

## HOUSE BILL NO. 458

INTRODUCED BY J. ETCHART

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PHYSICIAN ASSISTANTS; REVISING THE NONECONOMIC DAMAGE LIMITATION APPLICABLE IN MEDICAL MALPRACTICE CASES; INCLUDING "PHYSICIAN ASSISTANT" IN THE DEFINITION OF "HEALTH CARE PROVIDER"; PROVIDING FOR ANNUAL INCREASES; PROVIDING APPLICABILITY TO FUTURE AND EXISTING MALPRACTICE CLAIMS; AMENDING SECTION 25-9-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 25-9-411, MCA, is amended to read:

**"25-9-411. (Temporary) Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages for noneconomic loss may not exceed ~~\$250,000~~ the applicable noneconomic damage limit as provided in subsection (1)(c). All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed ~~\$250,000~~ the applicable noneconomic damage limit as provided in subsection (1)(c). This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were by one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(c) The noneconomic damage limit is \$300,000. The noneconomic damage limit increases as follows:

(i) \$350,000, effective January 1, 2026;

(ii) \$400,000, effective January 1, 2027;

1           (iii) \$450,000 effective January 1, 2028;

2           (iv) \$500,000 effective January 1, 2029; and

3           (v) effective January 1, 2030, and on January 1 of each subsequent year, the limit must be  
4 increased by 2% of the prior year's limit. The court administrator's office shall publish the adjusted limit within  
5 14 days of January 1 of each year. Regardless of when the court administrator's office publishes the adjusted  
6 limit, the adjusted limit must go into effect on January 1 of each year.

7           (d) The limit on past and future noneconomic damages in subsection (1)(a) applicable to a  
8 claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant  
9 first files a claim with the Montana medical legal panel. If the claim is not subject to the Montana Medical Legal  
10 Panel Act provided for in Title 27, chapter 6, the limit on past and future noneconomic damages pursuant to  
11 subsection (1)(a) that is applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c),  
12 that is in effect on the date the claimant first files suit in Montana district court or any other court with jurisdiction  
13 over the case.

14           (2)     (a) For the purposes of the limitation on awards contained in subsection (1), a claimant has the  
15 burden of proving separate injuries, each arising from a different act or series of acts. An award or combination  
16 of awards in excess of \$250,000 the limit applicable to the claimant's claim must be reduced to \$250,000 the  
17 limit applicable as provided in subsection (1), after which the court shall make other reductions that are required  
18 by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future  
19 noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit applicable limit, past  
20 noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000 the applicable  
21 limit, a claimant's share of the \$250,000 applicable limit must be the same percentage as the claimant's share  
22 of the combined awards before reduction.

23           (b)     For each claimant, further reductions must be made in the following order:

24           (i)     first, reductions under 27-1-702;

25           (ii)    second, reductions under 27-1-703; and

26           (iii)   third, setoffs and credits to which a defendant is entitled.

27           (3)     An award of future damages for noneconomic loss may not be discounted to present value.

28           (4)     The \$250,000 applicable limit provided for in subsection (1) may not be disclosed to a jury.

1 (5) As used in this section, the following definitions apply:

2 (a) "Claimant" includes but is not limited to:

3 (i) a person suffering bodily injury;

4 (ii) a person making a claim as a result of bodily injury to or the death of another;

5 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

6 (iv) the representative of the estate of a person who suffered bodily injury or death; or

7 (v) a person bringing a wrongful death action.

8 (b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist,  
9 chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50,  
10 chapter 5.

11 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care  
12 provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful  
13 death.

14 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

15 (i) physical and mental pain or suffering;

16 (ii) emotional distress;

17 (iii) inconvenience;

18 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

19 (v) loss of society, companionship, and consortium, other than household services;

20 (vi) injury to reputation; and

21 (vii) humiliation.

