

2018 Regular Session

HOUSE BILL NO. 586

BY REPRESENTATIVE JIMMY HARRIS

MALPRACTICE/MEDICAL: Amends the Medical Malpractice Act

1 AN ACT

2 To amend and reenact R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3),  
3 and 1231.8(A)(1)(a) and (B)(1)(a)(i), to enact R.S. 40:1231.3(B)(3) and (4), and to  
4 repeal R.S. 40:1231.3(G) and (H), relative to medical malpractice; to provide for  
5 limitation of liability for medical malpractice; to provide relative to the amount of  
6 recovery; to provide for future medical care and related benefits; to provide relative  
7 to the patient's compensation fund and medical review panel; to provide for  
8 procedures; to provide relative to prescription; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3), and  
11 1231.8(A)(1)(a) and (B)(1)(a)(i) are hereby amended and reenacted and R.S.  
12 40:1231.3(B)(3) and (4) are hereby enacted to read as follows:

13 §1231.2. Limitation of recovery

14 \* \* \*

15 B.(1) The total amount recoverable for all malpractice claims for injuries to  
16 or death of a patient, exclusive of economic loss including loss of income or earning  
17 capacity and past or future medical expenses, ~~future medical care and related benefits~~  
18 as provided in R.S. 40:1231.3; shall not exceed one million ~~five hundred thousand~~  
19 dollars plus interest and cost. This limitation shall be adjusted annually for inflation

1 by a percentage increase equal to the change in the Consumer Price Index published  
2 by the United States Bureau of Labor Statistics for the preceding year.

3 (2) A ~~health care~~ healthcare provider qualified under this Part is not liable  
4 for an amount in excess of two hundred fifty ~~one hundred~~ thousand dollars plus  
5 interest thereon ~~accruing after April 1, 1991~~, and costs specifically provided for by  
6 this Paragraph for all malpractice claims because of injuries to or death of any one  
7 patient. The sole cost for which a health care provider qualified under this Part may  
8 be assessed by a trial court shall be limited to the cost incurred prior to the rendering  
9 of a final judgment against the health care provider, not as a nominal defendant, after  
10 a trial on a malpractice claim, including but not limited to, costs assessed pursuant  
11 to Code of Civil Procedure Article 970 in any instance where the board was not the  
12 offeror or offeree of the proposed settlement amount. The health care provider shall  
13 not be assessed costs in any action in which the fund intervenes or the health care  
14 provider is a nominal defendant after there has been a settlement between the health  
15 care provider and the claimant. This limitation shall be adjusted annually for  
16 inflation by a percentage increase equal to the change in the Consumer Price Index  
17 published by the United States Bureau of Labor Statistics for the preceding year.

18 \* \* \*

19 D.

20 \* \* \*

21 (5) In the event that a partial settlement is executed between the defendant  
22 and/or his insurer with a plaintiff for the sum equal to the limitation provided by  
23 Paragraph (B)(2) of this Section ~~of one hundred thousand dollars or less~~, written  
24 notice of such settlement shall promptly be sent to the board by the defendant or his  
25 insurer. Such settlement shall not bar the continuation of the action against the  
26 patient's compensation fund for damages in excess of the partial settlement, but any  
27 subsequent judgment awarded to the claimant shall be reduced by the court in an  
28 amount equivalent to the partial settlement. ~~excess sums in which event the court~~



1 by the Patient's Compensation Fund without regard to this Section as any other  
2 element of damage, or should be held in trust with the Patient's Compensation Fund  
3 to be paid as reimbursement to the patient for future medical expenses and related  
4 benefits as incurred, or by direct payment to the provider, at the option of the patient.

5 (a)(b) The court shall make such determination at a post-trial hearing at  
6 which time all affected parties shall have the opportunity to present evidence and to  
7 be heard before the determination is made by the court. The court shall then render  
8 a final judgment with written reasons.

9 (c) In support of the judgment, the court shall consider the competence of the  
10 patient and his family in managing the medical care and related benefits of the  
11 patient, including the creation of a special needs trust fund, annuities for future  
12 maintenance and support and other means of structuring the award that assures the  
13 patient or his family can manage the patient's future needs without the necessity of  
14 the Patient's Compensation Fund.

