

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 809

Short Title: Ensure Health Care Access. (Public)

Sponsors: Representatives Miner, Nye, Kiser, Crawford (Primary Sponsors); G. Allen, Barbee, Barnhart, Blackwood, Bowie, Brubaker, Capps, Church, Clary, Cole, Culp, Daughtridge, Decker, Dockham, Eddins, Ellis, England, Fox, Frye, Gibson, Gillespie, Goforth, Gorman, Gulley, Hall, Harrell, Hill, Hilton, Holmes, Howard, C. Johnson, L. Johnson, Justice, Justus, LaRoque, Lewis, Lucas, McComas, McCombs, McGee, McHenry, McMahan, Mitchell, Owens, Pate, Preston, Rapp, Ray, Rayfield, Rhodes, Sauls, Setzer, Sexton, Sherrill, Starnes, Walend, Walker, Warner, Warren, West, K. Williams, C. Wilson, G. Wilson, Wood, and Yongue.

Referred to: Rules, Calendar, and Operations of the House.

March 31, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO ENSURE ACCESS TO HEALTH CARE BY ESTABLISHING A
3 REASONABLE TWO HUNDRED FIFTY THOUSAND DOLLAR LIMIT ON
4 NONECONOMIC DAMAGES, ACCOUNTING FOR CERTAIN COLLATERAL
5 SOURCE PAYMENTS, AUTHORIZING THE PERIODIC PAYMENT OF
6 FUTURE ECONOMIC DAMAGES, PROVIDING THE FORM OF VERDICTS
7 AND AWARDS OF DAMAGES, AND REGULATING ATTORNEY
8 CONTINGENCY FEES IN MEDICAL MALPRACTICE ACTIONS; AND TO
9 PROVIDE THAT CERTAIN CONFIDENTIALITY REQUIREMENTS APPLY TO
10 DOCUMENTS REGARDING NURSING HOME QUALITY OF CARE.

11 Whereas, the United States Department of Health and Human Services
12 recently labeled North Carolina a "State in Crisis" due to the dramatic increase in
13 professional liability insurance premiums in this State; and

14 Whereas, the American Medical Association has named North Carolina a
15 "State in Crisis" due to reports showing that the State's current medical malpractice
16 liability system is adversely affecting medical care; and

17 Whereas, North Carolina hospitals have experienced premium increases of
18 four hundred to five hundred percent (400-500%) for medical liability insurance over
19 the last three years, with the greatest increases impacting small, rural hospitals; and

1 Whereas, North Carolina nursing homes receiving liability coverage from one
2 of the State's largest insurers have experienced on average a one thousand five hundred
3 forty-two percent (1,542%) rate increase since 1998; and

4 Whereas, according to statistics from the National Association of Insurance
5 Commissioners, the medical-loss ratio for North Carolina medical malpractice insurers
6 has increased so that insurers are now paying one dollar and thirteen cents (\$1.13) in
7 claims for every dollar (\$1.00) in premiums received, a ratio that is sixteen percent
8 (16%) higher than the national average; and

9 Whereas, many medical malpractice insurers have stopped providing
10 insurance coverage in North Carolina; and

11 Whereas, the United States Department of Health and Human Services
12 reports that a leading cause of the national professional liability insurance crisis is the
13 recent explosion in multimillion dollar litigation awards and the resulting instability this
14 creates in the professional liability insurance market; and

15 Whereas, the United States Department of Health and Human Services cites
16 North Carolina as tied with Nevada for having the most "mega" malpractice awards in
17 recent years; and

18 Whereas, in 1975, California enacted comprehensive reforms to stabilize its
19 professional liability insurance market, including establishing a two hundred fifty
20 thousand dollar (\$250,000) limit on noneconomic damages, accounting for collateral
21 source payments, regulating attorney contingency fees, and providing for periodic
22 payments of future damages; and

23 Whereas, since the enactment of these comprehensive reforms in California,
24 the national average increase in professional liability insurance premiums has been three
25 hundred percent (300%) greater than the premium increases experienced in California,
26 allowing California patients to avoid the health care access problems experienced by
27 neighboring states; and

