



932842

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2024	.	
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	.	
	.	

The Committee on Judiciary (Yarborough) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

400.023 Civil enforcement.—

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



932842

11 ~~death of the resident.~~

12 Section 2. Section 400.0235, Florida Statutes, is amended
13 to read:

14 400.0235 Certain provisions not applicable to actions under
15 this part.—An action under this part for a violation of rights
16 or negligence recognized under this part is not a claim for
17 medical malpractice, ~~and the provisions of s. 768.21(8) do not~~
18 ~~apply to a claim alleging death of the resident.~~

19 Section 3. Section 429.295, Florida Statutes, is amended to
20 read:

21 429.295 Certain provisions not applicable to actions under
22 this part.—An action under this part for a violation of rights
23 or negligence recognized herein is not a claim for medical
24 malpractice, ~~and the provisions of s. 768.21(8) do not apply to~~
25 ~~a claim alleging death of the resident.~~

26 Section 4. Section 766.118, Florida Statutes, is amended to
27 read:

28 766.118 Determination of noneconomic damages.—

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

30 (a) ~~“Catastrophic injury” means a permanent impairment~~
31 ~~constituted by:~~

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

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

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

37 ~~a. Severe sensory or motor disturbances;~~

38 ~~b. Severe communication disturbances;~~

39 ~~c. Severe complex integrated disturbances of cerebral~~



932842

40 ~~function;~~

41 ~~d. Severe episodic neurological disorders; or~~

42 ~~e. Other severe brain and closed head injury conditions at~~
43 ~~least as severe in nature as any condition provided in sub-~~
44 ~~subparagraphs a.-d.;~~

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

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

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

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

54 ~~(c)~~ "Practitioner" means any person licensed under
55 chapter 458, chapter 459, chapter 460, chapter 461, chapter 462,
56 chapter 463, chapter 466, chapter 467, chapter 486, or s.
57 464.012 or registered under s. 464.0123. "Practitioner" also
58 means any association, corporation, firm, partnership, or other
59 business entity under which such practitioner practices or any
60 employee of such practitioner or entity acting in the scope of
61 his or her employment. For the purpose of determining the
62 limitations on noneconomic damages set forth in this section,
63 the term "practitioner" includes any person or entity for whom a
64 practitioner is vicariously liable and any person or entity
65 whose liability is based solely on such person or entity being
66 vicariously liable for the actions of a practitioner.

67 (2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
68 PRACTITIONER ~~PRACTITIONERS~~.-



932842

69 ~~(a) With respect to a cause of action for personal injury~~
70 ~~or wrongful death arising from medical negligence of a~~
71 ~~practitioner practitioners, regardless of the number of such~~
72 ~~practitioner defendants, noneconomic damages may shall not~~
73 ~~exceed \$500,000 per claimant. No practitioner shall be liable~~
74 ~~for more than \$500,000 in noneconomic damages, regardless of the~~
75 ~~number of practitioners who are liable for a claimant's damages~~
76 ~~elaimants.~~

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

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

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

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

95 (3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
96 NONPRACTITIONER DEFENDANTS.-

97 (a) With respect to a cause of action for personal injury



932842

98 or wrongful death arising from medical negligence of a
99 nonpractitioner ~~nonpractitioners, regardless of the number of~~
100 ~~such nonpractitioner defendants,~~ noneconomic damages may ~~shall~~
101 not exceed \$750,000 per claimant, regardless of the number of
102 nonpractitioners who are liable for a claimant's damages.

103 (b) ~~Notwithstanding paragraph (a), if the negligence~~
104 ~~resulted in a permanent vegetative state or death, the total~~
105 ~~noneconomic damages recoverable by such claimant from all~~
106 ~~nonpractitioner defendants under this paragraph shall not exceed~~
107 ~~\$1.5 million. The patient injured by medical negligence of a~~
108 ~~nonpractitioner defendant may recover noneconomic damages not to~~
109 ~~exceed \$1.5 million if:~~

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

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

117 (c) A nonpractitioner ~~is~~ defendants are subject to the cap
118 on noneconomic damages provided in this subsection regardless of
119 the theory of liability, including vicarious liability.

