

By the Committee on Judiciary; and Senators Yarborough, Burgess, Book, Hutson, Perry, and Stewart

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1                                   A bill to be entitled  
2       An act relating to medical negligence; amending ss.  
3       400.023, 400.0235, and 429.295, F.S.; conforming  
4       provisions to changes made by the act; amending s.  
5       766.118, F.S.; deleting the definition of the term  
6       "catastrophic injury"; revising the limits on  
7       noneconomic damages for personal injury or wrongful  
8       death arising from medical negligence; making  
9       technical changes; amending s. 768.21, F.S.; deleting  
10      a provision that prohibits adult children and parents  
11      of adult children from recovering certain damages in  
12      medical negligence suits; requiring that medical  
13      malpractice insurer rate filings reflect certain  
14      changes in costs and expenses; requiring the Office of  
15      Insurance Regulation to consider such changes in its  
16      review of rate filings; authorizing the Office of  
17      Insurance Regulation to develop certain methodology  
18      and data in reviewing rate filings by medical  
19      malpractice insurers; requiring the Office of Program  
20      Policy Analysis and Government Accountability to study  
21      the efficacy of caps on noneconomic damages and to  
22      report its findings and recommendations to the  
23      Governor and the Legislature by a specified date;  
24      reenacting s. 766.209(3)(a), F.S., relating to effects  
25      of failure to offer or accept voluntary binding  
26      arbitration, to incorporate the amendment made to s.  
27      766.118, F.S., in a reference thereto; providing  
28      applicability; providing an effective date.

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30 WHEREAS, the Legislature finds that expanding the right to  
31 recover noneconomic damages for wrongful death caused by medical  
32 negligence furthers an important state interest of promoting  
33 accountability and adherence to the applicable standards of  
34 care, and

35 WHEREAS, the Legislature further recognizes that the  
36 expansion of the right to recover damages must be balanced  
37 against the important state interests of minimizing increases in  
38 the cost of malpractice insurance and promoting the availability  
39 of quality health care services, and

40 WHEREAS, the Legislature finds that limitations on  
41 noneconomic damages in medical negligence cases further the  
42 critical state interest in promoting the affordability and  
43 availability of health care services, and

44 WHEREAS, the Legislature finds that the cases of *Estate of*  
45 *McCall v. United States*, 134 So. 3d 894 (Fla. 2014) and *North*  
46 *Broward Hospital District v. Kalitan*, 219 So. 3d 49 (Fla. 2017),  
47 which invalidated limits on noneconomic damages, were decided  
48 contrary to legislative intent and prior case law interpreting  
49 the equal protection clauses of the United States Constitution  
50 and the State Constitution, and

51 WHEREAS, the cases of *Estate of McCall v. United States* and  
52 *North Broward Hospital District v. Kalitan* are inconsistent with  
53 the decisions of other courts addressing limits on damages, and

54 WHEREAS, the Legislature finds that the state has the  
55 highest medical malpractice insurance premiums in the nation and  
56 is in a sustained and continuing crisis of affordability with  
57 respect to the price of medical malpractice insurance, and

58 WHEREAS, the Legislature finds that having the highest

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59 medical malpractice insurance premiums in the nation is causing  
60 physicians to practice medicine without malpractice insurance,  
61 begin medical careers in other states, pursue opportunities to  
62 practice in other states, abstain from performing high-risk  
63 procedures in this state, or retire early from the practice of  
64 medicine, and

65 WHEREAS, the Legislature finds that the crisis of having  
66 the highest medical malpractice insurance premiums in the nation  
67 threatens the quality and availability of health care services  
68 for everyone in this state, and

69 WHEREAS, the Legislature finds that the rapidly growing  
70 population and the changing demographics of this state make it  
71 imperative for the state to have a legal environment that helps  
72 to attract and retain physicians, and

73 WHEREAS, the Legislature finds that there is an  
74 overpowering public necessity to ensure that physicians practice  
75 medicine in this state, and

76 WHEREAS, the Legislature finds that there is also an  
77 overpowering public necessity to enact policies that prevent  
78 medical malpractice insurance premiums from being unaffordable  
79 and continuing at crisis levels, and

80 WHEREAS, the Legislature finds that limitations on  
81 noneconomic damages in medical negligence cases further the  
82 public necessities of making quality health care available to  
83 the residents of this state, ensuring that physicians practice  
84 medicine in this state, and ensuring that those physicians have  
85 the opportunity to purchase affordable medical malpractice  
86 insurance, NOW, THEREFORE,

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88 Be It Enacted by the Legislature of the State of Florida:

