

SENATE BILL No. 152

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-18.

Synopsis: Medical malpractice. Increases the maximum amount recoverable for an injury or a death of a patient in a medical malpractice action from \$1,250,000 to \$1,650,000 after December 31, 2016. Increases the maximum amount recoverable from a health care provider in a medical malpractice action from \$250,000 to \$450,000 after December 31, 2016. Requires the insurance commissioner to increase these maximum amounts based on percentage increases of the Consumer Price Index (CPI): (1) beginning January 1, 2019, if there was an overall CPI percentage increase for calendar years 2016, 2017, and 2018; and (2) on January 1 every four calendar years thereafter based on an overall CPI percentage increase for the preceding four calendar years, if there was an overall percentage increase in the CPI during the preceding four calendar years. Allows a patient to commence a medical malpractice action without submitting a complaint to a medical review panel if the patient seeks damages in an amount not greater than \$75,000. (Current law states the amount must be not greater than \$15,000.) Provides that the cost of a periodic payments agreement expended by a health care provider must exceed: (1) \$187,000 for an occurrence of medical malpractice that occurs before January 1, 2017; and (2) 75% of the maximum amount a health care provider is responsible for for an occurrence of medical malpractice that occurs after December 31, 2016. Provides that a party, attorney, or panelist who fails to act as required under the medical malpractice law is subject to mandate and appropriate sanctions, including: (1) entry of a default judgment as to liability; and (2) allowing a case to be commenced in a court without presenting the case
(Continued next page)

Effective: July 1, 2016.

Steele, Charbonneau

January 5, 2016, read first time and referred to Committee on Judiciary.



Digest Continued

to a medical review panel. Amends the amount of attorney's fees a plaintiff's attorney may recover in a medical malpractice action. Makes conforming amendments.



Introduced

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.

SENATE BILL No. 152

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 34-18-8-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. Notwithstanding
3 section 4 of this chapter, a claimant may commence an action in court
4 for malpractice without the presentation of the claim to a medical
5 review panel:
6 (1) under a court ordered sanction issued under
7 IC 34-18-10-14 or IC 34-18-11; or
8 (2) if the claimant and all parties named as defendants in the
9 action agree that the claim is not to be presented to a medical
10 review panel.
11 The agreement under subdivision (2) must be in writing and must be
12 signed by each party or an authorized agent of the party. The claimant
13 must attach a copy of the court order under subdivision (1) or
14 agreement under subdivision (2) to the complaint filed with the court
15 in which the action is commenced.

2016

IN 152—LS 6498/DI 69



1 SECTION 2. IC 34-18-8-6 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) Notwithstanding
 3 section 4 of this chapter, a patient may commence an action against a
 4 health care provider for malpractice without submitting a proposed
 5 complaint to a medical review panel if the patient's pleadings include
 6 a declaration that the patient seeks damages from the health care
 7 provider in an amount not greater than ~~fifteen seventy-five~~ thousand
 8 dollars ~~(\$15,000)~~. **(\$75,000)**. In an action commenced under this
 9 subsection (or IC 27-12-8-6(a) before its repeal), the patient is barred
 10 from recovering any amount greater than ~~fifteen seventy-five~~ thousand
 11 dollars ~~(\$15,000)~~, **(\$75,000)**, except as provided in subsection (b).

12 (b) A patient who:

13 (1) commences an action under subsection (a) (or IC 27-12-8-6(a)
 14 before its repeal) in the reasonable belief that damages in an
 15 amount not greater than ~~fifteen seventy-five~~ thousand dollars
 16 ~~(\$15,000)~~ **(\$75,000)** are adequate compensation for the bodily
 17 injury allegedly caused by the health care provider's malpractice;
 18 and

19 (2) later learns, during the pendency of the action, that the bodily
 20 injury is more serious than previously believed and that ~~fifteen~~
 21 **seventy-five** thousand dollars ~~(\$15,000)~~ **(\$75,000)** is insufficient
 22 compensation for the bodily injury;

23 may move that the action be dismissed without prejudice and, upon
 24 dismissal of the action, may file a proposed complaint subject to
 25 section 4 of this chapter based upon the same allegations of malpractice
 26 as were asserted in the action dismissed under this subsection. In a
 27 second action commenced in court following the medical review
 28 panel's proceeding on the proposed complaint, the patient may recover
 29 an amount greater than ~~fifteen seventy-five~~ thousand dollars ~~(\$15,000)~~.
 30 **(\$75,000)**. However, a patient may move for dismissal without
 31 prejudice and, if dismissal without prejudice is granted, may
 32 commence a second action under this subsection only if the patient's
 33 motion for dismissal is filed within two (2) years after commencement
 34 of the original action under subsection (a) (or IC 27-12-8-6(a) before
 35 its repeal).

