

Handwritten signatures: Angus, Mills, Anderson, Curtiss, Emerson, Hargrove, Brad, Molnar
 DENNY House BILL NO. 309

INTRODUCED BY *James Benedict, Barnett, J. Russ, ORR*

BY REQUEST OF THE GOVERNOR'S OFFICE *Ron, Bittling*

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE

LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES; AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Handwritten signatures: Ketchum, Storall, Knox, Foster, Hansen, ARLESTAD, Holden

NEW SECTION. Section 1. 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, the combined awards for past and future damages for noneconomic loss may not exceed \$250,000, whether:

- (i) for one or more claimants in the same proceeding or separate proceedings;
- (ii) 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; and
- (iii) the act or series of acts were by one or more health care providers.

(b) A claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit, past noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000, a claimant's share of the \$250,000 must be the same percentage as the claimant's share of the combined awards before reduction.

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

- (i) first, reductions under 27-1-702;
- (ii) second, reductions under 27-1-703; and
- (iii) third, setoffs and credits to which a defendant is entitled.

- 1 (2) An award of future damages for noneconomic loss may not be discounted to present value.
- 2 (3) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.
- 3 (4) As used in this section, the following definitions apply:
- 4 (a) "Claimant" includes but is not limited to:
- 5 (i) a person suffering bodily injury;
- 6 (ii) a person making a claim as a result of bodily injury to or the death of another;
- 7 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;
- 8 (iv) the representative of the estate of a person who suffered bodily injury or death; or
- 9 (v) a person bringing a wrongful death action.
- 10 (b) "Health care provider" means a physician, dentist, or health care facility, as defined in
- 11 27-6-103, or a nurse licensed under Title 37, chapter 8.
- 12 (c) "Malpractice claim" has the meaning as defined in 27-6-103.
- 13 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:
- 14 (i) physical and mental pain or suffering;
- 15 (ii) emotional distress;
- 16 (iii) inconvenience;
- 17 (iv) physical impairment or disfigurement;
- 18 (v) loss of society, companionship, and consortium, other than household services;
- 19 (vi) injury to reputation; and
- 20 (vii) humiliation.

21

22 **NEW SECTION. Section 2. Periodic payment of future damages in medical malpractice cases.** (1)

23 A party to an action for a malpractice claim, as defined in 27-6-103, in which \$50,000 or more of future

24 damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering

25 future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment.

26 Upon a request, the court shall enter an order for periodic payment of future damages. The total dollar

27 amount of the ordered periodic payments must equal the total dollar amount of the future damages without

28 a reduction to present value.

29 (2) A court ordering the payment of future damages by periodic payments shall make specific

30 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for

1 future damages.

2 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
3 amount of the payments, the interval between payments, and the number of payments or the period of time
4 over which payments must be made.

5 (4) The court shall order that periodic payment of future damages be made, during the life of the
6 judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor,
7 through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the
8 form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent
9 edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The
10 annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the
11 court shall order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment
12 creditor dies before all periodic payments have been made, the remaining payments become the property
13 of the creditor's estate.

14

15 **Section 3.** Section 25-9-403, MCA, is amended to read:

16 **"25-9-403. Request for periodic payment of future damages -- nonmalpractice claims.** (1) A
17 Except as provided in [section 2], a party to an action for personal injury, property damage, or wrongful
18 death in which \$100,000 or more of future damages is awarded may, prior to the entry of judgment,
19 request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic
20 payments rather than by a lump-sum payment. Upon ~~such~~ a request, the court may enter an order for
21 periodic payment of future damages if the court finds that ~~such~~ periodic payment is in the best interests
22 of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar
23 amount of the future damages without a reduction to present value.

24 (2) A court ordering the payment of future damages by periodic payments shall make specific
25 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for
26 future damages and as to whether an order for periodic payment of future damages is in the best interests
27 of the claimant.

28 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
29 amount of the payments, the interval between payments, and the number of payments or the period of time
30 over which payments ~~shall~~ must be made.

1 (4) A court ordering periodic payment of future damages shall order that the payments be made,
2 during the life of the judgment creditor or during the continuance of the compensable injury or disability of
3 the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The
4 annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that,
5 in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher
6 classification. The annuity also serves as any required supersedeas bond. Upon purchase of a
7 court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor
8 is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining
9 payments become the property of ~~his~~ the creditor's estate."

