

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE DRH30146-LD-47A (03/20)**

Short Title:   Ensure Health Care Access. (Public)

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Sponsors:   Representatives Miner, Nye, Kiser, and Crawford (Primary Sponsors).

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Referred to:

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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

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

23       Whereas, according to statistics from the National Association of Insurance  
24 Commissioners, the medical-loss ratio for North Carolina medical malpractice insurers  
25 has increased so that insurers are now paying one dollar and thirteen cents (\$1.13) in  
26 claims for every dollar (\$1.00) in premiums received, a ratio that is sixteen percent  
27 (16%) higher than the national average; and

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

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

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

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

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

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

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

28          **"§ 90-21.18. Limitation on noneconomic damages in medical malpractice actions.**

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

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

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

42          **"§ 90-21.18A. Accounting for certain collateral source payments in medical**  
43 **malpractice actions.**

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

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

13 **"§ 90-21.18B. Periodic payment of future economic damages in medical**  
14 **malpractice actions.**

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

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

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

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

36       (c) The judgment ordering the payment of future economic damages by periodic  
37 payments shall specify the recipient of the payments, the dollar amount of the payments,  
38 the interval between payments, and the number of payments or the period of time over  
39 which payment shall be made. Such payments shall only be subject to modification by  
40 the court in the event of the death of the plaintiff as provided in subsection (d) of this  
41 section.

42       (d) In any judgment that orders future economic damages payable in periodic  
43 payments, liability for payment of future economic damages not yet due shall terminate  
44 upon the death of the plaintiff; however, the court that rendered the original judgment

1 may modify the judgment to provide that damages awarded for loss of future earnings  
2 shall not be reduced or payments terminated by reason of the death of the plaintiff, but  
3 shall be paid to persons to whom the plaintiff owed a duty of support, as provided by  
4 law, immediately prior to the plaintiff's death.

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

10 **"§ 90-21.18C. Verdicts and awards of damages in medical malpractice actions;**  
11 **form.**

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

- 15 (1) Noneconomic damages.
- 16 (2) Present economic damages.
- 17 (3) Future economic damages.

18 If applicable, the court shall instruct the jury on the definition of noneconomic  
19 damages under G.S. 90-21.18 and the definition of future economic damages under G.S.  
20 90-21.18B. If applicable, the court shall instruct the jury that present economic damages  
21 are those damages for medical treatment, care or custody, loss of future earnings, loss of  
22 bodily function, and any other pecuniary damages of the plaintiff up to the date of the  
23 verdict or award.

24 **"§ 90-21.18D. Regulation of contingency fees in medical malpractice actions.**

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

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

- 32 (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000)  
33 recovered.
- 34 (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand  
35 dollars (\$50,000) recovered.
- 36 (3) Twenty-five percent (25%) of the next five hundred thousand dollars  
37 (\$500,000) recovered.
- 38 (4) Fifteen percent (15%) of any amount for which the recovery exceeds  
39 six hundred thousand dollars (\$600,000).

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

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

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

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

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

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

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

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

30 "**§ 131E-107. Medical-Quality assurance, medical, or peer review committees.**

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

37 (b) The proceedings of a quality assurance, medical, or peer review committee,  
38 the records and materials it produces, and the materials it considers shall be confidential  
39 wherever located, shall not be considered 'public records' within the meaning of G.S.  
40 132-1, ' "Public records" defined,' and shall not be subject to discovery or introduction  
41 into evidence in any civil action against a nursing home or a provider of professional  
42 health services that results from matters that are the subject of evaluation and review by  
43 the committee. No person who was in attendance at a meeting of the committee shall be  
44 required to testify in any civil action as to any evidence or other matters produced or

1 presented during the proceedings of the committee or as to any findings,  
2 recommendations, evaluations, opinions, or other actions of the committee or its  
3 members."

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

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

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

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

18 **"§ 90-21.11. Definitions.**

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

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

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

38 **SECTION 8.** This act is effective when it becomes law, and G.S. 90-21.18,  
39 90-21.18A, 90-21.18B, 90-21.18C, and 90-21.18D, as enacted by Section 1 of this act,  
40 apply to causes of actions arising on or after that date and to contingency fee  
41 agreements entered into on or after that date.