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

123 (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
124 PRACTITIONER ~~PRACTITIONERS~~ PROVIDING EMERGENCY SERVICES AND
125 CARE.—Notwithstanding subsections (2) and (3), with respect to a
126 cause of action for personal injury or wrongful death arising



932842

127 from medical negligence of a practitioner who provided
128 ~~practitioners providing~~ emergency services and care, as defined
129 in s. 395.002(9), or provided ~~providing~~ services as provided in
130 s. 401.265, or provided ~~providing~~ services pursuant to
131 obligations imposed by 42 U.S.C. s. 1395dd to a person ~~persons~~
132 with whom the practitioner did ~~does~~ not have a then-existing
133 health care patient-practitioner relationship for that medical
134 condition:

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

139 ~~(b) Notwithstanding paragraph (a), the total noneconomic~~
140 ~~damages recoverable by all claimants from all such practitioners~~
141 ~~shall not exceed \$300,000.~~ The limitation provided by this
142 subsection applies only to noneconomic damages awarded as a
143 result of any act or omission of providing medical care or
144 treatment, including diagnosis that occurs prior to the time the
145 patient is stabilized and is capable of receiving medical
146 treatment as a nonemergency patient, unless surgery is required
147 as a result of the emergency within a reasonable time after the
148 patient is stabilized, in which case the limitation provided by
149 this subsection applies to any act or omission of providing
150 medical care or treatment which occurs prior to the
151 stabilization of the patient following the surgery.

152 (5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A
153 ~~NONPRACTITIONER DEFENDANTS~~ PROVIDING EMERGENCY SERVICES AND
154 CARE.—Notwithstanding subsections (2) and (3), with respect to a
155 cause of action for personal injury or wrongful death arising



932842

156 from medical negligence of a nonpractitioner ~~defendants~~ other
157 than a practitioner who provided ~~practitioners providing~~
158 emergency services and care pursuant to obligations imposed by
159 s. 395.1041 or s. 401.45, or obligations imposed by 42 U.S.C. s.
160 1395dd to a person ~~persons~~ with whom the practitioner did ~~does~~
161 not have a then-existing health care patient-practitioner
162 relationship for that medical condition:

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

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

170 (c) ~~A~~ A nonpractitioner ~~defendants~~ may receive a full setoff
171 for payments made by a practitioner ~~defendants~~.

172
173 The limitation provided by this subsection applies only to
174 noneconomic damages awarded as a result of any act or omission
175 of providing medical care or treatment, including a diagnosis
176 that occurs before ~~prior to~~ the time the patient is stabilized
177 and is capable of receiving medical treatment as a nonemergency
178 patient, unless surgery is required as a result of the emergency
179 within a reasonable time after the patient is stabilized, in
180 which case the limitation provided by this subsection applies to
181 any act or omission of providing medical care or treatment which
182 occurs before ~~prior to~~ the stabilization of the patient
183 following the surgery.

184 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A



932842

185 PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID
186 RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with
187 respect to a cause of action for personal injury or wrongful
188 death arising from medical negligence of a practitioner
189 committed in the course of providing medical services and
190 medical care to a Medicaid recipient, ~~regardless of the number~~
191 ~~of such practitioner defendants providing the services and care,~~
192 noneconomic damages may not exceed \$300,000 per claimant,
193 regardless of the number of practitioners who are liable for a
194 claimant's damages, unless the claimant pleads and proves, by
195 clear and convincing evidence, that the practitioner acted in a
196 wrongful manner. ~~A practitioner providing medical services and~~
197 ~~medical care to a Medicaid recipient is not liable for more than~~
198 ~~\$200,000 in noneconomic damages, regardless of the number of~~
199 ~~claimants, unless the claimant pleads and proves, by clear and~~
200 ~~convincing evidence, that the practitioner acted in a wrongful~~
201 ~~manner.~~ The fact that a claimant proves that a practitioner
202 acted in a wrongful manner does not preclude the application of
203 the limitation on noneconomic damages prescribed elsewhere in
204 this section. For purposes of this subsection:

205 (a) The terms "medical services," "medical care," and
206 "Medicaid recipient" have the same meaning as provided in s.
207 409.901.