89

90 Section 1. Subsection (9) of section 400.023, Florida  
91 Statutes, is amended to read:

92 400.023 Civil enforcement.—

93 (9) An action under this part for a violation of rights or  
94 negligence recognized herein is not a claim for medical  
95 malpractice, ~~and s. 768.21(8) does not apply to a claim alleging~~  
96 ~~death of the resident.~~

97 Section 2. Section 400.0235, Florida Statutes, is amended  
98 to read:

99 400.0235 Certain provisions not applicable to actions under  
100 this part.—An action under this part for a violation of rights  
101 or negligence recognized under this part is not a claim for  
102 medical malpractice, ~~and the provisions of s. 768.21(8) do not~~  
103 ~~apply to a claim alleging death of the resident.~~

104 Section 3. Section 429.295, Florida Statutes, is amended to  
105 read:

106 429.295 Certain provisions not applicable to actions under  
107 this part.—An action under this part for a violation of rights  
108 or negligence recognized herein is not a claim for medical  
109 malpractice, ~~and the provisions of s. 768.21(8) do not apply to~~  
110 ~~a claim alleging death of the resident.~~

111 Section 4. Section 766.118, Florida Statutes, is amended to  
112 read:

113 766.118 Determination of noneconomic damages.—

114 (1) DEFINITIONS.—As used in this section, the term:

115 (a) ~~“Catastrophic injury” means a permanent impairment~~  
116 ~~constituted by:~~

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117 ~~1. Spinal cord injury involving severe paralysis of an arm,~~  
118 ~~a leg, or the trunk;~~

119 ~~2. Amputation of an arm, a hand, a foot, or a leg involving~~  
120 ~~the effective loss of use of that appendage;~~

121 ~~3. Severe brain or closed head injury as evidenced by:~~

122 ~~a. Severe sensory or motor disturbances;~~

123 ~~b. Severe communication disturbances;~~

124 ~~c. Severe complex integrated disturbances of cerebral~~  
125 ~~function;~~

126 ~~d. Severe episodic neurological disorders; or~~

127 ~~e. Other severe brain and closed head injury conditions at~~  
128 ~~least as severe in nature as any condition provided in sub-~~  
129 ~~subparagraphs a.-d.;~~

130 ~~4. Second degree or third degree burns of 25 percent or~~  
131 ~~more of the total body surface or third degree burns of 5~~  
132 ~~percent or more to the face and hands;~~

133 ~~5. Blindness, defined as a complete and total loss of~~  
134 ~~vision; or~~

135 ~~6. Loss of reproductive organs which results in an~~  
136 ~~inability to procreate.~~

137 ~~(b)~~ "Noneconomic damages" means noneconomic damages as  
138 defined in s. 766.202(8).

139 (b) ~~(e)~~ "Practitioner" means any person licensed under  
140 chapter 458, chapter 459, chapter 460, chapter 461, chapter 462,  
141 chapter 463, chapter 466, chapter 467, chapter 486, or s.  
142 464.012 or registered under s. 464.0123. "Practitioner" also  
143 means any association, corporation, firm, partnership, or other  
144 business entity under which such practitioner practices or any  
145 employee of such practitioner or entity acting in the scope of

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146 his or her employment. For the purpose of determining the  
147 limitations on noneconomic damages set forth in this section,  
148 the term "practitioner" includes any person or entity for whom a  
149 practitioner is vicariously liable and any person or entity  
150 whose liability is based solely on such person or entity being  
151 vicariously liable for the actions of a practitioner.

152 (2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A  
153 PRACTITIONER PRACTITIONERS.—

154 ~~(a) With respect to a cause of action for personal injury~~  
155 ~~or wrongful death arising from medical negligence of a~~  
156 ~~practitioner practitioners, regardless of the number of such~~  
157 ~~practitioner defendants, noneconomic damages may shall not~~  
158 ~~exceed \$500,000 per claimant. No practitioner shall be liable~~  
159 ~~for more than \$500,000 in noneconomic damages, regardless of the~~  
160 ~~number of practitioners who are liable for a claimant's damages~~  
161 ~~claimants.~~

162 ~~(b) Notwithstanding paragraph (a), if the negligence~~  
163 ~~resulted in a permanent vegetative state or death, the total~~  
164 ~~noneconomic damages recoverable from all practitioners,~~  
165 ~~regardless of the number of claimants, under this paragraph~~  
166 ~~shall not exceed \$1 million. In cases that do not involve death~~  
167 ~~or permanent vegetative state, the patient injured by medical~~  
168 ~~negligence may recover noneconomic damages not to exceed \$1~~  
169 ~~million if:~~