36 (c) If a patient:

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

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

41 (3) files a proposed complaint subject to section 4 of this chapter
 42 based upon the same allegations of malpractice as were asserted



1 in the action dismissed under subsection (b) (or IC 27-12-8-6(b)
2 before its repeal); and

3 (4) commences a second action in court following the medical
4 review panel proceeding on the proposed complaint;
5 the timeliness of the second action is governed by IC 34-18-7-1(c).

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

10 SECTION 3. IC 34-18-10-14 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14. A party, attorney,
12 or panelist who fails to act as required by this ~~chapter~~ **article** without
13 good cause shown is subject to mandate ~~or~~ **and** appropriate sanctions
14 upon application to the court designated in the proposed complaint as
15 having jurisdiction. **The appropriate sanctions that may be imposed**
16 **against the party, attorney, or panelist under this section include,**
17 **but are not limited to, the following:**

18 (1) **Entry of a default judgment as to liability.**

19 (2) **Allowing the case to be commenced in a court without**
20 **presenting the case to a medical review panel as otherwise**
21 **required under IC 34-18-8-4.**

22 SECTION 4. IC 34-18-11-1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) A court having
24 jurisdiction over the subject matter and the parties to a proposed
25 complaint filed with the commissioner under this article may, upon the
26 filing of a copy of the proposed complaint and a written motion under
27 this chapter, do ~~one (1) or both~~ of the following:

28 (1) Preliminarily determine an affirmative defense or issue of law
29 or fact that may be preliminarily determined under the Indiana
30 Rules of Procedure. ~~or~~

31 (2) Compel discovery in accordance with the Indiana Rules of
32 Procedure.

33 (3) **Impose sanctions allowed under IC 34-18-10-14 on a party,**
34 **an attorney, or a panelist who fails to act as required by this**
35 **article without good cause shown.**

36 (b) The court has no jurisdiction to rule preliminarily upon any
37 affirmative defense or issue of law or fact reserved for written opinion
38 by the medical review panel under IC 34-18-10-22(b)(1),
39 IC 34-18-10-22(b)(2), and IC 34-18-10-22(b)(4).

40 (c) The court has jurisdiction to entertain a motion filed under this
41 chapter only during that time after a proposed complaint is filed with
42 the commissioner under this article but before the medical review panel



1 gives the panel's written opinion under IC 34-18-10-22.

2 (d) The failure of any party to move for a preliminary determination
3 or to compel discovery under this chapter before the medical review
4 panel gives the panel's written opinion under IC 34-18-10-22 does not
5 constitute the waiver of any affirmative defense or issue of law or fact.

6 SECTION 5. IC 34-18-14-3 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) The total amount
8 recoverable for an injury or death of a patient may not exceed the
9 following:

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

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

14 (A) after December 31, 1989; and

15 (B) before July 1, 1999.

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

18 (A) after June 30, 1999; and

19 (B) before January 1, 2017.

20 (4) **One million six hundred fifty thousand dollars (\$1,650,000)**
21 **for an act of malpractice that occurs after December 31, 2016,**
22 **subject to adjustments required under section 3.5 of this**
23 **chapter.**

24 (b) A health care provider qualified under this article (or IC 27-12
25 before its repeal) is not liable for an amount in excess of:

26 (1) two hundred fifty thousand dollars (\$250,000) for an
27 occurrence of malpractice **that occurs:**

28 (A) after June 30, 1999; and

29 (B) before January 1, 2017; and

30 (2) **four hundred fifty thousand dollars (\$450,000) for an**
31 **occurrence of malpractice that occurs after December 31,**
32 **2016, subject to adjustments required under section 3.5 of this**
33 **chapter.**

34 (c) Any amount due from a judgment or settlement that is in excess
35 of the total liability of all liable health care providers, subject to
36 subsections (a), (b), and (d), shall be paid from the patient's
37 compensation fund under IC 34-18-15.

