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LEGISLATIVE ACTION

Senate

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House

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Senator Yarborough moved the following:

**Senate Amendment (with title amendment)**

Before line 12

insert:

Section 1. Paragraphs (a), (b), and (c) of subsection (1) of section 766.201, Florida Statutes, are amended to read

766.201 Legislative findings and intent.—

(1) The Legislature makes the following findings:

(a) High medical malpractice liability insurance premiums ~~result have increased dramatically in recent years, resulting in~~ increased medical care costs for ~~most~~ patients and functional



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unavailability of malpractice insurance for some physicians.

(b) The major cost drivers of ~~primary cause of increased~~ medical malpractice liability insurance premiums include the cost of ~~has been the substantial increase in~~ loss payments and the cost of defending ~~to claimants caused by tremendous increases in the amounts of paid~~ claims.

(c) The ~~average~~ cost of a medical negligence claims, including claims for wrongful death, must be balanced against the public interest in ensuring access to ~~claim has escalated in the past decade to the point where it has become imperative to control such cost in the interests of the public need for~~ quality medical services.

Section 2. Section 766.118, Florida Statutes, is amended to read:

766.118 Determination of noneconomic damages.—

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

(a) "Catastrophic injury" means a permanent impairment constituted by:

1. Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

2. Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

3. Severe brain or closed-head injury as evidenced by:

a. Severe sensory or motor disturbances;

b. Severe communication disturbances;

c. Severe complex integrated disturbances of cerebral function;

d. Severe episodic neurological disorders; or

e. Other severe brain and closed-head injury conditions at



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least as severe in nature as any condition provided in sub-subparagraphs a.-d.;

4. Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands;

5. Blindness, defined as a complete and total loss of vision; or

6. Loss of reproductive organs which results in an inability to procreate.

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

(c) "Practitioner" means any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 486, or s. 464.012 or registered under s. 464.0123. "Practitioner" also means any association, corporation, firm, partnership, or other business entity under which such practitioner practices or any employee of such practitioner or entity acting in the scope of his or her employment. For the purpose of determining the limitations on noneconomic damages set forth in this section, the term "practitioner" includes any person or entity for whom a practitioner is vicariously liable and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of a practitioner.

(2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS.—

(a) With respect to a cause of action for personal injury ~~or wrongful death~~ arising from medical negligence of practitioners, regardless of the number of such practitioner



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defendants, noneconomic damages shall not exceed \$500,000 per claimant. No practitioner shall be liable for more than \$500,000 in noneconomic damages, regardless of the number of claimants.

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

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

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

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

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

(a) With respect to a cause of action for personal injury ~~or wrongful death~~ arising from medical negligence of nonpractitioners, regardless of the number of such nonpractitioner defendants, noneconomic damages shall not exceed \$750,000 per claimant.

(b) Notwithstanding paragraph (a), if the negligence



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resulted in a permanent vegetative state ~~or death~~, the total noneconomic damages recoverable by such claimant from all nonpractitioner defendants under this paragraph shall not exceed \$1.5 million. The patient injured by medical negligence of a nonpractitioner defendant may recover noneconomic damages not to exceed \$1.5 million if:

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

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

(c) Nonpractitioner defendants are subject to the cap on noneconomic damages provided in this subsection regardless of the theory of liability, including vicarious liability.

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

(4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND CARE.—

Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury ~~or wrongful death~~ arising from medical negligence of practitioners providing emergency services and care, as defined in s. 395.002(9), or providing services as provided in s. 401.265, or providing services pursuant to obligations imposed by 42 U.S.C. s. 1395dd to persons with whom the practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition:



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(a) Regardless of the number of such practitioner defendants, noneconomic damages shall not exceed \$150,000 per claimant.

(b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such practitioners shall not exceed \$300,000.

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

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

(a) Regardless of the number of such nonpractitioner



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defendants, noneconomic damages shall not exceed \$750,000 per claimant.

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

(c) Nonpractitioner defendants may receive a full setoff for payments made by practitioner defendants.

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

(6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with respect to a cause of action for personal injury ~~or wrongful death~~ arising from medical negligence of a practitioner committed in the course of providing medical services and medical care to a Medicaid recipient, regardless of the number of such practitioner defendants providing the services and care, noneconomic damages may not exceed \$300,000 per claimant, unless the claimant pleads and proves, by clear and convincing



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evidence, that the practitioner acted in a wrongful manner. A practitioner providing medical services and medical care to a Medicaid recipient is not liable for more than \$200,000 in noneconomic damages, regardless of the number of claimants, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner. The fact that a claimant proves that a practitioner acted in a wrongful manner does not preclude the application of the limitation on noneconomic damages prescribed elsewhere in this section. For purposes of this subsection:

(a) The terms "medical services," "medical care," and "Medicaid recipient" have the same meaning as provided in s. 409.901.