28 Whereas, the United States Department of Health and Human Services
29 reports that states without limits on noneconomic damages have experienced much
30 larger average increases in professional liability insurance premiums as compared to
31 states with such limits and estimates that limiting excessive damages could significantly
32 reduce overall health care costs; Now, therefore,
33 The General Assembly of North Carolina enacts:

34 **SECTION 1.** Article 1B of Chapter 90 of the General Statutes is amended
35 by adding the following new sections to read:

36 "**§ 90-21.18. Limitation on noneconomic damages in medical malpractice actions.**

37 (a) As used in this section and G.S. 90-21.18C, 'noneconomic damages' includes
38 all damages to compensate mental anguish; emotional distress; emotional pain and
39 suffering; loss of consortium; loss of society, companionship, comfort, guidance, kindly
40 offices, or advice; pain and suffering; inconvenience; disfigurement; physical
41 impairment; and any other nonpecuniary damages.

42 (b) In any medical malpractice action, the plaintiff may be entitled to recover
43 noneconomic damages. The total amount of all noneconomic damages shall not exceed
44 two hundred fifty thousand dollars (\$250,000) per plaintiff.

1 (c) Any award of damages in a medical malpractice action shall be stated in
2 accordance with G.S. 90-21.18C. If a jury is determining the facts, the court shall not
3 instruct the jury with respect to the limit on noneconomic damages under subsection (b)
4 of this section, and neither the attorney for any party nor a witness shall inform the jury
5 or potential members of the jury panel of that limit.

6 **§ 90-21.18A. Accounting for certain collateral source payments in medical**
7 **malpractice actions.**

8 (a) As used in this section, 'collateral source payments' means any current or
9 future payments or benefits paid to or for the benefit of the plaintiff or that are otherwise
10 made available to the plaintiff, by a federal, State, or local government agency for
11 medical care, custodian care, education, therapy, disability, loss of income, or other
12 similar benefits for expenses or losses alleged in the medical malpractice action.
13 'Collateral source payments' does not include life or health insurance benefits, including
14 health insurance benefits provided to a public employee, or any other private benefits
15 paid as a result of a contract entered into and paid for, by, or on behalf of, the plaintiff.

16 (b) In any medical malpractice action, the court shall allow into evidence, if
17 requested by a defendant, collateral source payments paid to or for the benefit of the
18 plaintiff, or that are otherwise made available to the plaintiff, related to the losses or
19 damages alleged in the medical malpractice action.

20 **§ 90-21.18B. Periodic payment of future economic damages in medical**
21 **malpractice actions.**

22 (a) As used in this section and G.S. 90-21.18C:

23 (1) 'Future economic damages' includes all economic damages for future
24 medical treatment, care or custody, loss of future earnings, loss of
25 bodily function, and any other pecuniary damages of the plaintiff
26 following the date of the verdict or award.

27 (2) 'Periodic payments' means the payment of money or delivery of other
28 property to the plaintiff at regular intervals.

29 (b) Upon the award of damages in any medical malpractice action, the presiding
30 judge shall, at the request of either party, enter a judgment ordering that money damages
31 or its equivalent for future economic damages of the plaintiff be paid in whole or in part
32 by periodic payments rather than by a lump-sum payment when the award exceeds one
33 hundred thousand dollars (\$100,000) in future economic damages. In entering a
34 judgment ordering the payment of future economic damages by periodic payments, the
35 court shall make a specific finding of fact as to the dollar amount of periodic payments
36 that will compensate the plaintiff for such future economic damages. As a condition to
37 authorizing periodic payments of future economic damages, the court shall, in its order
38 of judgment, require that such payments be made through the establishment of a trust
39 fund or the purchase of an annuity for the life of the plaintiff or during the continuance
40 of the compensable injury or disability of the plaintiff. The establishment of a trust fund
41 or the purchase of an annuity, as approved by the court, shall satisfy the defendant's
42 judgment for future economic damages.

43 (c) The judgment ordering the payment of future economic damages by periodic
44 payments shall specify the recipient of the payments, the dollar amount of the payments,

1 the interval between payments, and the number of payments or the period of time over
2 which payment shall be made. Such payments shall only be subject to modification by
3 the court in the event of the death of the plaintiff as provided in subsection (d) of this
4 section.