38 (d) If a health care provider qualified under this article (or IC 27-12
39 before its repeal) admits liability or is adjudicated liable solely by
40 reason of the conduct of another health care provider who is an officer,
41 agent, or employee of the health care provider acting in the course and
42 scope of employment and qualified under this article (or IC 27-12



1 before its repeal), the total amount that shall be paid to the claimant on
 2 behalf of the officer, agent, or employee and the health care provider
 3 by the health care provider or its insurer is:

4 **(1) two hundred fifty thousand dollars (\$250,000) for an**
 5 **occurrence of malpractice that occurs:**

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

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

8 **(2) four hundred fifty thousand dollars (\$450,000) for an**
 9 **occurrence of malpractice that occurs after December 31,**
 10 **2016, subject to adjustments required under section 3.5 of this**
 11 **chapter.**

12 The balance of an adjudicated amount to which the claimant is entitled
 13 shall be paid by other liable health care providers or the patient's
 14 compensation fund, or both.

15 SECTION 6. IC 34-18-14-3.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2016]: **Sec. 3.5. (a) As used in this section,**
 18 **"CPI" means the Consumer Price Index published by the United**
 19 **States Bureau of Labor Statistics, or any successor index published**
 20 **by the United States, commencing January 1, 2016.**

21 **(b) The total amount recoverable for an injury or a death of a**
 22 **patient set forth in section 3(a)(4) of this chapter and the maximum**
 23 **amount for which a health care provider is responsible under**
 24 **section 3(b)(2) and 3(d)(2) of this chapter shall be increased by the**
 25 **commissioner based on a percentage equal to a percentage increase**
 26 **in the CPI as follows:**

27 **(1) The amounts set forth in section 3(a)(4), 3(b)(2), and**
 28 **3(d)(2) of this chapter shall be increased by the percentage**
 29 **determined and established by the commissioner:**

30 **(A) on January 1, 2019, that is equal to the overall**
 31 **percentage increase in the CPI for calendar years 2016,**
 32 **2017, and 2018, if there was an overall percentage increase**
 33 **in the CPI during those calendar years; and**

34 **(B) on January 1 every four (4) calendar years thereafter**
 35 **that is equal to the overall percentage increase in the CPI**
 36 **for the preceding four (4) calendar years, if there was an**
 37 **overall percentage increase in the CPI during the**
 38 **preceding four (4) calendar years.**

39 **(2) The commissioner shall use mathematical rounding to**
 40 **establish any percentage increase to amounts:**

41 **(A) recoverable for an injury or a death of a patient set**
 42 **forth in section 3(a)(4) of this chapter; and**



1 **(B) concerning the maximum amount for which a health**
 2 **care provider is responsible under section 3(b)(2) and**
 3 **3(d)(2) of this chapter;**
 4 **rounded up in increments to the next five thousand dollars**
 5 **(\$5,000).**

6 SECTION 7. IC 34-18-14-4 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) If the possible
 8 liability of the health care provider to the patient is discharged solely
 9 through an immediate payment, the limitations on recovery from a
 10 health care provider stated in section 3(b) and 3(d) of this chapter
 11 apply. ~~without adjustment.~~

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

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

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

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

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

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



1 at least fifty thousand dollars (\$50,000).

2 SECTION 8. IC 34-18-15-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. If a health care
4 provider or its insurer has agreed to settle its liability on a claim by
5 payment of its policy limits of ~~two hundred fifty thousand dollars~~
6 ~~(\$250,000)~~, **established in IC 34-18-14-3(b) and IC 34-18-14-3(d)**,
7 and the claimant is demanding an amount in excess of that amount, the
8 following procedure must be followed:

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

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

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

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

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

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

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



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

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

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

19 SECTION 9. IC 34-18-18-1 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. When a plaintiff is
 21 represented by an attorney in the prosecution of the plaintiff's claim
 22 **subject to IC 34-18-8-4**, the plaintiff's attorney's fees ~~from any award~~
 23 ~~made from the patient's compensation fund~~ may not exceed ~~fifteen~~
 24 **thirty-one percent (+15%) (31%)** of any recovery ~~from the fund.~~ **under**
 25 **IC 34-18-14-3.**