170 ~~1. The trial court determines that a manifest injustice~~  
171 ~~would occur unless increased noneconomic damages are awarded,~~  
172 ~~based on a finding that because of the special circumstances of~~  
173 ~~the case, the noneconomic harm sustained by the injured patient~~  
174 ~~was particularly severe; and~~

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175 ~~2. The trier of fact determines that the defendant's~~  
176 ~~negligence caused a catastrophic injury to the patient.~~

177 ~~(c) The total noneconomic damages recoverable by all~~  
178 ~~claimants from all practitioner defendants under this subsection~~  
179 ~~shall not exceed \$1 million in the aggregate.~~

180 (3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A  
181 ~~NONPRACTITIONER DEFENDANTS.~~

182 (a) With respect to a cause of action for personal injury  
183 or wrongful death arising from medical negligence of a  
184 nonpractitioner nonpractitioners, regardless of the number of  
185 such nonpractitioner defendants, noneconomic damages may shall  
186 not exceed \$750,000 per claimant, regardless of the number of  
187 nonpractitioners who are liable for a claimant's damages.

188 (b) ~~Notwithstanding paragraph (a), if the negligence~~  
189 ~~resulted in a permanent vegetative state or death, the total~~  
190 ~~noneconomic damages recoverable by such claimant from all~~  
191 ~~nonpractitioner defendants under this paragraph shall not exceed~~  
192 ~~\$1.5 million. The patient injured by medical negligence of a~~  
193 ~~nonpractitioner defendant may recover noneconomic damages not to~~  
194 ~~exceed \$1.5 million if:~~

195 1. ~~The trial court determines that a manifest injustice~~  
196 ~~would occur unless increased noneconomic damages are awarded,~~  
197 ~~based on a finding that because of the special circumstances of~~  
198 ~~the case, the noneconomic harm sustained by the injured patient~~  
199 ~~was particularly severe; and~~

200 2. ~~The trier of fact determines that the defendant's~~  
201 ~~negligence caused a catastrophic injury to the patient.~~

202 ~~(c) A nonpractitioner is defendants are subject to the cap~~  
203 ~~on noneconomic damages provided in this subsection regardless of~~

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204 the theory of liability, including vicarious liability.

205 ~~(d) The total noneconomic damages recoverable by all~~  
206 ~~claimants from all nonpractitioner defendants under this~~  
207 ~~subsection shall not exceed \$1.5 million in the aggregate.~~

208 (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A  
209 PRACTITIONER ~~PRACTITIONERS~~ PROVIDING EMERGENCY SERVICES AND  
210 CARE.—Notwithstanding subsections (2) and (3), with respect to a  
211 cause of action for personal injury or wrongful death arising  
212 from medical negligence of a practitioner who provided  
213 ~~practitioners providing~~ emergency services and care, as defined  
214 in s. 395.002(9), or provided ~~providing~~ services as provided in  
215 s. 401.265, or provided ~~providing~~ services pursuant to  
216 obligations imposed by 42 U.S.C. s. 1395dd to a person ~~persons~~  
217 with whom the practitioner did ~~does~~ not have a then-existing  
218 health care patient-practitioner relationship for that medical  
219 condition.

220 ~~(a) Regardless of the number of such practitioner~~  
221 ~~defendants, noneconomic damages may shall~~ not exceed \$150,000  
222 per claimant, regardless of the number of practitioners who are  
223 liable for a claimant's damages.

224 ~~(b) Notwithstanding paragraph (a), the total noneconomic~~  
225 ~~damages recoverable by all claimants from all such practitioners~~  
226 ~~shall not exceed \$300,000.~~ The limitation provided by this  
227 subsection applies only to noneconomic damages awarded as a  
228 result of any act or omission of providing medical care or  
229 treatment, including diagnosis that occurs prior to the time the  
230 patient is stabilized and is capable of receiving medical  
231 treatment as a nonemergency patient, unless surgery is required  
232 as a result of the emergency within a reasonable time after the



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233 patient is stabilized, in which case the limitation provided by  
234 this subsection applies to any act or omission of providing  
235 medical care or treatment which occurs prior to the  
236 stabilization of the patient following the surgery.