15 \* \* \*

16 B.

17 \* \* \*

18 (3) "Future medical care and benefits" as used in this Section shall include  
19 the payment of custodial care at fair and reasonable market value of such services  
20 in the parish in which the patient customarily resides.

21 (4) The necessity of future medical care to be paid or reimbursed to the  
22 patient under this Section, including the nature of any therapy to be afforded to the  
23 patient, shall be deemed reasonable if it is prescribed by a duly licensed physician  
24 in the state of Louisiana or of any other state where the patient customarily resides.

25 \* \* \*

26 §1231.8. Medical review panel

27 A.(1)(a) All malpractice claims against health care providers covered by this  
28 Part, other than claims validly agreed for submission to a lawfully binding arbitration  
29 procedure, ~~shall~~ may be reviewed by a medical review panel established as

1 hereinafter provided for in this Section. The filing of a request for review by a  
2 medical review panel as provided for in this Section shall not be reportable by any  
3 health care provider, the Louisiana Patient's Compensation Fund, or any other entity  
4 to the Louisiana State Board of Medical Examiners, to any licensing authority,  
5 committee, or board of any other state, or to any credentialing or similar agency,  
6 committee, or board of any clinic, hospital, health insurer, or managed care  
7 company.

8 \* \* \*

9 B.(1)(a)(i) No action against a health care provider covered by this Part, or  
10 his insurer, may be commenced in any court before the claimant's proposed  
11 complaint has been presented to a medical review panel established pursuant to this  
12 Section or, alternatively, an affidavit by a board certified medical doctor, holding a  
13 valid and unrestricted license to practice in his specialty in the state in which he  
14 resides or practices, certifies that (1) adequate medical records of the patient have  
15 been provided and reviewed by him, (2) these records are sufficient for him to state  
16 that the allegations of malpractice against each defendant health care provider named  
17 in the petition constitute a breach of the standard of care, and (3) that the breach  
18 caused or contributed to injury or death of the patient. Such affidavit must be  
19 notarized by a suitable authority for the state in which the medical doctor resides or  
20 practices and filed contemporaneously with the petition in the record of the district  
21 court in which the action is filed. If subsequent to the filing of the petition, additional  
22 healthcare providers are named as defendants, one of the alternative procedures  
23 required by this subsection shall be followed for such new parties. The prescriptive  
24 period for actions initiated by affidavit shall be provided by Civil Code Articles 2324  
25 and 3492, provided that any action against a healthcare provider subject to this Part,  
26 even as to claims filed within one year from the date of discovery, shall in all events  
27 be filed at the latest within a period of three years from the date of the alleged act,  
28 omission, or neglect.

29 \* \* \*

1 Section 2. R.S. 40:1231.3(G) and (H) are hereby repealed in their entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 586 Original

2018 Regular Session

Jimmy Harris

**Abstract:** Modifies the medical malpractice claims, and provides for alternative to the medical review panel for complaints filed against a healthcare providers or insurers.

Present law provides that the maximum amount recoverable for a claim is \$500,000 plus interest and cost.

Proposed law raises the amount recoverable per claim to \$1,000,000 plus interest and cost and excludes economic damages.

Present law allows a qualified health care provider to be liable for up to \$100,000 in damages plus interest and costs.

Proposed law raises a qualified health care provider's potential liability from \$100,000 plus interest and costs to \$250,000 plus interest and costs.

Proposed law requires a court or fact finder to find a specific amount of future medical expenses and related benefits for a claimant.

Proposed law allows a court, after determining that a total award exceeds the \$1,000,000 cap, to hold excess damages in a trust with the Patient Compensation Fund to be paid in reimbursement to a patient or to his provider for future medical care.

Proposed law defines future medical care and benefits.

Proposed law changes the present law requirement that all medical malpractice claims against health care providers be heard by a medical review panel, and offers a claimant an alternative to initiate a claim through an affidavit by a board certified doctor. The affidavit shall certify that the doctor has reviewed the necessary records and that there was a breach of the standard of care which caused or contributed to the injury or death of a patient.

Proposed law provides a prescriptive period for actions initiated by the affidavit process.

(Amends R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3), and 1231.8(A)(1)(a) and (B)(1)(a)(i); Adds R.S. 40:1231.3(B)(3) and (4); Repeals R.S. 40:1231.3(G) and (H))