

103^D CONGRESS
2^D SESSION

H. R. 5253

To establish standards relating to the calculation and payment of damages in medical malpractice liability claims and actions, to restrict attorneys' contingency fees under such claims and actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

Mr. BALLENGER introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To establish standards relating to the calculation and payment of damages in medical malpractice liability claims and actions, to restrict attorneys' contingency fees under such claims and actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Medical Malpractice
5 Reform Act of 1994".

1 **SEC. 2. CALCULATION AND PAYMENT OF DAMAGES IN MED-**
2 **ICAL MALPRACTICE CLAIMS AND ACTIONS.**

3 (a) LIMITATION ON NONECONOMIC DAMAGES.—The
4 total amount of noneconomic damages that may be award-
5 ed to a claimant and the members of the claimant's family
6 for losses resulting from the injury which is the subject
7 of a medical malpractice liability claim or action may not
8 exceed \$250,000, regardless of the number of parties
9 against whom the claim or action is brought or the number
10 of actions brought with respect to the injury.

11 (b) MANDATORY OFFSETS FOR DAMAGES PAID BY
12 A COLLATERAL SOURCE.—

13 (1) IN GENERAL.—With respect to a medical
14 malpractice liability claim or action, the total
15 amount of damages received by an individual under
16 such claim or action shall be reduced, in accordance
17 with paragraph (2), by any other payment that has
18 been, or will be, made to an individual to com-
19 pensate such individual for the injury that was the
20 subject of such claim or action.

21 (2) AMOUNT OF REDUCTION.—The amount by
22 which an award of damages to an individual for an
23 injury shall be reduced under paragraph (1) shall
24 be—

25 (A) the total amount of any payments
26 (other than such award) that have been made

1 or that will be made to such individual to pay
2 costs of or compensate such individual for the
3 injury that was the subject of the claim or ac-
4 tion; minus

5 (B) the amount paid by such individual (or
6 by the spouse, parent, or legal guardian of such
7 individual) to secure the payments described in
8 subparagraph (A).

9 (c) PERIODIC PAYMENTS FOR FUTURE LOSSES.—

10 (1) GENERAL RULE.—In any medical mal-
11 practice liability claim or action in which future eco-
12 nomic damages exceed \$100,000, a defendant may
13 not be required to pay such damages in a single,
14 lump-sum payment, but shall be permitted to make
15 such payments periodically based on when the dam-
16 ages are found likely to occur, as such payments are
17 determined by the court.

18 (2) WAIVER.—A court may waive the applica-
19 tion of paragraph (1) with respect to a defendant if
20 the court determines that it is not in the best inter-
21 ests of the plaintiff to receive payments for damages
22 on such a periodic basis.

1 **SEC. 3. LIMITATION ON ATTORNEYS' CONTINGENCY FEES**
2 **AND OTHER COSTS UNDER MEDICAL MAL-**
3 **PRACTICE CLAIMS.**

4 (a) IN GENERAL.—An attorney who represents, on
5 a contingency fee basis, a claimant in a medical mal-
6 practice liability claim may not charge, demand, receive,
7 or collect for services rendered in connection with such
8 claim in excess of the following amount recovered by judg-
9 ment or settlement under such claim:

10 (1) 25 percent of the first \$150,000 (or portion
11 thereof) recovered, plus

12 (2) 10 percent of any amount in excess of
13 \$150,000 recovered.

14 (b) CALCULATION OF PERIODIC PAYMENTS.—In the
15 event that a judgment or settlement includes periodic or
16 future payments of damages, the amount recovered for
17 purposes of computing the limitation on the contingency
18 fee under subsection (a) shall be based on the cost of the
19 annuity or trust established to make the payments. In any
20 case in which an annuity or trust is not established to
21 make such payments, such amount shall be based on the
22 present value of the payments.

23 **SEC. 4. APPLICABILITY; EFFECT ON STATE LAW.**

24 (a) APPLICABILITY.—This Act shall apply with re-
25 spect to any medical malpractice liability claim and to any
26 medical malpractice liability action brought in any State

1 or Federal court, except that this subtitle shall not apply
2 to a claim or action for damages arising from a vaccine-
3 related injury or death to the extent that title XXI of the
4 Public Health Service Act applies to the claim or action.

5 (b) PREEMPTION.—The provisions of this Act shall
6 preempt any State law to the extent such law is inconsis-
7 tent with such provisions, except that such provisions shall
8 not preempt any State law that places greater limitations
9 on the amount of damages that may be awarded or the
10 amount of attorneys' fees that may be collected with re-
11 spect to medical malpractice liability claims.

12 (c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
13 OF LAW OR VENUE.—Nothing in subsection (b) shall be
14 construed to—

15 (1) waive or affect any defense of sovereign im-
16 munity asserted by any State under any provision of
17 law;

18 (2) waive or affect any defense of sovereign im-
19 munity asserted by the United States;

20 (3) affect the applicability of any provision of
21 the Foreign Sovereign Immunities Act of 1976;

22 (4) preempt State choice-of-law rules with re-
23 spect to claims brought by a foreign nation or a citi-
24 zen of a foreign nation; or

1 (5) affect the right of any court to transfer
2 venue or to apply the law of a foreign nation or to
3 dismiss a claim of a foreign nation or of a citizen
4 of a foreign nation on the ground of inconvenient
5 forum.

