

1 House BILL NO. 639
 2 INTRODUCED BY Bradley Sully-----
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE, IN ACTIONS
 5 IN DISTRICT COURT FOR PERSONAL INJURY OR DEATH, THE ENTRY OF
 6 JUDGMENTS THAT PROVIDE FOR THE PAYMENT OF FUTURE DAMAGES
 7 THROUGH PERIODIC PAYMENTS RATHER THAN LUMP-SUM PAYMENTS."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Definitions. Unless the context requires
 11 otherwise, the following definitions apply in this act:

12 (1) "Future damages" includes but is not limited to
 13 damages for future medical treatment, care, or custody, loss
 14 of future earnings, loss of bodily function, and future pain
 15 and suffering of the plaintiff.

16 (2) "Periodic payments" means the payment of money or
 17 delivery of other property to the plaintiff at regular
 18 intervals.

19 Section 2. Purpose. It is the intent of the
 20 legislature in adopting this act to require that district
 21 court judgments which provide for the payment of future
 22 damages also provide for periodic payments rather than
 23 lump-sum payments. It is the further intent of the
 24 legislature that such judgments provide compensation
 25 sufficient to meet the needs of an injured plaintiff and

1 those persons who are dependent on the plaintiff for
 2 whatever period is necessary, while eliminating the
 3 potential windfall from a lump-sum recovery when the
 4 plaintiff dies shortly after the judgment is paid and the
 5 balance of the judgment award is left to persons other than
 6 those dependent upon the plaintiff for support. It is also
 7 the intent of the legislature that all elements of the
 8 periodic payment program be specified with certainty in the
 9 judgment ordering such payments and that the judgment not be
 10 subject at some future time to modification that might alter
 11 the specifications of the original judgment.

12 Section 3. Actions for personal injury or death --
 13 form of judgment. (1) In any action in a district court for
 14 damages arising from bodily injury, sickness, disease, or
 15 death in which future damages are awarded, the court shall
 16 enter a judgment ordering that the award for future damages
 17 be paid in whole or in part by periodic payments rather than
 18 by a lump-sum payment. In such actions the jury or the
 19 court, if the trial is without a jury, shall make special
 20 findings as to the dollar value of periodic payments that
 21 will compensate the plaintiff for his future damages,
 22 including but not limited to a specific finding as to the
 23 dollar value of an award for loss of future earnings, if
 24 any.

25 (2) The judgment shall specify the recipients of the

1 periodic payments, the dollar value of the payments, the
 2 interval between payments, and the number of payments or the
 3 period of time over which the payments are to be made. The
 4 period of time may be measured by the occurrence of a
 5 contingency, such as the death of the plaintiff.

6 (3) The judgment may also provide that the recipients,
 7 dollar value, interval, and number of payments or period of
 8 time over which the payments are to be made are subject to
 9 modification or termination on the occurrence of a
 10 contingency specified in the judgment. Such a provision may
 11 not include termination upon the death of the plaintiff of
 12 that portion of the periodic payments attributable to an
 13 award for loss of future earnings. The dollar value of the
 14 modified periodic payments shall be specified in the
 15 judgment so that it is certain at the time judgment is
 16 entered.

17 Section 4. Exclusions. This act does not apply to any
 18 action for damages in which:

19 (1) the defendant fails, prior to trial, to make
 20 application for the periodic payment of future damages;

21 (2) the amount of future damages set forth in the
 22 judgment is less than \$5,000;

23 (3) the defendant, upon application of the plaintiff,
 24 fails to file with the court an undertaking, bond, or proof
 25 of purchase of an annuity or other insurance mechanism in

1 the amount of the future damages specified in the judgment,
 2 guaranteeing the prompt payment of the periodic payments
 3 pursuant to the judgment. The undertaking, bond, or
 4 insurance mechanism may be modified or terminated according
 5 to the terms of any modification or termination of the
 6 periodic payments that occurs pursuant to the judgment.

7 (4) the court, upon application of the plaintiff for
 8 good cause shown, orders that a lump-sum payment be made.

9 Section 5. Application. This act applies to claims for
 10 which a right of action has accrued and trial has not begun
 11 prior to [the effective date hereof].

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