208 (b) The term "practitioner," in addition to the meaning
209 prescribed in subsection (1), includes any hospital or
210 ambulatory surgical center as defined and licensed under chapter
211 395.

212 (c) The term "wrongful manner" means in bad faith or with
213 malicious purpose or in a manner exhibiting wanton and willful



932842

214 disregard of human rights, safety, or property, and shall be
215 construed in conformity with the standard set forth in s.
216 768.28(9)(a).

217 (7) SETOFF.—In any case in which the jury verdict for
218 noneconomic damages exceeds the limits established by this
219 section, the trial court shall reduce the award for noneconomic
220 damages within the same category of defendants in accordance
221 with this section after making any reduction for comparative
222 fault as required by s. 768.81 but before application of a
223 setoff in accordance with ss. 46.015 and 768.041. In the event
224 of a prior settlement or settlements involving one or more
225 defendants subject to the limitations of the same subsection
226 applicable to a defendant remaining at trial, the court shall
227 make such reductions within the same category of defendants as
228 are necessary to ensure that the ~~total amount of~~ noneconomic
229 damages recovered by the claimant do ~~does~~ not exceed the
230 ~~aggregate~~ limit established by the applicable subsection. This
231 subsection is not intended to change current law relating to the
232 setoff of economic damages.

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

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

238 768.21 Damages.—All potential beneficiaries of a recovery
239 for wrongful death, including the decedent's estate, shall be
240 identified in the complaint, and their relationships to the
241 decedent shall be alleged. Damages may be awarded as follows:

242 (3) Minor children of the decedent, and all children of the



932842

243 decedent if there is no surviving spouse, may also recover for
244 lost parental companionship, instruction, and guidance and for
245 mental pain and suffering from the date of injury. For the
246 purposes of this subsection, if both spouses die within 30 days
247 of one another as a result of the same wrongful act or series of
248 acts arising out of the same incident, each spouse is considered
249 to have been predeceased by the other.

250 (4) Each parent of a deceased minor child may also recover
251 for mental pain and suffering from the date of injury. Each
252 parent of an adult child may also recover for mental pain and
253 suffering if there are no other survivors.

254 ~~(8) The damages specified in subsection (3) shall not be~~
255 ~~recoverable by adult children and the damages specified in~~
256 ~~subsection (4) shall not be recoverable by parents of an adult~~
257 ~~child with respect to claims for medical negligence as defined~~
258 ~~by s. 766.106(1).~~

259 Section 6. (1) Every medical malpractice insurer and every
260 medical malpractice insurer rate filing made with the Office of
261 Insurance Regulation on or after January 1, 2025, must reflect
262 the projected changes in claim frequency, claim severity, and
263 loss adjustment expenses, including for attorney fees, and any
264 other change actuarially indicated, due to the combined effect
265 of the applicable provisions of this act in order to ensure that
266 rates for such insurance accurately reflect the risk of
267 providing such insurance.

268 (2) The Office of Insurance Regulation shall consider in
269 its review of rate filings made on or after January 1, 2025, the
270 projected changes in costs associated with the amendments to ss.
271 766.118 and 768.21(8), Florida Statutes, by this act. The office



932842

272 may develop methodology and data that incorporate generally
273 accepted actuarial techniques and standards to be used in its
274 review of rate filings governed by this section. The methodology
275 must account for the expected losses, by class, of insureds
276 covered by a medical malpractice insurance, provided the
277 methodology is consistent with generally accepted actuarial
278 techniques and standards. Such methodology and data are not
279 intended to create a mandatory rate increase or decrease for all
280 medical malpractice insurers, but rather to ensure that the
281 rates for such coverage meet the requirements of s. 627.062,
282 Florida Statutes, and thus, are not inadequate, excessive, or
283 unfairly discriminatory and allow such insurers a reasonable
284 rate of return.

