



February 29, 2016

ENGROSSED SENATE BILL No. 28

DIGEST OF SB 28 (Updated February 29, 2016 3:07 pm - DI 123)

Citations Affected: IC 34-18.

Synopsis: Medical malpractice. Allows a plaintiff to commence a "direct file" action against a health care provider without submitting a proposed complaint to a medical review panel if the plaintiff's recovery totals \$35,000 or less. Increases the amount of recoverable damages for injury or death to a patient from \$1,250,000 to: (1) \$1.65 million on January 1, 2017; (2) \$1.80 million on January 1, 2019; (3) \$1.95 million on January 1, 2023; (4) \$2.10 million on January 1, 2027, and (5) \$2.25 million on January 1, 2031. Establishes a timetable for health care provider liability limits. Provides a formula for periodic payment agreements. Requires the 2032 legislative assembly to review the following topics: (1) the "direct file" threshold amount; (2) the total amount of recoverable damages for injury or death to a patient; and (3) health care provider liability limits. Provides that attorney fees may not exceed 32% of the total recovery. Makes conforming technical corrections.

Effective: January 1, 2017.

**Steele, Head, Buck,
Randolph Lonnie M**

(HOUSE SPONSORS — KOCH, STEUERWALD)

January 5, 2016, read first time and referred to Committee on Civil Law.
January 26, 2016, reported favorably — Do Pass.
January 28, 2016, read second time, ordered engrossed. Engrossed.
February 1, 2016, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Judiciary.
February 29, 2016, amended, reported — Do Pass.

ES 28—LS 6178/DI 124



February 29, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 28

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-18-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2017]:

4 **Chapter 0.5. Implementation**
5 **Sec. 1. The general assembly emphasizes, to the parties, the**
6 **courts, and the medical review panels, that adhering to the**
7 **timelines set forth in this article is of extreme importance in**
8 **ensuring the fairness of the medical malpractice act. Absent a**
9 **mutual written agreement between the parties for a continuance,**
10 **all parties subject to this article, and all persons charged with**
11 **implementing this article, including courts and medical review**
12 **panels, shall carefully follow the timelines in this article. No party**
13 **may be dilatory in the selection of the panel, the exchange of**
14 **discoverable evidence, or in any other matter necessary to bring a**
15 **case to finality, and the courts and medical review panels shall**
16 **enforce the timelines set forth in this article so as to carry out the**
17 **intent of the general assembly.**

ES 28—LS 6178/DI 124



1 SECTION 2. IC 34-18-4-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 1. Financial
 3 responsibility of a health care provider and the provider's officers,
 4 agents, and employees while acting in the course and scope of their
 5 employment with the health care provider may be established under
 6 subdivision (1), (2), or (3):

7 (1) By the health care provider's insurance carrier filing with the
 8 commissioner proof that the health care provider is insured by a
 9 policy of malpractice liability insurance in ~~the amount of~~ at least
 10 ~~two hundred fifty thousand dollars (\$250,000)~~ **the amount**
 11 **specified in IC 34-18-14-3(b)** per occurrence and ~~seven hundred~~
 12 ~~fifty thousand dollars (\$750,000)~~ **three (3) times that amount** in
 13 the annual aggregate, except for the following:

14 (A) If the health care provider is a hospital, as defined in this
 15 article, the minimum annual aggregate insurance amount is as
 16 follows:

17 (i) For hospitals of not more than one hundred (100) beds,
 18 ~~five million dollars (\$5,000,000)~~ **twenty (20) times the**
 19 **amount specified in IC 34-18-14-3(b).**

20 (ii) For hospitals of more than one hundred (100) beds,
 21 ~~seven million five hundred thousand dollars (\$7,500,000)~~
 22 **thirty (30) times the amount specified in**
 23 **IC 34-18-14-3(b).**

24 (B) If the health care provider is a health maintenance
 25 organization (as defined in IC 27-13-1-19) or a limited service
 26 health maintenance organization (as defined in
 27 IC 27-13-34-4), the minimum annual aggregate insurance
 28 amount is ~~one million seven hundred fifty thousand dollars~~
 29 ~~(\$1,750,000)~~ **seven (7) times the amount specified in**
 30 **IC 34-18-14-3(b).**

