

2016 Regular Session

SENATE BILL NO. 78

BY SENATOR GATTI

MALPRACTICE. Increases medical malpractice cap for child brain injuries. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:1231.2(B)(1) and 1231.3(D), the introductory paragraph of
3 (F), and (F)(2), (3), (6) and (7), and to enact R.S. 40:1231.3(K), relative to medical
4 malpractice; to provide relative to limitations of recovery for certain injuries; to
5 provide relative to payments for medical care and related benefits; to provide certain
6 terms, conditions, exceptions, requirements, definitions, and procedures; to provide
7 relative to brain injuries to a child; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1231.2(B)(1) and 1231.3(D), the introductory paragraph of (F),
10 and (F)(2), (3), (6) and (7) are hereby amended and reenacted, and R.S. 40:1231.3(K) is
11 hereby enacted to read as follows:

12 §1231.2. Limitation of recovery

13 * * *

14 B.(1) ~~The~~ **Except as provided in Subparagraph (a), the** total amount
15 recoverable for all malpractice claims for injuries to or death of a patient, exclusive
16 of future medical care and related benefits as provided in R.S. 40:1231.3, shall not
17 exceed five hundred thousand dollars plus interest and cost.

1 (a) The total amount recoverable for all malpractice claims for brain
2 injuries to a child, exclusive of future medical care and related benefits as
3 provided in R.S. 40:1231.3, shall not exceed five million dollars plus interest and
4 costs. However, this Subparagraph shall apply only when either (1) a medical
5 review panel renders a unanimous opinion in favor of the claimant as provided
6 in the expert opinions stated in R.S. 40:1231.8(G)(1); or (2) liability is
7 determined unanimously by a jury. For the purposes of this Subparagraph,
8 "brain injury" means any mild, severe, or traumatic injury to the brain, and
9 "child" means a fetus in utero or any natural person under the age of eighteen
10 years.

* * *

§1231.3. Future medical care and related benefits

* * *

14 D. Payments for medical care and related benefits shall be paid by the
15 patient's compensation fund without regard to the ~~five hundred thousand dollar~~
16 limitation imposed in R.S. 40:1231.2.

* * *

18 ~~F. Notwithstanding any other provision of the law to the contrary~~ **Except as**
19 **provided in Subsection K of this Section and notwithstanding any other**
20 **provision of law to the contrary,** no judgment shall be rendered and no settlement
21 or compromise shall be entered into for the injury or death of any patient in any
22 action or claim for an alleged act of malpractice in excess of five hundred thousand
23 dollars plus interest and costs, exclusive of future medical care and related benefits
24 valued in excess of such five hundred thousand dollars. In claims which may include
25 future medical care and related benefits, the following procedures shall apply:

* * *

27 (2) If the total amount of the value of the judgment or settlement or
28 compromise is for ~~five hundred thousand dollars~~ **the maximum amount allowed**
29 **under this Section,** plus interest and costs, exclusive of the value of future medical

1 care and related benefits, all future medical care and related benefits shall be paid in
2 accordance herewith.

3 (3) If the total amount of recovery, excluding interest and costs but including
4 the amount of future medical care and related benefits does not exceed ~~five hundred~~
5 ~~thousand dollars~~ **the maximum amount allowed under this Section**, judgment may
6 be rendered for the total amount and paid by the state as provided by Subsection I of
7 this Section.

8 * * *

9 (6) If the total amount of recovery awarded against the state, excluding
10 interest and costs but including the amount of future medical care and related
11 benefits, exceeds ~~five hundred thousand dollars~~ **the maximum amount allowed**
12 **under this Section**, the claimant may make a claim to the office of risk management
13 for all future medical care and related benefits.

14 (7) Payments for medical care and related benefits shall be paid by the office
15 of risk management pursuant to Subsection L of this Section, without regard to the
16 ~~five hundred thousand~~ **maximum** dollar limitation imposed in this ~~Subsection~~
17 **Section**.

18 * * *

19 **(K) The total amount recoverable for all malpractice claims for brain**
20 **injuries to a child, exclusive of future medical care and related benefits, shall**
21 **not exceed five million dollars plus interest and costs. However, this Subsection**
22 **shall apply only when either (1) a medical review panel renders a unanimous**
23 **opinion in favor of the claimant as provided in the expert opinions stated in R.S.**
24 **40:1231.8(G)(1); or (2) liability is determined unanimously by a jury. For the**
25 **purposes of this Subsection, "brain injury" means any mild, severe, or traumatic**
26 **injury to the brain and "child" means a fetus in utero or any natural person**
27 **under the age of eighteen years.**

28 Section 2. This Act shall become effective upon signature by the governor or, if not,
29 signed by the governor, as provided by Article III, Section 18 of the Constitution of

