

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "D" to H.P. 1842, L.D. 2513, Bill, "An Act to Establish the Rural Medical Access Program and the 5-year Medical Liability Demonstration Project and to Revise the Discovery Rule without Imposing Caps on Damages and the Rules Regarding Collateral Sources"

Amend the bill by inserting after section 4 the following:

Sec. 5. 24 MRSA c. 21, sub-c. X is enacted to read:

SUBCHAPTER X

LIMITS ON NONECONOMIC DAMAGES

§2991. Limits on noneconomic damages

1. Limitation. In an action for professional negligence as defined in section 2502, the noneconomic damages awarded to a prevailing party may not exceed \$250,000. If the trial of the action is to a jury, the jury may not be informed of the damage award limitation established in this subsection. If the jury awards total damages in excess of \$250,000, the court shall direct the jury to establish the portion of the total damages awarded that is noneconomic damages. If the portion that is noneconomic damages exceeds \$250,000, the court shall reduce the noneconomic damages awarded to that amount, unless a further reduction is warranted by exercise of the powers described in subsection 3.

The limit of \$250,000 on noneconomic damages is a single limit applicable to all causes of action, by one or more parties, arising out of the same occurrence or circumstances. The noneconomic damages limitation established by this subchapter does not apply to claims for punitive damages.

2. Definition. As used in this subchapter, unless the context otherwise indicates, "noneconomic damages" means subjective, nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental

anguish, emotional stress, loss of society and companionship,
loss of consortium, injury to reputation, humiliation, other
nonpecuniary damages and any other theory of damages such as fear
of loss, illness or injury.

3. Court's powers. Nothing in this section is intended to
eliminate the court's powers of additur and remittitur with
regard to all damages, except to the extent that the power of
additur is limited with regard to noneconomic damages beyond the
limitation established in subsection 1.

4. Adjustment of cap. Effective February 1st of every
year, beginning in the year 1992, the Superintendent of Insurance
shall automatically increase the cap on noneconomic damages by a
percentage amount equal to the percentage rise in the federal
Consumer Price Index for January 1st of that year over the level
of the index for January 1st of the previous year. The
superintendent shall report the adjustment and the actual change
in the index to the Legislature every February 1st.

For purposes of this subsection, "Consumer Price Index" means the
Consumer Price Index for Urban Wage Earners and Clerical Workers:
United States City Average, All items, 1967=100, as compiled by
the United States Department of Labor, Bureau of Labor Statistics
or, if the index is revised or superseded, the Consumer Price
Index is the index represented by the Bureau of Labor Statistics
as reflecting most accurately changes in the purchasing power of
the dollar by consumers.

5. Application. This section applies to all cases in which
notices of claim are filed after the effective date of this
section.'

Further amend the bill in section 5 by striking out all of
that part designated "~~§6305.~~" and inserting in its place the
following:

'§6305. Amount of assessment determined

1. Determination of assessment based on anticipated
savings. This subsection governs the determination and payment
of assessments.

A. Beginning September 1, 1991, the superintendent shall
determine the savings in professional liability insurance
claims and claim settlement costs to insurers anticipated in
each 12-month period as a result of imposition of a legal
limit on noneconomic damages, as established in Title 24,
section 2991, and reform of the collateral source rule.

2 B. The superintendent shall order a total assessment to be
3 collected each year beginning September 1, 1991, equal to
4 the lesser of 1/2 of the savings determined or \$1,000,000,
5 but not less than \$500,000.

6 C. The superintendent shall order each insurer to assess
7 its policyholders the percentage of the total assessment
8 ordered that the insurer's Maine premium volume for
9 professional liability insurance for physicians, surgeons,
10 osteopaths and hospital bears to the total Maine premium
11 volume of all insurers and self-insureds for that coverage.

12 D. Each insurer shall assess the surcharge against its
13 insureds as a percentage of premium unless the
14 superintendent prescribes a different basis by rule or order.

15 E. Every self-insured allopathic or osteopathic physician
16 and every self-insured hospital shall remit the assessment
17 required by this section to the principal writer of
18 physicians and surgeons malpractice insurance in this
19 State. Remittance by self-insured physicians or hospitals
20 may be made on their behalf by a self-insurer. The
21 superintendent shall prescribe by rule a method to calculate
22 and collect the assessment from self-insured physicians and
23 hospitals.

24 2. Final evaluation of savings in 1995. The final
25 evaluation of the savings in professional liability insurance
26 claims and claim settlement costs to insurers must be determined
27 by the superintendent in 1995. Insurers shall continue to assess
28 policyholders after 1995 based on the final determination, but
29 the total assessment may not be more than \$1,000,000 per year.'

30 Further amend the bill in section 5 in that part designated
31 "~~§6308.~~" by striking out all of subsection 1 and inserting in its
32 place the following:

33 '1. Available funds. The amount available for premium
34 assistance for policy years beginning on or after September 1,
35 1991, is the amount of the assessment determined under section
36 6305.'

37 Further amend the bill by renumbering the sections to read
38 consecutively.

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STATEMENT OF FACT

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This amendment establishes a cap of \$250,000 on noneconomic damages in medical malpractice liability actions and adds the savings from this cap to the formula for calculating assessments for physician premium assistance.

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The amendment also requires that the Rural Medical Access Fund be funded in an amount of at least \$500,000 but not more than \$1,000,000. The effective date of the fund is changed from July 1, 1990, to September 1, 1991.

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Filed by Rep. Richards of Hampden
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