10
11 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
12 as an integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to
13 [sections 1 and 2].

14
15 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].

18
19 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
21 applications, the part remains in effect in all valid applications that are severable from the invalid
22 applications.

23
24 **NEW SECTION. Section 7. Applicability.** [This act] applies to causes of action arising on or after
25 October 1, 1995.

26 -END-

1 HOUSE BILL NO. 309

2 INTRODUCED BY GRIMES, BENEDICT, BARNETT, BAER, ORR, HEAVY RUNNER, MILLS, MILLER,
3 ANDERSON, COLE, CURTISS, EMERSON, DENNY, HARGROVE, MOLNAR, WELLS, SOFT, HERTEL,
4 ROSE, TASH, BOHLINGER, MCGEE, SPRAGUE, HIBBARD, MOHL, MASOLO, ESTRADA, HAYNE, JABS,
5 PECK, BROWN, GROSFIELD, OHS, CLARK, SIMPKINS, JACOBSON, DEVLIN, HARP, JERGESON,
6 JENKINS, ZOOK, REHBEIN, TOEWS, SWYSGOOD, KITZENBERG, STOVALL, KNOX, FOSTER,
7 HARDING, L. NELSON, BURNETT, SCHWINDEN, AKLESTAD, HOLDEN, S. SMITH

8 BY REQUEST OF THE GOVERNOR'S OFFICE

9
10 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND
11 RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE
12 LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES;
13 AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. **Section 1. Medical malpractice noneconomic damages limitation.** (1) (a) In a
18 malpractice claim or claims against one or more health care providers based on a single incident of
19 malpractice, the combined awards for past and future damages for noneconomic loss may not exceed
20 \$250,000, whether:

21 (i) for one or more claimants in the same proceeding or separate proceedings;

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

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

25 (b) A claimant has the burden of proving separate injuries, each arising from a different act or series
26 of acts. An award or combination of awards in excess of \$250,000 must be reduced to \$250,000, after
27 which the court shall make other reductions that are required by law. If a combination of awards for past
28 and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first
29 and, if necessary to reach the \$250,000 limit, past noneconomic loss must then be reduced. If a
30 combination of awards is reduced to \$250,000, a claimant's share of the \$250,000 must be the same

1 percentage as the claimant's share of the combined awards before reduction.

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

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

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

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

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

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

8 (4) As used in this section, the following definitions apply:

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

10 (i) a person suffering bodily injury;

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

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

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

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

15 (b) "Health care provider" means a physician, dentist, ~~or health care facility, as defined in~~
 16 ~~27-6-103, or a nurse licensed under Title 37, chapter 8~~ PODIATRIST, OPTOMETRIST, CHIROPRACTOR,
 17 PHYSICAL THERAPIST, OR NURSE LICENSED UNDER TITLE 37 OR A HEALTH CARE FACILITY LICENSED
 18 UNDER TITLE 50, CHAPTER 5.

19 (c) "Malpractice claim" ~~has the meaning as defined in 27-6-103~~ MEANS A CLAIM BASED ON A
 20 NEGLIGENT ACT OR OMISSION BY A HEALTH CARE PROVIDER IN THE RENDERING OF PROFESSIONAL
 21 SERVICES THAT IS THE PROXIMATE CAUSE OF A PERSONAL INJURY OR WRONGFUL DEATH.

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

23 (i) physical and mental pain or suffering;

24 (ii) emotional distress;

25 (iii) inconvenience;

26 (iv) physical impairment or disfigurement;

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

28 (vi) injury to reputation; and

29 (vii) humiliation.

30

1 **NEW SECTION. Section 2. Periodic payment of future damages in medical malpractice cases.** (1)

2 A party to an action for a malpractice claim, as defined in 27-6-103, in which \$50,000 or more of future
3 damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering
4 future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment.
5 Upon a request, the court shall enter an order for periodic payment of future damages. The total dollar
6 amount of the ordered periodic payments must equal the total dollar amount of the future damages without
7 a reduction to present value.

8 (2) A court ordering the payment of future damages by periodic payments shall make specific
9 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for
10 future damages.

