

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS35226-LN-49A (2/3)

Short Title: Health Care Liability Claims. (Public)

Sponsors: Senator Bingham.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE AMOUNT OF DAMAGES THAT MAY BE AWARDED IN
3 CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS FOR HEALTH CARE
4 LIABILITY CLAIMS, TO OTHERWISE REFORM HEALTH CARE LIABILITY, AND
5 TO MAKE CONFORMING CHANGES.

6 The General Assembly of North Carolina enacts:

7 **PART 1. HEALTH CARE LIABILITY CLAIMS**

8 **SECTION 1.(a)** Article 1G of Chapter 90 of the General Statutes is amended by
9 designating G.S. 90-21.50 through G.S. 90-21.56 as Part 1 of that Article, and by designating
10 Part 1 as "Part 1. Actions."

11 **SECTION 1.(b)** Article 1G of Chapter 90 of the General Statutes, as amended by
12 Section 1(a) of this act, is amended by adding a new Part to read:

13 "Part 2. Limitations on Liability.

14 "**§ 90-21.59. Definitions.**

15 (a) In this Part:

- 16 (1) "Claimant" means a person, including a decedent's estate, seeking or who
17 has sought recovery of damages in a health care liability claim. All persons
18 claiming to have sustained damages as the result of the bodily injury or
19 death of a single person are considered a single claimant.
- 20 (2) "Control" means the possession, directly or indirectly, of the power to direct
21 or cause the direction of the management and policies of the person, whether
22 through ownership of equity or securities, by contract, or otherwise.
- 23 (3) "Court" means any federal or State court.
- 24 (4) "Economic damages" means compensatory damages intended to compensate
25 a claimant for actual economic or pecuniary loss; the term does not include
26 punitive damages or noneconomic damages.
- 27 (5) "Emergency medical care" means bona fide emergency services provided
28 after the sudden onset of a medical or traumatic condition manifesting itself
29 by acute symptoms of sufficient severity, including severe pain, such that the
30 absence of immediate medical attention could reasonably be expected to
31 result in placing the patient's health in serious jeopardy, serious impairment
32 to bodily functions, or serious dysfunction of any bodily organ or part. The
33 term does not include medical care or treatment that occurs after the patient
34 is stabilized and is capable of receiving medical treatment as a
35 nonemergency patient or that is unrelated to the original medical emergency.



- 1 (6) "Emergency medical services provider" means an individual or entity
2 licensed under Article 7 of Chapter 131E of the General Statutes.
- 3 (7) "Gross negligence" means an act or omission:
4 a. Which, when viewed objectively from the standpoint of the actor at
5 the time of its occurrence, involves an extreme degree of risk,
6 considering the probability and magnitude of the potential harm to
7 others; and
8 b. Of which the actor has actual, subjective awareness of the risk
9 involved, but nevertheless proceeds with conscious indifference to
10 the rights, safety, or welfare of others.
- 11 (8) "Health care" means any act or treatment performed or furnished, or that
12 should have been performed or furnished, by any health care provider for, to,
13 or on behalf of a patient during the patient's medical care, treatment, or
14 confinement.
- 15 (9) "Health care institution" includes:
16 a. An ambulatory surgical center;
17 b. An assisted living facility licensed under Chapter 131D of the
18 General Statutes;
19 c. An emergency medical services provider;
20 d. A health services district created under Chapter 131E of the General
21 Statutes;
22 e. A home care agency;
23 f. A hospice;
24 g. A hospital;
25 h. A hospital system;
26 i. An intermediate care facility for the mentally retarded or a home and
27 community-based services waiver program for persons with mental
28 retardation adopted in accordance with section 1915(c) of the federal
29 Social Security Act (42 U.S.C. § 1396n), as amended; or
30 j. A nursing home.
- 31 (10) "Health care liability claim" means a cause of action against a health care
32 provider or physician for treatment, lack of treatment, or other claimed
33 departure from accepted standards of medical care, or health care, or safety
34 or professional or administrative services directly related to health care,
35 which proximately results in injury to or death of a claimant; whether the
36 claimant's claim or cause of action sounds in tort or contract.
- 37 (11) "Health care provider" means any person, partnership, professional
38 association, corporation, facility, or institution duly licensed to provide
39 health care in this State, including:
40 a. A registered nurse;
41 b. A dentist;
42 c. A podiatrist;
43 d. A pharmacist;
44 e. A chiropractor;
45 f. An optometrist; or
46 g. A health care institution.
47 The term "health care provider" includes:
48 h. An officer, director, shareholder, member, partner, manager, owner,
49 or affiliate of a health care provider or physician; and