22 (e) "Patient" means a person who receives services from a health care provider. (Terminates on  
23 occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

24 **25-9-411. (Effective on occurrence of contingency) Medical malpractice noneconomic**

25 **damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based  
26 on a single incident of malpractice, an award for past and future damages for noneconomic loss may not  
27 exceed ~~\$250,000~~ the applicable noneconomic damage limit as provided in subsection (1)(c). All claims for  
28 noneconomic loss deriving from injuries to a patient are subject to an award not to exceed ~~\$250,000~~ the

1 applicable noneconomic damage limit as provided in subsection (1)(c). This limitation applies whether:

2 (i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or  
3 deaths on which the action or actions are based; or

4 (ii) the act or series of acts were by one or more health care providers.

5 (b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards  
6 contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

7 (c) The noneconomic damage limit is \$300,000, effective on [the effective date of this act]. The  
8 noneconomic damage limit increases as follows:

9 (i) \$350,000, effective January 1, 2026;

10 (ii) \$400,000, effective January 1, 2027;

11 (iii) \$450,000 effective January 1, 2028;

12 (iv) \$500,000 effective January 1, 2029; and

13 (v) effective January 1, 2030, and on January 1 of each subsequent year, the limit must be  
14 increased by 2% of the prior year's limit. The court administrator's office shall publish the adjusted limit within  
15 14 days of January 1 of each year. Regardless of when the court administrator's office publishes the adjusted  
16 limit, the adjusted limit must go into effect on January 1 of each year.

17 (d) The limit on past and future noneconomic damages in subsection (1)(a) applicable to a  
18 claimant's claim is the limit, as adjusted pursuant to subsection (1)(c), that is in effect on the date the claimant  
19 first files a claim with the Montana medical legal panel. If the claim is not subject to the Montana Medical Legal  
20 Panel Act provided for in Title 27, chapter 6, the limit on past and future noneconomic damages pursuant to  
21 subsection (1)(a) that is applicable to a claimant's claim is the limit, as adjusted pursuant to subsection (1)(c),  
22 that is in effect on the date the claimant first files suit in Montana district court or any other court with jurisdiction  
23 over the case.

24 (2) (a) For the purposes of the limitation on awards contained in subsection (1), a claimant has the  
25 burden of proving separate injuries, each arising from a different act or series of acts. An award or combination  
26 of awards in excess of \$250,000 the limit applicable to the claimant's claim must be reduced to \$250,000 the  
27 limit as provided in subsection (1), after which the court shall make other reductions that are required by law. If  
28 a combination of awards for past and future noneconomic loss is reduced in the same action, future

1 noneconomic loss must be reduced first and, if necessary to reach the \$250,000 applicable limit, past  
2 noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000 the applicable  
3 limit, a claimant's share of the \$250,000 applicable limit must be the same percentage as the claimant's share  
4 of the combined awards before reduction.

5 (b) For each claimant, further reductions must be made in the following order:

6 (i) first, reductions under 27-1-702; and

7 (ii) second, setoffs and credits to which a defendant is entitled.

8 (3) An award of future damages for noneconomic loss may not be discounted to present value.

9 (4) The \$250,000 applicable limit provided for in subsection (1) may not be disclosed to a jury.

10 (5) As used in this section, the following definitions apply:

11 (a) "Claimant" includes but is not limited to:

12 (i) a person suffering bodily injury;

13 (ii) a person making a claim as a result of bodily injury to or the death of another;

14 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

15 (iv) the representative of the estate of a person who suffered bodily injury or death; or

16 (v) a person bringing a wrongful death action.

17 (b) "Health care provider" means a physician, physician assistant, dentist, podiatrist, optometrist,  
18 chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50,  
19 chapter 5.

20 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care  
21 provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful  
22 death.

23 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

24 (i) physical and mental pain or suffering;

25 (ii) emotional distress;

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27 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

28 (v) loss of society, companionship, and consortium, other than household services;

1 (vi) injury to reputation; and

2 (vii) humiliation.

3 (e) "Patient" means a person who receives services from a health care provider."

4

5 NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are  
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
7 the part remains in effect in all valid applications that are severable from the invalid applications.

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9 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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