6 (d) FEDERAL COURT JURISDICTION NOT ESTAB-
7 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in
8 this Act shall be construed to establish any jurisdiction
9 in the district courts of the United States over medical
10 malpractice liability actions on the basis of section 1331
11 or 1337 of title 28, United States Code.

12 **SEC. 5. DEFINITIONS.**

13 As used in this Act:

14 (1) CLAIMANT.—The term “claimant” means
15 any person who alleges a medical malpractice liabil-
16 ity claim, and any person on whose behalf such a
17 claim is alleged, including the decedent in the case
18 of an action brought through or on behalf of an es-
19 tate.

20 (2) ECONOMIC DAMAGES.—The term “economic
21 damages” means damages paid to compensate an in-
22 dividual for hospital and other medical expenses, lost
23 wages, lost employment, and other pecuniary losses.

24 (3) HEALTH CARE PROFESSIONAL.—The term
25 “health care professional” means any individual who

1 provides health care services in a State and who is
2 required by the laws or regulations of the State to
3 be licensed or certified by the State to provide such
4 services in the State.

5 (4) HEALTH CARE PROVIDER.—The term
6 “health care provider” means any organization or
7 institution that is engaged in the delivery of health
8 care services in a State and that is required by the
9 laws or regulations of the State to be licensed or cer-
10 tified by the State to engage in the delivery of such
11 services in the State.

12 (5) INJURY.—The term “injury” means any ill-
13 ness, disease, or other harm that is the subject of
14 a medical malpractice liability action or a medical
15 malpractice liability claim.

16 (6) MEDICAL MALPRACTICE LIABILITY AC-
17 TION.—The term “medical malpractice liability ac-
18 tion” means a civil action brought in a State or Fed-
19 eral court against a health care provider or health
20 care professional in which the plaintiff alleges a
21 medical malpractice liability claim, but does not in-
22 clude any action in which the plaintiff’s sole allega-
23 tion is an allegation of an intentional tort.

24 (7) MEDICAL MALPRACTICE LIABILITY
25 CLAIM.—The term “medical malpractice liability

1 claim” means a claim in which the claimant alleges
2 that injury was caused by the provision of (or the
3 failure to provide) health care services or the use of
4 a medical product.

5 (8) MEDICAL PRODUCT.—

6 (A) IN GENERAL.—The term “medical
7 product” means, with respect to the allegation
8 of a claimant, a drug (as defined in section
9 201(g)(1) of the Federal Food, Drug, and Cos-
10 metic Act (21 U.S.C. 321(g)(1)) or a medical
11 device (as defined in section 201(h) of the Fed-
12 eral Food, Drug, and Cosmetic Act (21 U.S.C.
13 321(h)) if—

14 (i) such drug or device was subject to
15 premarket approval under section 505,
16 507, or 515 of the Federal Food, Drug,
17 and Cosmetic Act (21 U.S.C. 355, 357, or
18 360e) or section 351 of the Public Health
19 Service Act (42 U.S.C. 262) with respect
20 to the safety of the formulation or per-
21 formance of the aspect of such drug or de-
22 vice which is the subject of the claimant’s
23 allegation or the adequacy of the packag-
24 ing or labeling of such drug or device, and

1 such drug or device is approved by the
2 Food and Drug Administration; or

3 (ii) the drug or device is generally rec-
4 ognized as safe and effective under regula-
5 tions issued by the Secretary of Health
6 and Human Services under section 201(p)
7 of the Federal Food, Drug, and Cosmetic
8 Act (21 U.S.C. 321(p)).

9 (B) EXCEPTION IN CASE OF MISREPRE-
10 SENTATION OR FRAUD.—Notwithstanding sub-
11 paragraph (A), the term “medical product”
12 shall not include any product described in such
13 subparagraph if the claimant shows that the
14 product is approved by the Food and Drug Ad-
15 ministration for marketing as a result of with-
16 held information, misrepresentation, or an ille-
17 gal payment by manufacturer of the product.

18 (9) NONECONOMIC DAMAGES.—The term “non-
19 economic damages” means damages paid to com-
20 pensate an individual for physical and emotional
21 pain, suffering, inconvenience, physical impairment,
22 mental anguish, disfigurement, loss of enjoyment of
23 life, loss of consortium, and other nonpecuniary
24 losses, but does not include punitive damages.

1 (10) PUNITIVE DAMAGES.—The term “punitive
2 damages” means compensation, in addition to com-
3 pensation for actual harm suffered, that is awarded
4 for the purpose of punishing a person for conduct
5 deemed to be malicious, wanton, willful, or exces-
6 sively reckless.

7 (11) STATE.—The term “State” means each of
8 the several States, the District of Columbia, the
9 Commonwealth of Puerto Rico, the Virgin Islands,
10 Guam, and American Samoa.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act shall apply with respect to claims accruing
13 or actions brought on or after the date of the enactment
14 of this Act.

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