237 (5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A  
238 NONPRACTITIONER ~~DEFENDANTS~~ PROVIDING EMERGENCY SERVICES AND  
239 CARE.—Notwithstanding subsections (2) and (3), with respect to a  
240 cause of action for personal injury or wrongful death arising  
241 from medical negligence of a nonpractitioner ~~defendants~~ other  
242 than a practitioner who provided ~~practitioners providing~~  
243 emergency services and care pursuant to obligations imposed by  
244 s. 395.1041 or s. 401.45, or obligations imposed by 42 U.S.C. s.  
245 1395dd to a person ~~persons~~ with whom the practitioner did ~~does~~  
246 not have a then-existing health care patient-practitioner  
247 relationship for that medical condition:

248 (a) ~~Regardless of the number of such nonpractitioner~~  
249 ~~defendants,~~ Noneconomic damages may ~~shall~~ not exceed \$750,000  
250 per claimant, regardless of the number of nonpractitioners who  
251 are liable for a claimant's damages.

252 (b) ~~Notwithstanding paragraph (a), the total noneconomic~~  
253 ~~damages recoverable by all claimants from all such~~  
254 ~~nonpractitioner defendants shall not exceed \$1.5 million.~~

255 ~~(c)~~ A nonpractitioner ~~defendants~~ may receive a full setoff  
256 for payments made by a practitioner ~~defendants~~.

257  
258 The limitation provided by this subsection applies only to  
259 noneconomic damages awarded as a result of any act or omission  
260 of providing medical care or treatment, including a diagnosis  
261 that occurs before ~~prior to~~ the time the patient is stabilized

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262 and is capable of receiving medical treatment as a nonemergency  
263 patient, unless surgery is required as a result of the emergency  
264 within a reasonable time after the patient is stabilized, in  
265 which case the limitation provided by this subsection applies to  
266 any act or omission of providing medical care or treatment which  
267 occurs before ~~prior to~~ the stabilization of the patient  
268 following the surgery.

269 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A  
270 PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID  
271 RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with  
272 respect to a cause of action for personal injury or wrongful  
273 death arising from medical negligence of a practitioner  
274 committed in the course of providing medical services and  
275 medical care to a Medicaid recipient, ~~regardless of the number~~  
276 ~~of such practitioner defendants providing the services and care,~~  
277 noneconomic damages may not exceed \$300,000 per claimant,  
278 regardless of the number of practitioners who are liable for a  
279 claimant's damages, unless the claimant pleads and proves, by  
280 clear and convincing evidence, that the practitioner acted in a  
281 wrongful manner. ~~A practitioner providing medical services and~~  
282 ~~medical care to a Medicaid recipient is not liable for more than~~  
283 ~~\$200,000 in noneconomic damages, regardless of the number of~~  
284 ~~claimants, unless the claimant pleads and proves, by clear and~~  
285 ~~convincing evidence, that the practitioner acted in a wrongful~~  
286 ~~manner.~~ The fact that a claimant proves that a practitioner  
287 acted in a wrongful manner does not preclude the application of  
288 the limitation on noneconomic damages prescribed elsewhere in  
289 this section. For purposes of this subsection:

290 (a) The terms "medical services," "medical care," and

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291 "Medicaid recipient" have the same meaning as provided in s.  
292 409.901.

293 (b) The term "practitioner," in addition to the meaning  
294 prescribed in subsection (1), includes any hospital or  
295 ambulatory surgical center as defined and licensed under chapter  
296 395.

297 (c) The term "wrongful manner" means in bad faith or with  
298 malicious purpose or in a manner exhibiting wanton and willful  
299 disregard of human rights, safety, or property, and shall be  
300 construed in conformity with the standard set forth in s.  
301 768.28(9)(a).

302 (7) SETOFF.—In any case in which the jury verdict for  
303 noneconomic damages exceeds the limits established by this  
304 section, the trial court shall reduce the award for noneconomic  
305 damages within the same category of defendants in accordance  
306 with this section after making any reduction for comparative  
307 fault as required by s. 768.81 but before application of a  
308 setoff in accordance with ss. 46.015 and 768.041. In the event  
309 of a prior settlement or settlements involving one or more  
310 defendants subject to the limitations of the same subsection  
311 applicable to a defendant remaining at trial, the court shall  
312 make such reductions within the same category of defendants as  
313 are necessary to ensure that the ~~total amount of~~ noneconomic  
314 damages recovered by the claimant do ~~does~~ not exceed the  
315 ~~aggregate~~ limit established by the applicable subsection. This  
316 subsection is not intended to change current law relating to the  
317 setoff of economic damages.

318 (8) ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW.—This  
319 section does ~~shall~~ not apply to actions governed by s. 768.28.