5 (d) In any judgment that orders future economic damages payable in periodic
6 payments, liability for payment of future economic damages not yet due shall terminate
7 upon the death of the plaintiff; however, the court that rendered the original judgment
8 may modify the judgment to provide that damages awarded for loss of future earnings
9 shall not be reduced or payments terminated by reason of the death of the plaintiff, but
10 shall be paid to persons to whom the plaintiff owed a duty of support, as provided by
11 law, immediately prior to the plaintiff's death.

12 (e) In the event the court finds that the defendant has exhibited a continuing
13 pattern of failing to make the payment specified in subsection (b) of this section, the
14 court shall find the defendant in contempt of court and, in addition to the required
15 periodic payments, shall order the defendant to pay the plaintiff all damages caused by
16 the failure to make such periodic payments, including court costs and attorneys' fees.

17 **"§ 90-21.18C. Verdicts and awards of damages in medical malpractice actions;**
18 **form.**

19 In any medical malpractice action, any verdict or award of damages, if supported by
20 the evidence, shall indicate specifically what amount is awarded for each of all of the
21 following:

- 22 (1) Noneconomic damages.
- 23 (2) Present economic damages.
- 24 (3) Future economic damages.

25 If applicable, the court shall instruct the jury on the definition of noneconomic
26 damages under G.S. 90-21.18 and the definition of future economic damages under G.S.
27 90-21.18B. If applicable, the court shall instruct the jury that present economic damages
28 are those damages for medical treatment, care or custody, loss of future earnings, loss of
29 bodily function, and any other pecuniary damages of the plaintiff up to the date of the
30 verdict or award.

31 **"§ 90-21.18D. Regulation of contingency fees in medical malpractice actions.**

32 (a) As used in this section, 'recovered' means the net sum recovered after
33 deducting any disbursements or costs incurred in connection with the litigation,
34 arbitration, or settlement of the claim. The sum recovered shall include any punitive
35 damages awarded under Chapter 1D of the General Statutes.

36 (b) No attorney shall contract for or collect a contingency fee for representing
37 any person seeking damages in connection with a medical malpractice action in excess
38 of the following limits:

- 39 (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000)
40 recovered.
- 41 (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand
42 dollars (\$50,000) recovered.
- 43 (3) Twenty-five percent (25%) of the next five hundred thousand dollars
44 (\$500,000) recovered.

1 (4) Fifteen percent (15%) of any amount for which the recovery exceeds
2 six hundred thousand dollars (\$600,000).

3 (c) The limits under subsection (b) of this section apply regardless of whether
4 recovery is by settlement, arbitration, or judgment, or whether the person for whom the
5 recovery is made is a responsible adult or a person who is under a disability as provided
6 in G.S. 1-17.

7 (d) If periodic payments are awarded to the plaintiff pursuant to G.S. 90-21.18B,
8 the court shall place a total value on these payments based upon the projected life
9 expectancy of the plaintiff and use this amount in computing the total award from which
10 attorneys' fees are calculated under this section."

11 **SECTION 2.** G.S. 131E-101 is amended by adding a new subdivision to
12 read:

13 "(8) 'Quality assurance committee' means a committee, agency, or
14 department of a State or local professional organization, of a medical
15 staff of a licensed hospital, of nurses or aides on the staff of a nursing
16 home, of physicians having privileges within the nursing home, or of a
17 peer review corporation or organization that is formed for the purpose
18 of evaluating the quality, cost of, or necessity for health care services
19 under applicable federal and State statutes, regulations, and rules."

20 **SECTION 3.** G.S. 131E-105 is amended by adding two new subsections to
21 read:

22 "(d) The results of any inspection of a nursing home that is conducted in
23 accordance with this section and rules adopted by the Commission, including any
24 statement of deficiencies and all findings and deficiencies cited in the statement on the
25 basis of the inspection, and all plans of correction responding to a statement of
26 deficiencies, shall be used solely to determine the nursing home's compliance with this
27 Article. The results of an inspection, the statement of deficiencies, the findings and
28 deficiencies cited in that statement, and all plans of correction responding to that
29 statement shall not be used in any court or in any action or proceeding that is pending in
30 any court and are not admissible in evidence in any action or proceeding.