11 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
12 amount of the payments, the interval between payments, and the number of payments or the period of time
13 over which payments must be made.

14 (4) The court shall order that periodic payment of future damages be made, during the life of the
15 judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor,
16 through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the
17 form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent
18 edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The
19 annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the
20 court shall order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment
21 creditor dies before all periodic payments have been made, the remaining payments become the property
22 of the creditor's estate.

23
24 **Section 3.** Section 25-9-403, MCA, is amended to read:

25 **"25-9-403. Request for periodic payment of future damages -- nonmalpractice claims.** (1) A
26 Except as provided in [section 2], a party to an action for personal injury, property damage, or wrongful
27 death in which \$100,000 or more of future damages is awarded may, prior to the entry of judgment,
28 request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic
29 payments rather than by a lump-sum payment. Upon ~~such a~~ request, the court may enter an order for
30 periodic payment of future damages if the court finds that ~~such~~ periodic payment is in the best interests

1 of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar
2 amount of the future damages without a reduction to present value.

3 (2) A court ordering the payment of future damages by periodic payments shall make specific
4 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for
5 future damages and as to whether an order for periodic payment of future damages is in the best interests
6 of the claimant.

7 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
8 amount of the payments, the interval between payments, and the number of payments or the period of time
9 over which payments ~~shall~~ must be made.

10 (4) A court ordering periodic payment of future damages shall order that the payments be made,
11 during the life of the judgment creditor or during the continuance of the compensable injury or disability of
12 the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The
13 annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that,
14 in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher
15 classification. The annuity also serves as any required supersedeas bond. Upon purchase of a
16 court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor
17 is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining
18 payments become the property of ~~his~~ the creditor's estate."
19

20 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified
21 as an integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to
22 [sections 1 and 2].
23

24 NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that
25 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
26 act].
27

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

1 applications.

2

3 NEW SECTION. **Section 7. Applicability.** [This act] applies to causes of action arising on or after
4 October 1, 1995.

5

-END-

HOUSE BILL NO. 309

INTRODUCED BY GRIMES, BENEDICT, BARNETT, BAER, ORR, HEAVY RUNNER, MILLS, MILLER,
 ANDERSON, COLE, CURTISS, EMERSON, DENNY, HARGROVE, MOLNAR, WELLS, SOFT, HERTEL,
 ROSE, TASH, BOHLINGER, MCGEE, SPRAGUE, HIBBARD, MOHL, MASOLO, ESTRADA, HAYNE, JABS,
 PECK, BROWN, GROSFIELD, OHS, CLARK, SIMPKINS, JACOBSON, DEVLIN, HARP, JERGSON,
 JENKINS, ZOOK, REHBEIN, TOEWS, SWYSGOOD, KITZENBERG, STOVALL, KNOX, FOSTER,
 HARDING, L. NELSON, BURNETT, SCHWINDEN, AKLESTAD, HOLDEN, S. SMITH

BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND
 RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE
 LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES;
 AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

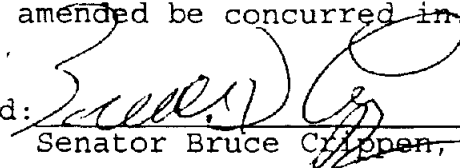
THERE ARE NO CHANGES IN THIS BILL AND IT WILL
 NOT BE REPRINTED. PLEASE REFER TO SECOND
 READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 23, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 309 (third reading copy -- blue), respectfully report that HB 309 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crispin, Chair

That such amendments read:

1. Page 1, line 19.

Following: "malpractice,"

Strike: "the combined awards"

Insert: "an award"

2. Page 1, line 20.

Following: "\$250,000"

Strike: ", "

Insert: ". All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed \$250,000. This limitation applies"

3. Page 1, line 21.

Strike: subsection (i) in its entirety

Renumber: subsequent subsections

4. Page 1, line 23.

Following: ";

Strike: "and"

Insert: "or"

5. Page 1, line 25.

Following: line 24

Insert: "(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. "

6. Page 1, line 25.

Strike: "(b) A"

Insert: "(2)(a) For purposes of the limitation on awards contained in subsection (1), a"

7. Page 2, line 2.

Strike: "(c)"

Insert: "(b)"

HB 309


S.F.

