consistent with generally accepted actuarial
363 techniques and standards. Such methodology and data are not
364 intended to create a mandatory rate increase or decrease for all
365 medical malpractice insurers, but rather to ensure that the
366 rates for such coverage meet the requirements of s. 627.062,
367 Florida Statutes, and thus, are not inadequate, excessive, or
368 unfairly discriminatory and allow such insurers a reasonable
369 rate of return.

370 Section 7. (1) The Office of Program Policy Analysis and
371 Government Accountability shall study the efficacy of the
372 statutory caps imposed by this act on noneconomic damages in
373 actions for personal injury or wrongful death arising from
374 medical negligence. The office may retain experts as are
375 reasonably necessary to complete the study. The study must
376 include, but need not be limited to, an evaluation of the
377 current, historical, and forecast data of the following:

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378 (a) The availability, affordability, and volatility of
379 professional liability insurance coverage for medical
380 negligence.

381 (b) The per capita supply of licensed physicians in this
382 state, including those in high-risk specialties that may
383 include, but are not limited to, internal medicine, general
384 surgery, and obstetrics and gynecology.

385 (c) The extent to which physicians in this state are forced
386 to practice medicine without professional liability insurance,
387 leave the state, refrain from practice in high-risk specialties,
388 or retire early from the practice of medicine.

389 (d) Evidence of the relationship between the statutory caps
390 and changes in the matters addressed in paragraphs (a), (b), and
391 (c).

392 (2) By December 31, 2029, the office shall submit a report
393 to the Governor, the President of the Senate, and the Speaker of
394 the House of Representatives which includes findings from its
395 study and recommendations as to whether the statutory caps on
396 noneconomic damages should be retained, modified, or eliminated.

397 Section 8. For the purpose of incorporating the amendment
398 made by this act to section 766.118, Florida Statutes, in a
399 reference thereto, paragraph (a) of subsection (3) of section
400 766.209, Florida Statutes, is reenacted to read:

401 766.209 Effects of failure to offer or accept voluntary
402 binding arbitration.—

403 (3) If the defendant refuses a claimant's offer of
404 voluntary binding arbitration:

405 (a) The claim shall proceed to trial, and the claimant,
406 upon proving medical negligence, shall be entitled to recover

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407 damages subject to the limitations in s. 766.118, prejudgment
408 interest, and reasonable attorney's fees up to 25 percent of the
409 award reduced to present value.

410 Section 9. This act applies to causes of action that accrue
411 on or after July 1, 2024.

412 Section 10. This act shall take effect July 1, 2024.