31 (e) For purposes of this section, 'inspection' means a standard survey, an
32 extended survey, a partial extended survey, a post-survey revisit, an initial certification
33 survey as defined by the United States Department of Health and Human Services, and
34 any investigation of a complaint under G.S. 131E-124."

35 **SECTION 4.** G.S. 131E-107 reads as rewritten:

36 "**§ 131E-107. ~~Medical-Quality assurance, medical, or peer review committees.~~**

37 (a) A member of a duly appointed ~~medical-quality assurance, medical, or peer~~
38 review committee shall not be subject to liability for damages in any civil action on
39 account of any act, statement or proceeding undertaken, made, or performed within the
40 scope of the functions of the committee, if the committee member acts without malice
41 or fraud, and if such peer review committee is approved and operates in accordance
42 with G.S. 131E-108.

43 (b) The proceedings of a quality assurance, medical, or peer review committee,
44 the records and materials it produces, and the materials it considers shall be confidential

1 wherever located, shall not be considered 'public records' within the meaning of G.S.
2 132-1, ' "Public records" defined,' and shall not be subject to discovery or introduction
3 into evidence in any civil action against a nursing home or a provider of professional
4 health services that results from matters that are the subject of evaluation and review by
5 the committee. No person who was in attendance at a meeting of the committee shall be
6 required to testify in any civil action as to any evidence or other matters produced or
7 presented during the proceedings of the committee or as to any findings,
8 recommendations, evaluations, opinions, or other actions of the committee or its
9 members."

10 **SECTION 5.** G.S. 131E-124 is amended by adding two new subsections to
11 read:

12 "(e) The results of any inspection of a nursing home that is conducted in
13 accordance with this section and rules adopted by the Commission, including any
14 statement of deficiencies and all findings and deficiencies cited in the statement on the
15 basis of the inspection, and all plans of correction responding to a statement of
16 deficiencies shall be used solely to determine the nursing home's compliance with this
17 Article. The results of an inspection, the statement of deficiencies, the findings and
18 deficiencies cited in that statement, and all plans of correction responding to that
19 statement shall not be used in any court or in any action or proceeding that is pending in
20 any court and are not admissible in evidence in any action or proceeding.

21 (f) For purposes of this section, 'inspection' has the same meaning as defined in
22 G.S. 131E-105."

23 **SECTION 6.** G.S. 90-21.11 reads as rewritten:

24 **"§ 90-21.11. Definitions.**

25 As used in this Article, the term 'health care provider' means without limitation any
26 person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed,
27 or is otherwise registered or certified to engage in the practice of or otherwise performs
28 duties associated with any of the following: medicine, surgery, dentistry, pharmacy,
29 optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing,
30 physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering
31 assistance to a physician, dental hygiene, psychiatry, psychology; or a ~~hospital or~~
32 ahospital, nursing home, or adult care home; or any other person who is legally
33 responsible for the negligence of such person, ~~hospital or~~ hospital, nursing home, or
34 adult care home; or any other person acting at the direction or under the supervision of
35 any of the foregoing persons, ~~hospital, or~~ nursing home, or adult care home.

36 As used in this Article, the term 'medical malpractice action' means a civil action for
37 damages for personal injury or death arising out of the furnishing or failure to furnish
38 professional services in the performance of medical, dental, or other health care by a
39 health care provider."

40 **SECTION 7.** The provisions of this act are severable. If any portion of this
41 act is declared unconstitutional or unenforceable or if the application of a portion of this
42 act to any person or circumstances is held invalid, then the remaining portions of this act
43 shall remain valid and enforceable.

1 **SECTION 8.** This act is effective when it becomes law, and G.S. 90-21.18,
2 90-21.18A, 90-21.18B, 90-21.18C, and 90-21.18D, as enacted by Section 1 of this act,
3 apply to causes of actions arising on or after that date and to contingency fee
4 agreements entered into on or after that date.