Amd. Coord.
Sec. of Senate

Sen. Benedict
Senator Carrying Bill

SENATE

8. Page 2, line 6.

Strike: "(2)"

Insert: "(3)"

Renumber: subsequent subsections

9. Page 2, line 26.

Following: "(iv)"

Insert: "subjective, nonmonetary loss arising from"

10. Page 2, line 30.

Following: line 29

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

11. Page 3, line 2.

Following: "defined in"

Strike: "27-6-103"

Insert: "[section 1]"

-END-

1 HOUSE BILL NO. 309

2 INTRODUCED BY GRIMES, BENEDICT, BARNETT, BAER, ORR, HEAVY RUNNER, MILLS, MILLER,
 3 ANDERSON, COLE, CURTISS, EMERSON, DENNY, HARGROVE, MOLNAR, WELLS, SOFT, HERTEL,
 4 ROSE, TASH, BOHLINGER, MCGEE, SPRAGUE, HIBBARD, MOHL, MASOLO, ESTRADA, HAYNE, JABS,
 5 PECK, BROWN, GROSFIELD, OHS, CLARK, SIMPKINS, JACOBSON, DEVLIN, HARP, JERGESON,
 6 JENKINS, ZOOK, REHBEIN, TOEWS, SWYSGOOD, KITZENBERG, STOVALL, KNOX, FOSTER,
 7 HARDING, L. NELSON, BURNETT, SCHWINDEN, AKLESTAD, HOLDEN, S. SMITH
 8 BY REQUEST OF THE GOVERNOR'S OFFICE

9
 10 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAL MALPRACTICE CLAIMS AND
 11 RECOVERIES; LIMITING NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES; REVISING THE
 12 LAW RELATING TO PERIODIC PAYMENT OF FUTURE DAMAGES IN MEDICAL MALPRACTICE CASES;
 13 AMENDING SECTION 25-9-403, MCA; AND PROVIDING AN APPLICABILITY DATE."
 14

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

16
 17 NEW SECTION. Section 1. Medical malpractice noneconomic damages limitation. (1) (a) In a
 18 malpractice claim or claims against one or more health care providers based on a single incident of
 19 malpractice, ~~the combined awards~~ AN AWARD for past and future damages for noneconomic loss may not
 20 exceed \$250,000. ALL CLAIMS FOR NONECONOMIC LOSS DERIVING FROM INJURIES TO A PATIENT
 21 ARE SUBJECT TO AN AWARD NOT TO EXCEED \$250,000. THIS LIMITATION APPLIES whether:

22 ~~(i) for one or more claimants in the same proceeding or separate proceedings;~~

23 ~~(ii)(I)~~ based on the same act or a series of acts that allegedly caused the injury, injuries, death, or
 24 deaths on which the action or actions are based; ~~and~~ OR

25 ~~(iii)(II)~~ the act or series of acts were by one or more health care providers.

26 (B) IF A SINGLE INCIDENT OF MALPRACTICE INJURES MULTIPLE, UNRELATED PATIENTS, THE
 27 LIMITATION ON AWARDS CONTAINED IN SUBSECTION (1)(A) APPLIES TO EACH PATIENT AND ALL
 28 CLAIMS DERIVING FROM INJURIES TO THAT PATIENT.

29 ~~(b) A~~ (2) (A) FOR PURPOSES OF THE LIMITATION ON AWARDS CONTAINED IN SUBSECTION
 30 (1), A claimant has the burden of proving separate injuries, each arising from a different act or series of

1 acts. An award or combination of awards in excess of \$250,000 must be reduced to \$250,000, after
2 which the court shall make other reductions that are required by law. If a combination of awards for past
3 and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first
4 and, if necessary to reach the \$250,000 limit, past noneconomic loss must then be reduced. If a
5 combination of awards is reduced to \$250,000, a claimant's share of the \$250,000 must be the same
6 percentage as the claimant's share of the combined awards before reduction.

7 ~~(e)~~(B) For each claimant, further reductions must be made in the following order:

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

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

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

11 ~~(2)~~(3) An award of future damages for noneconomic loss may not be discounted to present value.