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320 Section 5. Subsection (8) of section 768.21, Florida  
321 Statutes, is amended, and subsections (3) and (4) of that  
322 section are republished, to read:

323 768.21 Damages.—All potential beneficiaries of a recovery  
324 for wrongful death, including the decedent's estate, shall be  
325 identified in the complaint, and their relationships to the  
326 decedent shall be alleged. Damages may be awarded as follows:

327 (3) Minor children of the decedent, and all children of the  
328 decedent if there is no surviving spouse, may also recover for  
329 lost parental companionship, instruction, and guidance and for  
330 mental pain and suffering from the date of injury. For the  
331 purposes of this subsection, if both spouses die within 30 days  
332 of one another as a result of the same wrongful act or series of  
333 acts arising out of the same incident, each spouse is considered  
334 to have been predeceased by the other.

335 (4) Each parent of a deceased minor child may also recover  
336 for mental pain and suffering from the date of injury. Each  
337 parent of an adult child may also recover for mental pain and  
338 suffering if there are no other survivors.

339 ~~(8) The damages specified in subsection (3) shall not be~~  
340 ~~recoverable by adult children and the damages specified in~~  
341 ~~subsection (4) shall not be recoverable by parents of an adult~~  
342 ~~child with respect to claims for medical negligence as defined~~  
343 ~~by s. 766.106(1).~~

344 Section 6. (1) Every medical malpractice insurer and every  
345 medical malpractice insurer rate filing made with the Office of  
346 Insurance Regulation on or after January 1, 2025, must reflect  
347 the projected changes in claim frequency, claim severity, and  
348 loss adjustment expenses, including for attorney fees, and any

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349 other change actuarially indicated, due to the combined effect  
350 of the applicable provisions of this act in order to ensure that  
351 rates for such insurance accurately reflect the risk of  
352 providing such insurance.

353 (2) The Office of Insurance Regulation shall consider in  
354 its review of rate filings made on or after January 1, 2025, the  
355 projected changes in costs associated with the amendments to ss.  
356 766.118 and 768.21(8), Florida Statutes, by this act. The office  
357 may develop methodology and data that incorporate generally  
358 accepted actuarial techniques and standards to be used in its  
359 review of rate filings governed by this section. The methodology  
360 must account for the expected losses, by class, of insureds  
361 covered by a medical malpractice insurance, provided the  
362 methodology is consistent with generally accepted actuarial  
363 techniques and standards. Such methodology and data are not  
364 intended to create a mandatory rate increase or decrease for all  
365 medical malpractice insurers, but rather to ensure that the  
366 rates for such coverage meet the requirements of s. 627.062,  
367 Florida Statutes, and thus, are not inadequate, excessive, or  
368 unfairly discriminatory and allow such insurers a reasonable  
369 rate of return.

370 Section 7. (1) The Office of Program Policy Analysis and  
371 Government Accountability shall study the efficacy of the  
372 statutory caps imposed by this act on noneconomic damages in  
373 actions for personal injury or wrongful death arising from  
374 medical negligence. The office may retain experts as are  
375 reasonably necessary to complete the study. The study must  
376 include, but need not be limited to, an evaluation of the  
377 current, historical, and forecast data of the following:

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378       (a) The availability, affordability, and volatility of  
379 professional liability insurance coverage for medical  
380 negligence.

381       (b) The per capita supply of licensed physicians in this  
382 state, including those in high-risk specialties that may  
383 include, but are not limited to, internal medicine, general  
384 surgery, and obstetrics and gynecology.

385       (c) The extent to which physicians in this state are forced  
386 to practice medicine without professional liability insurance,  
387 leave the state, refrain from practice in high-risk specialties,  
388 or retire early from the practice of medicine.

389       (d) Evidence of the relationship between the statutory caps  
390 and changes in the matters addressed in paragraphs (a), (b), and  
391 (c).

392       (2) By December 31, 2029, the office shall submit a report  
393 to the Governor, the President of the Senate, and the Speaker of  
394 the House of Representatives which includes findings from its  
395 study and recommendations as to whether the statutory caps on  
396 noneconomic damages should be retained, modified, or eliminated.

397       Section 8. For the purpose of incorporating the amendment  
398 made by this act to section 766.118, Florida Statutes, in a  
399 reference thereto, paragraph (a) of subsection (3) of section  
400 766.209, Florida Statutes, is reenacted to read:

401       766.209 Effects of failure to offer or accept voluntary  
402 binding arbitration.—

403       (3) If the defendant refuses a claimant's offer of  
404 voluntary binding arbitration:

405       (a) The claim shall proceed to trial, and the claimant,  
406 upon proving medical negligence, shall be entitled to recover

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407 damages subject to the limitations in s. 766.118, prejudgment  
408 interest, and reasonable attorney's fees up to 25 percent of the  
409 award reduced to present value.

410 Section 9. This act applies to causes of action that accrue  
411 on or after July 1, 2024.

412 Section 10. This act shall take effect July 1, 2024.