31 (C) If the health care provider is a health facility, the minimum
 32 annual aggregate insurance amount is as follows:

33 (i) For health facilities with not more than one hundred
 34 (100) beds, ~~seven hundred fifty thousand dollars (\$750,000)~~
 35 **three (3) times the amount specified in IC 34-18-14-3(b).**

36 (ii) For health facilities with more than one hundred (100)
 37 beds, ~~one million two hundred fifty thousand dollars~~
 38 ~~(\$1,250,000)~~ **five (5) times the amount specified in**
 39 **IC 34-18-14-3(b).**

40 (2) By filing and maintaining with the commissioner cash or
 41 surety bond approved by the commissioner in the amounts set
 42 forth in subdivision (1).



1 (3) If the health care provider is a hospital or a psychiatric
 2 hospital, by submitting annually a verified financial statement
 3 that, in the discretion of the commissioner, adequately
 4 demonstrates that the current and future financial responsibility
 5 of the health care provider is sufficient to satisfy all potential
 6 malpractice claims incurred by the provider or the provider's
 7 officers, agents, and employees while acting in the course and
 8 scope of their employment up to a total of ~~two hundred fifty~~
 9 ~~thousand dollars (\$250,000)~~ **the amount specified in**
 10 **IC 34-18-14-3(b)** per occurrence and annual aggregates as
 11 follows:

12 (A) For hospitals of not more than one hundred (100) beds,
 13 ~~five million dollars (\$5,000,000)~~. **twenty (20) times the**
 14 **amount specified in IC 34-18-14-3(b).**

15 (B) For hospitals of more than one hundred (100) beds, ~~seven~~
 16 ~~million five hundred thousand dollars (\$7,500,000)~~. **thirty**
 17 **(30) times the amount specified in IC 34-18-14-3(b).**

18 The commissioner may require the deposit of security to assure
 19 continued financial responsibility.

20 SECTION 3. IC 34-18-8-6 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 6. (a)
 22 Notwithstanding section 4 of this chapter, a patient may commence an
 23 action against a health care provider for malpractice without submitting
 24 a proposed complaint to a medical review panel if the patient's
 25 pleadings include a declaration that the patient seeks damages from the
 26 health care provider in an amount not greater than ~~fifteen~~ **thirty-five**
 27 ~~thousand dollars (\$15,000)~~. **(\$35,000)**. In an action commenced under
 28 this subsection (or IC 27-12-8-6(a) before its repeal), the patient is
 29 barred from recovering any amount greater than ~~fifteen~~ **thirty-five**
 30 ~~thousand dollars (\$15,000)~~. **(\$35,000)**, except as provided in subsection
 31 (b).

32 (b) A patient who:

33 (1) commences an action under subsection (a) (or IC 27-12-8-6(a)
 34 before its repeal) in the reasonable belief that damages in an
 35 amount not greater than ~~fifteen~~ **thirty-five** thousand dollars
 36 ~~(\$15,000)~~ **(\$35,000)** are adequate compensation for the bodily
 37 injury allegedly caused by the health care provider's malpractice;
 38 and

39 (2) later learns, during the pendency of the action, that the bodily
 40 injury is more serious than previously believed and that ~~fifteen~~
 41 **thirty-five** thousand dollars ~~(\$15,000)~~ **(\$35,000)** is insufficient
 42 compensation for the bodily injury;



1 may move that the action be dismissed without prejudice and, upon
 2 dismissal of the action, may file a proposed complaint subject to
 3 section 4 of this chapter based upon the same allegations of malpractice
 4 as were asserted in the action dismissed under this subsection. In a
 5 second action commenced in court following the medical review
 6 panel's proceeding on the proposed complaint, the patient may recover
 7 an amount greater than ~~fifteen~~ **thirty-five** thousand dollars (~~\$15,000~~;
 8 **\$35,000**). However, a patient may move for dismissal without
 9 prejudice and, if dismissal without prejudice is granted, may
 10 commence a second action under this subsection only if the patient's
 11 motion for dismissal is filed within two (2) years after commencement
 12 of the original action under subsection (a) (or IC 27-12-8-6(a) before
 13 its repeal).