12 ~~(3)~~(4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

13 ~~(4)~~(5) As used in this section, the following definitions apply:

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

15 (i) a person suffering bodily injury;

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

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

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

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

20 (b) "Health care provider" means a physician, dentist, ~~or health care facility, as defined in~~
21 ~~27-6-103, or a nurse licensed under Title 37, chapter 8~~ PODIATRIST, OPTOMETRIST, CHIROPRACTOR,
22 PHYSICAL THERAPIST, OR NURSE LICENSED UNDER TITLE 37 OR A HEALTH CARE FACILITY LICENSED
23 UNDER TITLE 50, CHAPTER 5.

24 (c) "Malpractice claim" ~~has the meaning as defined in 27-6-103~~ MEANS A CLAIM BASED ON A
25 NEGLIGENT ACT OR OMISSION BY A HEALTH CARE PROVIDER IN THE RENDERING OF PROFESSIONAL
26 SERVICES THAT IS THE PROXIMATE CAUSE OF A PERSONAL INJURY OR WRONGFUL DEATH.

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

28 (i) physical and mental pain or suffering;

29 (ii) emotional distress;

30 (iii) inconvenience;

- 1 (iv) SUBJECTIVE, NONMONETARY LOSS ARISING FROM physical impairment or disfigurement;
 2 (v) loss of society, companionship, and consortium, other than household services;
 3 (vi) injury to reputation; and
 4 (vii) humiliation.

5 (E) "PATIENT" MEANS A PERSON WHO RECEIVES SERVICES FROM A HEALTH CARE PROVIDER.
 6

7 NEW SECTION. Section 2. Periodic payment of future damages in medical malpractice cases. (1)

8 A party to an action for a malpractice claim, as defined in ~~27-6-103~~ SECTION 1, in which \$50,000 or
 9 more of future damages is awarded may, prior to the entry of judgment, request the court to enter a
 10 judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a
 11 lump-sum payment. Upon a request, the court shall enter an order for periodic payment of future damages.
 12 The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future
 13 damages without a reduction to present value.

14 (2) A court ordering the payment of future damages by periodic payments shall make specific
 15 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for
 16 future damages.

17 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
 18 amount of the payments, the interval between payments, and the number of payments or the period of time
 19 over which payments must be made.

20 (4) The court shall order that periodic payment of future damages be made, during the life of the
 21 judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor,
 22 through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the
 23 form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent
 24 edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The
 25 annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the
 26 court shall order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment
 27 creditor dies before all periodic payments have been made, the remaining payments become the property
 28 of the creditor's estate.
 29

30 **Section 3.** Section 25-9-403, MCA, is amended to read:

1 **"25-9-403. Request for periodic payment of future damages -- nonmalpractice claims.** (1) A
 2 Except as provided in [section 2], a party to an action for personal injury, property damage, or wrongful
 3 death in which \$100,000 or more of future damages is awarded may, prior to the entry of judgment,
 4 request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic
 5 payments rather than by a lump-sum payment. Upon ~~such a~~ request, the court may enter an order for
 6 periodic payment of future damages if the court finds that ~~such~~ periodic payment is in the best interests
 7 of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar
 8 amount of the future damages without a reduction to present value.

9 (2) A court ordering the payment of future damages by periodic payments shall make specific
 10 findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for
 11 future damages and as to whether an order for periodic payment of future damages is in the best interests
 12 of the claimant.

13 (3) The judgment order must specify the recipient or recipients of periodic payments, the dollar
 14 amount of the payments, the interval between payments, and the number of payments or the period of time
 15 over which payments ~~shall~~ must be made.

16 (4) A court ordering periodic payment of future damages shall order that the payments be made,
 17 during the life of the judgment creditor or during the continuance of the compensable injury or disability of
 18 the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The
 19 annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that,
 20 in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher
 21 classification. The annuity also serves as any required supersedeas bond. Upon purchase of a
 22 court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor
 23 is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining
 24 payments become the property of ~~his~~ the creditor's estate."

25
 26 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
 27 as an integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to
 28 [sections 1 and 2].

29
 30 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

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

8

9 **NEW SECTION. Section 7. Applicability.** [This act] applies to causes of action arising on or after
10 October 1, 1995.

11

-END-