

2016 Regular Session

SENATE BILL NO. 78

BY SENATOR GATTI

MALPRACTICE. Increases medical malpractice cap for certain child brain injuries. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:1231.2(B)(1) and 1231.3(D), the introductory paragraph of
3 1237.1(F), and (F)(2), (3), (6) and (7), and to enact R.S. 40:1231.3(K), relative to
4 medical malpractice; to provide relative to limitations of recovery for certain
5 injuries; to provide relative to payments for medical care and related benefits; to
6 provide certain terms, conditions, exceptions, requirements, definitions, and
7 procedures; to provide relative to certain brain injuries to a child; and to provide for
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:1231.2(B)(1) and 1231.3(D), the introductory paragraph of
11 1237.1(F), and (F)(2), (3), (6) and (7) are hereby amended and reenacted, and R.S.
12 40:1231.3(K) is hereby enacted to read as follows:

13 §1231.2. Limitation of recovery

14 * * *

15 B.(1) ~~The~~ **Except as provided in Subparagraph (a), the** total amount
16 recoverable for all malpractice claims for injuries to or death of a patient, exclusive
17 of future medical care and related benefits as provided in R.S. 40:1231.3, shall not

1 exceed five hundred thousand dollars plus interest and cost.

2 (a) The total amount recoverable for all malpractice claims for
3 catastrophic brain injuries to a child, exclusive of future medical care and
4 related benefits as provided in R.S. 40:1231.3, shall not exceed five million
5 dollars plus interest and costs. However, this Subparagraph shall apply only
6 when either (1) a medical review panel renders a unanimous opinion in favor
7 of the claimant as provided in the expert opinions stated in R.S.
8 40:1231.8(G)(1); or (2) liability is determined unanimously by a jury. For the
9 purposes of this Subparagraph, "catastrophic brain injury" means any
10 moderate or severe traumatic brain injury that causes a child to lose partial or
11 total use of one limb or become paraplegic or quadriplegic, and "child" means
12 a fetus in utero or any natural person under the age of eighteen years.

13 * * *

14 §1231.3. Future medical care and related benefits

15 * * *

16 D. Payments for medical care and related benefits shall be paid by the
17 patient's compensation fund without regard to the ~~five hundred thousand dollar~~
18 limitation imposed in R.S. 40:1231.2.

19 * * *

20 K. The total amount recoverable for all malpractice claims for
21 catastrophic brain injuries to a child, exclusive of future medical care and
22 related benefits, shall not exceed five million dollars plus interest and costs.
23 However, this Subsection shall apply only when either (1) a medical review
24 panel renders a unanimous opinion in favor of the claimant as provided in the
25 expert opinions stated in R.S. 40:1231.8(G)(1); or (2) liability is determined
26 unanimously by a jury. For the purposes of this Subsection, "catastrophic brain
27 injury" means any moderate or severe traumatic brain injury that causes a
28 child to lose partial or total use of one limb or become paraplegic or
29 quadriplegic, and "child" means a fetus in utero or any natural person under

1 **the age of eighteen years.**

2 * * *

3 §1237.1. Definitions and general application

4 * * *

5 F. ~~Notwithstanding any other provision of the law to the contrary~~ **Except as**
6 **provided in R.S. 40:1231.3(K) and notwithstanding any other provision of law**
7 **to the contrary**, no judgment shall be rendered and no settlement or compromise
8 shall be entered into for the injury or death of any patient in any action or claim for
9 an alleged act of malpractice in excess of five hundred thousand dollars plus interest
10 and costs, exclusive of future medical care and related benefits valued in excess of
11 such five hundred thousand dollars. In claims which may include future medical care
12 and related benefits, the following procedures shall apply:

13 * * *

14 (2) If the total amount of the value of the judgment or settlement or
15 compromise is for ~~five hundred thousand dollars~~ **the maximum amount allowed**
16 **under this Section**, plus interest and costs, exclusive of the value of future medical
17 care and related benefits, all future medical care and related benefits shall be paid in
18 accordance herewith.

19 (3) If the total amount of recovery, excluding interest and costs but including
20 the amount of future medical care and related benefits does not exceed ~~five hundred~~
21 ~~thousand dollars~~ **the maximum amount allowed under this Section**, judgment may
22 be rendered for the total amount and paid by the state as provided by Subsection I of
23 this Section.

24 * * *

25 (6) If the total amount of recovery awarded against the state, excluding
26 interest and costs but including the amount of future medical care and related
27 benefits, exceeds ~~five hundred thousand dollars~~ **the maximum amount allowed**
28 **under this Section**, the claimant may make a claim to the office of risk management
29 for all future medical care and related benefits.

1 (7) Payments for medical care and related benefits shall be paid by the office
 2 of risk management pursuant to Subsection L of this Section, without regard to the
 3 ~~five hundred thousand~~ **maximum** dollar limitation imposed in this ~~Subsection~~
 4 **Section.**

5 * * *

6 Section 2. This Act shall become effective upon signature by the governor or, if not,
 7 signed by the governor, as provided by Article III, Section 18 of the Constitution of
 8 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
 9 shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Ben Huxen.

DIGEST

SB 78 Engrossed

2016 Regular Session

Gatti

Present law relative to medical malpractice limits the total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of future medical care and related benefits, to a maximum of \$500,000 plus interest and cost.

Proposed law creates an exception to present law by providing that the total amount recoverable for all malpractice claims for catastrophic brain injuries to a child, exclusive of future medical care and related benefits, shall not exceed five million dollars plus interest and costs. However, proposed law applies only when either (1) a medical review panel renders a unanimous opinion in favor of the claimant as provided in the expert opinions stated in present law or (2) liability is determined unanimously by a jury.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends 40:1231.2(B)(1), 1231.3(D), 1237.1(F)(intro para), (2), (3), (6) and (7); adds R.S. 40:1231.3(K))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Eliminated the definition of "brain injury" and replaced it with a new definition for "catastrophic brain injury" and made technical amendments.