14 (c) If a patient:

15 (1) commences an action under subsection (a) (or IC 27-12-8-6(a)
 16 before its repeal);

17 (2) moves under subsection (b) (or IC 27-12-8-6(b) before its
 18 repeal) for dismissal of that action;

19 (3) files a proposed complaint subject to section 4 of this chapter
 20 based upon the same allegations of malpractice as were asserted
 21 in the action dismissed under subsection (b) (or IC 27-12-8-6(b)
 22 before its repeal); and

23 (4) commences a second action in court following the medical
 24 review panel proceeding on the proposed complaint;

25 the timeliness of the second action is governed by IC 34-18-7-1(c).

26 (d) A medical liability insurer of a health care provider against
 27 whom an action has been filed under subsection (a) (or IC 27-12-8-6(a)
 28 before its repeal) shall provide written notice to the state health
 29 commissioner as required under IC 34-18-9-2.

30 SECTION 4. IC 34-18-14-3 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 3. (a) The total
 32 amount recoverable for an injury or death of a patient may not exceed
 33 the following:

34 (1) Five hundred thousand dollars (\$500,000) for an act of
 35 malpractice that occurs before January 1, 1990.

36 (2) Seven hundred fifty thousand dollars (\$750,000) for an act of
 37 malpractice that occurs:

38 (A) after December 31, 1989; and

39 (B) before July 1, 1999.

40 (3) One million two hundred fifty thousand dollars (\$1,250,000)
 41 for an act of malpractice that occurs:

42 (A) after June 30, 1999; **and**



- 1 (B) before January 1, 2017.
 2 (4) One million six hundred fifty thousand dollars (\$1,650,000)
 3 for an act of malpractice that occurs:
 4 (A) after December 31, 2016; and
 5 (B) before January 1, 2019.
 6 (5) One million eight hundred thousand dollars (\$1,800,000)
 7 for an act of malpractice that occurs:
 8 (A) after December 31, 2018; and
 9 (B) before January 1, 2023.
 10 (6) One million nine hundred fifty thousand dollars
 11 (\$1,950,000) for an act of malpractice that occurs:
 12 (A) after December 31, 2022; and
 13 (B) before January 1, 2027.
 14 (7) Two million one hundred thousand dollars (\$2,100,000) for
 15 an act of malpractice that occurs:
 16 (A) after December 31, 2026; and
 17 (B) before January 1, 2031.
 18 (8) Two million two hundred fifty thousand dollars
 19 (\$2,250,000) for an act of malpractice that occurs after
 20 December 31, 2030.
 21 (b) A health care provider qualified under this article (or IC 27-12
 22 before its repeal) is not liable for an amount in excess of **the following**:
 23 (1) Two hundred fifty thousand dollars (\$250,000) for an
 24 occurrence act of malpractice that occurs:
 25 (A) after June 30, 1999; and
 26 (B) before January 1, 2017.
 27 (2) Four hundred fifty thousand dollars (\$450,000) for an act
 28 of malpractice that occurs:
 29 (A) after December 31, 2016; and
 30 (B) before January 1, 2019.
 31 (3) Five hundred twenty-five thousand dollars (\$525,000) for
 32 an act of malpractice that occurs:
 33 (A) after December 31, 2018; and
 34 (B) before January 1, 2023.
 35 (4) Six hundred thousand dollars (\$600,000) for an act of
 36 malpractice that occurs:
 37 (A) after December 31, 2022; and
 38 (B) before January 1, 2027.
 39 (5) Six hundred seventy-five thousand dollars (\$675,000) for
 40 an act of malpractice that occurs:
 41 (A) after December 31, 2026; and
 42 (B) before January 1, 2031.



