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LEGISLATIVE ACTION

Senate

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House

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Senator Harrell moved the following:

**Senate Amendment (with title amendment)**

Before line 12

insert:

Section 1. 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,~~



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~~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 least as severe in nature as any condition provided in 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).

(b)~~(e)~~ "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



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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 A PRACTITIONER ~~PRACTITIONERS~~.—

~~(a) With respect to a cause of action for personal injury or wrongful death arising from medical negligence of a practitioner practitioners, regardless of the number of such practitioner defendants, noneconomic damages may 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 practitioners who are liable for a claimant's damages 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~~



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~~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 A NONPRACTITIONER DEFENDANTS.—

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

~~(b) Notwithstanding paragraph (a), if the negligence 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) A nonpractitioner is defendants are subject to the cap on noneconomic damages provided in this subsection regardless of the theory of liability, including vicarious liability.~~



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~~(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 A PRACTITIONER ~~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 a practitioner who provided ~~practitioners providing~~ emergency services and care, as defined in s. 395.002(9), or provided ~~providing~~ services as provided in s. 401.265, or provided ~~providing~~ services pursuant to obligations imposed by 42 U.S.C. s. 1395dd to a person ~~persons~~ with whom the practitioner did ~~does~~ not have a then-existing health care patient-practitioner relationship for that medical condition.

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

~~(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 before ~~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~~



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provided by this subsection applies to any act or omission of providing medical care or treatment which occurs before ~~prior to~~ the stabilization of the patient following the surgery.

(5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A 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 a nonpractitioner ~~defendants~~ other than a practitioner who provided ~~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 a person ~~persons~~ with whom the practitioner did ~~does~~ not have a then-existing health care patient-practitioner relationship for that medical condition:

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

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

~~(c)~~ A nonpractitioner ~~defendants~~ may receive a full setoff for payments made by a 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 a diagnosis that occurs before ~~prior to~~ the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency



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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 before ~~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, regardless of the number of practitioners who are liable for a claimant's damages, unless the claimant pleads and proves, by clear and convincing 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.



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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) SETOFF.—In any case in which the jury verdict for 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 do ~~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.

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





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

216 And the title is amended as follows:

217       Delete lines 2 - 3

218 and insert:

219       An act relating to claims for medical negligence;  
220       amending s. 766.118, F.S.; deleting the definition of  
221       the term "catastrophic injury"; revising the limits on  
222       noneconomic damages for personal injury or wrongful  
223       death arising from medical negligence; making  
224       technical changes; amending s. 768.21,