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

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

(7) LIMITATION ON NONECONOMIC DAMAGES FOR WRONGFUL DEATH ARISING FROM MEDICAL NEGLIGENCE.—In a cause of action for wrongful death arising from medical negligence, noneconomic damages may not exceed \$1 million, regardless of the number of claimants or the number of practitioners or nonpractitioners who are liable for a claimant's damages.

(8) SETOFF.—In any case in which the jury verdict for





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noneconomic damages exceeds the limits established by this section, the trial court shall reduce the award for noneconomic damages within the same category of defendants in accordance with this section after making any reduction for comparative fault as required by s. 768.81 but before application of a setoff in accordance with ss. 46.015 and 768.041. In the event of a prior settlement or settlements involving one or more defendants subject to the limitations of the same subsection applicable to a defendant remaining at trial, the court shall make such reductions within the same category of defendants as are necessary to ensure that the total amount of noneconomic damages recovered by the claimant does not exceed the aggregate limit established by the applicable subsection. This subsection is not intended to change current law relating to the setoff of economic damages.

~~(9)(8)~~ ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW.—This section shall not apply to actions governed by s. 768.28.

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

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

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

(a) The claim shall proceed to trial, and the claimant, upon proving medical negligence, shall be entitled to recover damages subject to the limitations in s. 766.118, prejudgment interest, and reasonable attorney's fees up to 25 percent of the



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award reduced to present value.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 8

and insert:

An act relating to recovery of damages for claims of medical negligence; amending s. 766.201, F.S.; revising legislative findings; amending s. 766.118, F.S.; deleting certain prohibitions providing that the total noneconomic damages recovered if negligence by certain persons resulted in death may not exceed specified sums; limiting the amount of noneconomic damages for wrongful death arising from medical negligence regardless of the number of claimants or the number of practitioners or nonpractitioners who are liable for a claimant's damages; reenacting s. 766.209(3)(a), F.S., relating to effects of failure to offer or accept voluntary binding arbitration, to incorporate the amendment made to s. 766.118, F.S., in a reference thereto; amending s. 768.21, F.S.; deleting a provision that precludes certain persons from recovering damages for medical negligence that result in death; amending ss. 400.023, 400.0235, and 429.295, F.S.; conforming provisions to changes made by the act; providing an effective date.

WHEREAS, the Legislature finds that expanding the right to recover noneconomic damages for wrongful death caused by medical



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negligence furthers an important state interest of promoting accountability and adherence to the applicable standards of care, and

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

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

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

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

WHEREAS, the Legislature finds that medical malpractice insurance premiums in this state are the highest or among the highest in the nation, and

WHEREAS, the Legislature finds that having high medical malpractice insurance premiums causes physicians to practice medicine without malpractice insurance, begin medical careers in other states, pursue opportunities to practice in other states,



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abstain from performing high-risk procedures in this state, or  
retire early from the practice of medicine, and

WHEREAS, the Legislature finds that having the highest or  
among the highest medical malpractice insurance premiums in the  
nation threatens the quality and availability of health care  
services for everyone in this state, and

WHEREAS, the Legislature finds that it is obligated to  
minimize or prevent crises that result from high medical  
malpractice premiums which, according to *Mizrahi v. North Miami  
Medical Center, Ltd.*, 712 So. 2d 826, 828 (Fla. 3d DCA 1998),  
aff'd, 761 So. 2d 1040 (Fla. 2000), "adversely impact not only  
physicians but also, ultimately, their patients through the  
resultant increased cost of medical care," and

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

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

WHEREAS, the Legislature finds that there is also an  
overpowering public necessity to enact policies that prevent  
medical malpractice insurance premiums from being unaffordable,  
and

WHEREAS, the Legislature finds that expanding the right to  
recover noneconomic damages for wrongful death arising from  
medical negligence without limiting amounts recoverable would  
make health care more expensive and less accessible, and

WHEREAS, the Legislature finds that limitations on



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331 noneconomic damages in medical negligence cases further the  
332 public necessities of making quality health care available to  
333 the residents of this state, ensuring that physicians practice  
334 medicine in this state and ensuring that those physicians have  
335 the opportunity to purchase affordable medical malpractice  
336 insurance, NOW, THEREFORE,