- 1 **(6) Seven hundred fifty thousand dollars (\$750,000) for an act**
 2 **of malpractice that occurs after December 31, 2030.**
 3 (c) Any amount due from a judgment or settlement that is in excess
 4 of the total liability of all liable health care providers, subject to
 5 subsections (a), (b), and (d), shall be paid from the patient's
 6 compensation fund under IC 34-18-15.
 7 (d) If a health care provider qualified under this article (or IC 27-12
 8 before its repeal) admits liability or is adjudicated liable solely by
 9 reason of the conduct of another health care provider who is an officer,
 10 agent, or employee of the health care provider acting in the course and
 11 scope of employment and qualified under this article (or IC 27-12
 12 before its repeal), the total amount that shall be paid to the claimant on
 13 behalf of the officer, agent, or employee and the health care provider
 14 by the health care provider or its insurer is **the following:**
 15 **(1) Two hundred fifty thousand dollars (\$250,000) for an act of**
 16 **malpractice that occurs:**
 17 **(A) after June 30, 1999; and**
 18 **(B) before January 1, 2017.**
 19 **(2) Four hundred fifty thousand dollars (\$450,000) for an act**
 20 **of malpractice that occurs:**
 21 **(A) after December 31, 2016; and**
 22 **(B) before January 1, 2019.**
 23 **(3) Five hundred twenty-five thousand dollars (\$525,000) for**
 24 **an act of malpractice that occurs:**
 25 **(A) after December 31, 2018; and**
 26 **(B) before January 1, 2023.**
 27 **(4) Six hundred thousand dollars (\$600,000) for an act of**
 28 **malpractice that occurs:**
 29 **(A) after December 31, 2022; and**
 30 **(B) before January 1, 2027.**
 31 **(5) Six hundred seventy-five thousand dollars (\$675,000) for**
 32 **an act of malpractice that occurs:**
 33 **(A) after December 31, 2026; and**
 34 **(B) before January 1, 2031.**
 35 **(6) Seven hundred fifty thousand dollars (\$750,000) for an act**
 36 **of malpractice that occurs after December 31, 2030.**
 37 The balance of an adjudicated amount to which the claimant is entitled
 38 shall be paid by other liable health care providers or the patient's
 39 compensation fund, or both.
 40 **(e) In the 2032 legislative session, the general assembly shall**
 41 **review:**
 42 **(1) the direct file amount described in IC 34-18-8-6;**



1 **(2) the total amount recoverable for an act of malpractice**
 2 **described in subsection (a); and**

3 **(3) health care provider liability limits described in**
 4 **subsections (b) and (d).**

5 SECTION 5. IC 34-18-14-4 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 4. (a) If the
 7 possible liability of the health care provider to the patient is discharged
 8 solely through an immediate payment, the limitations on recovery from
 9 a health care provider stated in section 3(b) and 3(d) of this chapter
 10 apply. ~~without adjustment.~~

11 (b) If the health care provider agrees to discharge its possible
 12 liability to the patient through a periodic payments agreement, the
 13 amount of the patient's recovery from a health care provider in a case
 14 under this subsection is the amount of any immediate payment made by
 15 the health care provider or the health care provider's insurer to the
 16 patient, plus the cost of the periodic payments agreement to the health
 17 care provider or the health care provider's insurer. For the purpose of
 18 determining the limitations on recovery stated in section 3(b) and 3(d)
 19 of this chapter and for the purpose of determining the question under
 20 IC 34-18-15-3 of whether the health care provider or the health care
 21 provider's insurer has agreed to settle its liability by payment of its
 22 policy limits, the sum of ~~(1)~~ the present payment of money to the
 23 patient (or the patient's estate) by the health care provider (or the health
 24 care provider's insurer) plus ~~(2)~~ the cost of the periodic payments
 25 agreement expended by the health care provider (or the health care
 26 provider's insurer) must exceed:

27 **(1) one hundred eighty-seven thousand dollars (\$187,000) for an**
 28 **act of malpractice that occurs:**

29 **(A) after June 30, 1999; and**

30 **(B) before January 1, 2017; and**

31 **(2) seventy-five percent (75%) of the maximum amount a**
 32 **health care provider is responsible for under section 3(b) and**
 33 **3(d) of this chapter for an act of malpractice that occurs after**
 34 **December 31, 2016.**

35 (c) More than one (1) health care provider may contribute to the cost
 36 of a periodic payments agreement, and in such an instance the sum of
 37 the amounts expended by each health care provider for immediate
 38 payments and for the cost of the periodic payments agreement shall be
 39 used to determine whether the ~~one hundred eighty-seven thousand~~
 40 ~~dollar (\$187,000)~~ requirement in subsection (b) has been satisfied.
 41 However, one (1) health care provider or its insurer must be liable for
 42 at least fifty thousand dollars (\$50,000).