- 1 i. An employee, independent contractor, or agent of a health care
2 provider or physician acting in the course and scope of the
3 employment or contractual relationship.
- 4 (12) "Home care agency" means an agency licensed under Part 3 of Article 6 of
5 Chapter 131E of the General Statutes.
- 6 (13) "Hospice" means a hospice facility or activity licensed under Article 10 of
7 Chapter 131E of the General Statutes.
- 8 (14) "Hospital" means a public or private institution licensed under Chapter 131E
9 of the General Statutes.
- 10 (15) "Hospital system" means a system of hospitals located in this State that are
11 under the common governance or control of a corporate parent.
- 12 (16) "Intermediate care facility for the mentally retarded" means a licensed public
13 or private institution operated under Chapter 122C of the General Statutes.
- 14 (17) "Medical care" means any act defined as practicing medicine under Article 1
15 of this Chapter, performed or furnished, or which should have been
16 performed or furnished, by a person licensed to practice medicine in this
17 State for, to, or on behalf of a patient during the patient's care, treatment, or
18 confinement.
- 19 (18) "Noneconomic damages" means damages awarded for the purpose of
20 compensating a claimant for physical pain and suffering, mental or
21 emotional pain or anguish, loss of consortium, disfigurement, physical
22 impairment, loss of companionship and society, inconvenience, loss of
23 enjoyment of life, injury to reputation, and all other nonpecuniary losses of
24 any kind other than punitive damages.
- 25 (19) "Nursing home" means a licensed public or private institution licensed under
26 Article 6 of Chapter 131E of the General Statutes.
- 27 (20) "Pharmacist" means an individual licensed under Article 4A of this Chapter,
28 who, for the purposes of this Chapter, performs those activities limited to the
29 dispensing of prescription medicines which result in health care liability
30 claims and does not include any other cause of action that may exist at
31 common law against them, including, but not limited to, causes of action for
32 the sale of mishandled or defective products.
- 33 (21) "Physician" means:
- 34 a. An individual licensed to practice medicine in this State;
35 b. A professional association organized under the laws of this State by
36 an individual physician or group of physicians;
37 c. A partnership or limited liability partnership formed by a group of
38 physicians;
39 d. A nonprofit health corporation organized under the laws of this State;
40 or
41 e. A company formed by a group of physicians under Chapter 57C of
42 the General Statutes.
- 43 (22) "Professional or administrative services" means those duties or services that
44 a physician or health care provider is required to provide as a condition of
45 maintaining the physician's or health care provider's license, accreditation
46 status, or certification to participate in State or federal health care programs.
- 47 (23) "Representative" means the spouse, parent, guardian, trustee, authorized
48 attorney, or other authorized legal agent of the patient or claimant.
- 49 (24) "Secretary" means the Secretary of Health and Human Services.
- 50 (b) Any legal term or word of art used in this Chapter, not otherwise defined in this
51 Chapter, shall have the meaning consistent with the common law.

1 **"§ 90-21.60. Limitation on noneconomic damages.**

2 (a) In an action on a health care liability claim where final judgment is rendered against
3 a physician or health care provider other than a health care institution, the limit of civil liability
4 for noneconomic damages of the physician or health care provider other than a health care
5 institution, inclusive of all persons for whom and entities for which vicarious liability theories
6 may apply, shall be limited to an amount not to exceed two hundred fifty thousand dollars
7 (\$250,000) for each claimant, regardless of the number of defendant physicians or health care
8 providers other than a health care institution against whom the claim is asserted or the number
9 of separate causes of action on which the claim is based.

10 (b) In an action on a health care liability claim where final judgment is rendered against
11 a single health care institution, the limit of civil liability for noneconomic damages, inclusive of
12 all persons for whom and entities for which vicarious liability theories may apply, shall be
13 limited to an amount not to exceed two hundred fifty thousand dollars (\$250,000) for each
14 claimant.

15 (c) In an action on a health care liability claim where final judgment is rendered against
16 more than one health care institution, the limit of civil liability for noneconomic damages for
17 each health care institution, inclusive of all persons for whom and entities for which vicarious
18 liability theories may apply, shall be limited to an amount not to exceed two hundred fifty
19 thousand dollars (\$250,000) for each claimant, and the limit of civil liability for noneconomic
20 damages for all health care institutions, inclusive of all persons for whom and entities for which
21 vicarious liability theories may apply, shall be limited to an amount not to exceed five hundred
22 thousand dollars (\$500,000) for each claimant.

23 **"§ 90-21.60A. Alternative limitation on noneconomic damages.**

24 (a) In the event that G.S. 90-21.86 is stricken from this Article or is otherwise to any
25 extent invalidated by a method other than through legislative means, the following, subject to
26 the provisions of this section, shall become effective:

27 (1) In an action on a health care liability claim where final judgment is rendered
28 against a physician or health care provider other than a health care
29 institution, the limit of civil liability for noneconomic damages of the
30 physician or health care provider other than a health care institution,
31 inclusive of all persons for whom and entities for which vicarious liability
32 theories may apply, shall be limited to an amount not to exceed two hundred
33 fifty thousand dollars (\$250,000) for each claimant, regardless of the number
34 of defendant physicians or health care providers other than a health care
35 institution against whom the claim is asserted or the number of separate
36 causes of action on which the claim is based.