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

293 (a) The availability, affordability, and volatility of
294 professional liability insurance coverage for medical
295 negligence.

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

300 (c) The extent to which physicians in this state are forced



932842

301 to practice medicine without professional liability insurance,
302 leave the state, refrain from practice in high-risk specialties,
303 or retire early from the practice of medicine.

304 (d) Evidence of the relationship between the statutory caps
305 and changes in the matters addressed in paragraphs (a), (b), and
306 (c).

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

312 Section 8. For the purpose of incorporating the amendment
313 made by this act to section 766.118, Florida Statutes, in a
314 reference thereto, paragraph (a) of subsection (3) of section
315 766.209, Florida Statutes, is reenacted to read:

316 766.209 Effects of failure to offer or accept voluntary
317 binding arbitration.—

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

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

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

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

328
329 ===== T I T L E A M E N D M E N T =====



932842

330 And the title is amended as follows:

331 Delete everything before the enacting clause
332 and insert:

333 A bill to be entitled

334 An act relating to medical negligence; amending ss.
335 400.023, 400.0235, and 429.295, F.S.; conforming
336 provisions to changes made by the act; amending s.
337 766.118, F.S.; deleting the definition of the term
338 "catastrophic injury"; revising the limits on
339 noneconomic damages for personal injury or wrongful
340 death arising from medical negligence; making
341 technical changes; amending s. 768.21, F.S.; deleting
342 a provision that prohibits adult children and parents
343 of adult children from recovering certain damages in
344 medical negligence suits; requiring that medical
345 malpractice insurer rate filings reflect certain
346 changes in costs and expenses; requiring the Office of
347 Insurance Regulation to consider such changes in its
348 review of rate filings; authorizing the Office of
349 Insurance Regulation to develop certain methodology
350 and data in reviewing rate filings by medical
351 malpractice insurers; requiring the Office of Program
352 Policy Analysis and Government Accountability to study
353 the efficacy of caps on noneconomic damages and to
354 report its findings and recommendations to the
355 Governor and the Legislature by a specified date;
356 reenacting s. 766.209(3)(a), F.S., relating to effects
357 of failure to offer or accept voluntary binding
358 arbitration, to incorporate the amendment made to s.



359 766.118, F.S., in a reference thereto; providing
360 applicability; providing an effective date.

361
362 WHEREAS, the Legislature finds that expanding the right to
363 recover noneconomic damages for wrongful death caused by medical
364 negligence furthers an important state interest of promoting
365 accountability and adherence to the applicable standards of
366 care, and

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

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

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

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

386 WHEREAS, the Legislature finds that the state has the
387 highest medical malpractice insurance premiums in the nation and



932842

388 is in a sustained and continuing crisis of affordability with
389 respect to the price of medical malpractice insurance, and

390 WHEREAS, the Legislature finds that having the highest
391 medical malpractice insurance premiums in the nation is causing
392 physicians to practice medicine without malpractice insurance,
393 begin medical careers in other states, pursue opportunities to
394 practice in other states, abstain from performing high-risk
395 procedures in this state, or retire early from the practice of
396 medicine, and

397 WHEREAS, the Legislature finds that the crisis of having
398 the highest medical malpractice insurance premiums in the nation
399 threatens the quality and availability of health care services
400 for everyone in this state, and

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

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

408 WHEREAS, the Legislature finds that there is also an
409 overpowering public necessity to enact policies that prevent
410 medical malpractice insurance premiums from being unaffordable
411 and continuing at crisis levels, and

412 WHEREAS, the Legislature finds that limitations on
413 noneconomic damages in medical negligence cases further the
414 public necessities of making quality health care available to
415 the residents of this state, ensuring that physicians practice
416 medicine in this state, and ensuring that those physicians have



932842

417 | the opportunity to purchase affordable medical malpractice
418 | insurance, NOW, THEREFORE,