1 SECTION 6. IC 34-18-15-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 3. If a health care
3 provider or its insurer has agreed to settle its liability on a claim by
4 payment of its policy limits of two hundred fifty thousand dollars
5 (~~\$250,000~~); **established in IC 34-18-14-3(b) and IC 34-18-14-3(d)**,
6 and the claimant is demanding an amount in excess of that amount, the
7 following procedure must be followed:

8 (1) A petition shall be filed by the claimant in the court named in
9 the proposed complaint, or in the circuit or superior court of
10 Marion County, at the claimant's election, seeking:

11 (A) approval of an agreed settlement, if any; or

12 (B) demanding payment of damages from the patient's
13 compensation fund.

14 (2) A copy of the petition with summons shall be served on the
15 commissioner, the health care provider, and the health care
16 provider's insurer, and must contain sufficient information to
17 inform the other parties about the nature of the claim and the
18 additional amount demanded.

19 (3) The commissioner and either the health care provider or the
20 insurer of the health care provider may agree to a settlement with
21 the claimant from the patient's compensation fund, or the
22 commissioner, the health care provider, or the insurer of the
23 health care provider may file written objections to the payment of
24 the amount demanded. The agreement or objections to the
25 payment demanded shall be filed within twenty (20) days after
26 service of summons with copy of the petition attached to the
27 summons.

28 (4) The judge of the court in which the petition is filed shall set
29 the petition for approval or, if objections have been filed, for
30 hearing, as soon as practicable. The court shall give notice of the
31 hearing to the claimant, the health care provider, the insurer of the
32 health care provider, and the commissioner.

33 (5) At the hearing, the commissioner, the claimant, the health care
34 provider, and the insurer of the health care provider may
35 introduce relevant evidence to enable the court to determine
36 whether or not the petition should be approved if the evidence is
37 submitted on agreement without objections. If the commissioner,
38 the health care provider, the insurer of the health care provider,
39 and the claimant cannot agree on the amount, if any, to be paid
40 out of the patient's compensation fund, the court shall, after
41 hearing any relevant evidence on the issue of claimant's damage
42 submitted by any of the parties described in this section,



1 determine the amount of claimant's damages, if any, in excess of
 2 the ~~two hundred fifty thousand dollars (\$250,000)~~ **health care**
 3 **provider's policy limits established in IC 34-18-14-3(b) and**
 4 **IC 34-18-14-3(d)** already paid by the insurer of the health care
 5 provider. The court shall determine the amount for which the fund
 6 is liable and make a finding and judgment accordingly. In
 7 approving a settlement or determining the amount, if any, to be
 8 paid from the patient's compensation fund, the court shall
 9 consider the liability of the health care provider as admitted and
 10 established.

11 (6) A settlement approved by the court may not be appealed. A
 12 judgment of the court fixing damages recoverable in a contested
 13 proceeding is appealable pursuant to the rules governing appeals
 14 in any other civil case tried by the court.

15 (7) A release executed between the parties does not bar access to
 16 the patient's compensation fund unless the release specifically
 17 provides otherwise.

18 SECTION 7. IC 34-18-18-1 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 1. When a
 20 plaintiff is represented by an attorney in the prosecution of the
 21 plaintiff's claim **subject to IC 34-18-8-4**, the plaintiff's attorney's fees
 22 ~~from any award made from the patient's compensation fund~~ may not
 23 exceed, **for an act of malpractice committed:**

24 **(1) before January 1, 2017**, fifteen percent (15%) of any
 25 recovery from the fund; **and**

26 **(2) after December 31, 2016, thirty-two percent (32%) of any**
 27 **recovery under IC 34-18-14-3.**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 28, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 28 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 28, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 28 as printed January 27, 2016.)

STEUERWALD

Committee Vote: yeas 11, nays 1.