37 (2) In an action on a health care liability claim where final judgment is rendered
38 against a single health care institution, the limit of civil liability for
39 noneconomic damages, inclusive of all persons for whom and entities for
40 which vicarious liability theories may apply, shall be limited to an amount
41 not to exceed two hundred fifty thousand dollars (\$250,000) for each
42 claimant.

43 (3) In an action on a health care liability claim where final judgment is rendered
44 against more than one health care institution, the limit of civil liability for
45 noneconomic damages for each health care institution, inclusive of all
46 persons for whom and entities for which vicarious liability theories may
47 apply, shall be limited to an amount not to exceed two hundred fifty
48 thousand dollars (\$250,000) for each claimant, and the limit of civil liability
49 for noneconomic damages for all health care institutions, inclusive of all
50 persons and entities for which vicarious liability theories may apply, shall be

- 1 limited to an amount not to exceed five hundred thousand dollars (\$500,000)
2 for each claimant.
- 3 (b) Effective until October 1, 2010, subsection (a) of this section applies to any
4 physician or health care provider that provides evidence of financial responsibility in the
5 following amounts in effect for any act or omission to which this Article applies:
- 6 (1) At least one hundred thousand dollars (\$100,000) for each health care
7 liability claim and at least three hundred thousand dollars (\$300,000) in
8 aggregate for all health care liability claims occurring in an insurance policy
9 year, calendar year, or fiscal year for a physician participating in an
10 approved residency program;
- 11 (2) At least two hundred thousand dollars (\$200,000) for each health care
12 liability claim and at least six hundred thousand dollars (\$600,000) in
13 aggregate for all health care liability claims occurring in an insurance policy
14 year, calendar year, or fiscal year for a physician or health care provider,
15 other than a hospital; and
- 16 (3) At least five hundred thousand dollars (\$500,000) for each health care
17 liability claim and at least one million five hundred thousand dollars
18 (\$1,500,000) in aggregate for all health care liability claims occurring in an
19 insurance policy year, calendar year, or fiscal year for a hospital.
- 20 (c) Effective October 1, 2010, subsection (a) of this section applies to any physician or
21 health care provider that provides evidence of financial responsibility in the following amounts
22 in effect for any act or omission to which this Article applies:
- 23 (1) At least one hundred thousand dollars (\$100,000) for each health care
24 liability claim and at least three hundred thousand dollars (\$300,000) in
25 aggregate for all health care liability claims occurring in an insurance policy
26 year, calendar year, or fiscal year for a physician participating in an
27 approved residency program;
- 28 (2) At least three hundred thousand dollars (\$300,000) for each health care
29 liability claim and at least nine hundred thousand dollars (\$900,000) in
30 aggregate for all health care liability claims occurring in an insurance policy
31 year, calendar year, or fiscal year for a physician or health care provider,
32 other than a hospital; and
- 33 (3) At least seven hundred fifty thousand dollars (\$750,000) for each health care
34 liability claim and at least two million two hundred fifty thousand dollars
35 (\$2,250,000) in aggregate for all health care liability claims occurring in an
36 insurance policy year, calendar year, or fiscal year for a hospital.
- 37 (d) Effective October 1, 2011, subsection (a) of this section applies to any physician or
38 health care provider that provides evidence of financial responsibility in the following amounts
39 in effect for any act or omission to which this Article applies:
- 40 (1) At least one hundred thousand dollars (\$100,000) for each health care
41 liability claim and at least three hundred thousand dollars (\$300,000) in
42 aggregate for all health care liability claims occurring in an insurance policy
43 year, calendar year, or fiscal year for a physician participating in an
44 approved residency program;
- 45 (2) At least five hundred thousand dollars (\$500,000) for each health care
46 liability claim and at least one million dollars (\$1,000,000) in aggregate for
47 all health care liability claims occurring in an insurance policy year, calendar
48 year, or fiscal year for a physician or health care provider, other than a
49 hospital; and
- 50 (3) At least one million dollars (\$1,000,000) for each health care liability claim
51 and at least three million dollars (\$3,000,000) in aggregate for all health care

1 liability claims occurring in an insurance policy year, calendar year, or fiscal
2 year for a hospital.

3 (e) Evidence of financial responsibility may be established at the time of judgment by
4 providing proof of:

5 (1) The purchase of a contract of insurance or other plan of insurance authorized
6 by this State or federal law or regulation;

7 (2) The purchase of coverage from a trust organized and operating under
8 G.S. 116-220 and reported by self-insurers under G.S. 58-2-170;

9 (3) The purchase of coverage or another plan of insurance provided by or
10 through a risk retention group or purchasing group authorized under
11 applicable laws of this State or under the Product Liability Risk Retention
12 Act of 1981 (15 U.S.C. § 3901, et seq.), as amended, or the Liability Risk
13 Retention Act of 1986 (15 U.S.C. § 3901, et seq.), as amended, or any other
14 contract or arrangement for transferring and distributing risk relating to legal
15 liability for damages, including cost of defense, legal costs, fees, and other
16 claims expenses; or

17 (4) The maintenance of financial reserves in or an irrevocable letter of credit
18 from a federally insured financial institution that has its main office or a
19 branch office in this State.

20 **"§ 90-21.61. Limitation on damages.**

21 (a) In a wrongful death or survival action on a health care liability claim where final
22 judgment is rendered against a physician or health care provider, the limit of civil liability for
23 all damages, including punitive damages, shall be limited to an amount not to exceed five
24 hundred thousand dollars (\$500,000) for each claimant, regardless of the number of defendant
25 physicians or health care providers against whom the claim is asserted or the number of
26 separate causes of action on which the claim is based.

27 (b) When there is an increase or decrease in the Consumer Price Index with respect to
28 the amount of that index on August 29, 1977, the liability limit prescribed in subsection (a) of
29 this section shall be increased or decreased, as applicable, by a sum equal to the amount of such
30 limit multiplied by the percentage increase or decrease in the Consumer Price Index, as
31 published by the Bureau of Labor Statistics of the United States Department of Labor, that
32 measures the average changes in prices of goods and services purchased by urban wage earners
33 and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted
34 U.S. City Average – All Items), between August 29, 1977, and the time at which damages
35 subject to such limits are awarded by final judgment or settlement.

36 (c) Subsection (a) of this section does not apply to the amount of damages awarded on a
37 health care liability claim for the expenses of necessary medical, hospital, and custodial care
38 received before judgment or required in the future for treatment of the injury.

39 (d) In any action on a health care liability claim that is tried by a jury in any court in
40 this State, both of the following shall be included in the court's written instructions to the
41 jurors:

42 (1) "Do not consider, discuss, nor speculate whether or not liability, if any, on
43 the part of any party is or is not subject to any limit under applicable law."

44 (2) "A finding of negligence may not be based solely on evidence of a bad result
45 to the claimant in question, but a bad result may be considered by you, along
46 with other evidence, in determining the issue of negligence. You are the sole
47 judges of the weight, if any, to be given to this kind of evidence."

48 **"§ 90-21.62: Reserved for future codification purposes.**

49 **"§ 90-21.63. Organization liability of hospitals providing free care.**

50 (a) In any civil action brought against a hospital or hospital system, or its employees,
51 officers, directors, or volunteers, for damages based on an act or omission by the hospital or

1 hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital
2 or hospital system is limited to money damages in a maximum amount of five hundred
3 thousand dollars (\$500,000) for any act or omission resulting in death, damage, or injury to a
4 patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person
5 responsible for the patient signs a written statement that acknowledges:

6 (1) That the hospital is providing care that is not administered for or in
7 expectation of compensation; and

8 (2) The limitations on the recovery of damages from the hospital in exchange
9 for receiving the health care services.

10 (b) Subsection (a) of this section applies even if:

11 (1) The patient is incapacitated due to illness or injury and cannot sign the
12 acknowledgment statement required by that subsection; or

13 (2) The patient is a minor or is otherwise legally incompetent and the person
14 responsible for the patient is not reasonably available to sign the
15 acknowledgment statement required by that subsection.

16 (c) As used in this section:

17 (1) "Hospital system" means a system of hospitals and other health care
18 providers located in this State that are under the common governance or
19 control of a corporate parent.

20 (2) "Person responsible for the patient" means any of the following:

21 a. The patient's parent, managing conservator, or guardian.

22 b. The patient's grandparent.

23 c. The patient's adult brother or sister.

24 d. Another adult who has actual care, control, and possession of the
25 patient and has written authorization to consent for the patient from
26 the parent, managing conservator, or guardian of the patient.

27 e. An educational institution in which the patient is enrolled that has
28 written authorization to consent for the patient from the parent,
29 managing conservator, or guardian of the patient.

30 f. Any other person with legal responsibility for the care of the patient.

31 (d) This section does not limit liability when it is established that the injuries or death
32 were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the
33 person rendering the services."

34 **SECTION 3.** This act becomes effective October 1, 2009, and applies to any health
35 care liability claims, as defined in G.S. 90-21.57, as enacted by Section 1 of this act, that are
36 filed on or after that date.