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CHAPTER 32

Noneconomic Damage Awards

ARTICLE 1

[Reserved]

ARTICLE 3

Noneconomic Damage Awards

**SECTION 15‑32‑200.** Citation of article.

 This article may be cited as the “South Carolina Noneconomic Damage Awards Act of 2005”.

HISTORY: 2005 Act No. 32, Section 2, eff July 1, 2005, for causes of action arising after that date.

**SECTION 15‑32‑210.** Definitions.

 As used in this article, unless the context clearly requires otherwise:

 (1) “Ambulatory surgical facility” means a licensed, distinct, freestanding, self‑contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, by licensed health care providers, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day. This term does not include abortion clinics.

 (2) “Claimant” means the person suffering personal injury.

 (3) “Economic damages” means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

 (4) “Health care institution” means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, and a renal dialysis facility.

 (5) “Health care provider” means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

 (6) “Hospital” means a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty‑four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina. This term includes a hospital that provides specialized service for one type of care, such as tuberculosis, maternity, or orthopedics.

 (7) “Institutional general infirmary” means a licensed facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents, or inmates with illness, injury, or infirmity for a period exceeding twenty‑four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.

 (8) “Medical malpractice” means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances.

 (9) “Noneconomic damages” means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and any other theory of damages including, but not limited to, fear of loss, illness, or injury.

 (10) “Nursing home” means a licensed facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing skilled nursing services for persons who are not in need of hospital care. This term does not include assisted living, independent living, or community residential care facilities that do not provide skilled nursing services.

 (11) “Personal injury” means injuries to the person including, but not limited to, bodily injuries, mental distress or suffering, loss of wages, loss of services, loss of consortium, wrongful death, survival, and other noneconomic damages and actual economic damages.

 (12) “Personal injury action” means an action for personal injury, including a wrongful death action pursuant to Sections 15‑51‑10 through 15‑51‑60 and a survival action pursuant to Section 15‑5‑90.

 (13) “Renal dialysis facility” means an outpatient facility which offers staff assisted dialysis or training and supported services for self‑dialysis to end‑stage renal disease patients.

 (14) “Skilled nursing services” means services that:

 (a) are ordered by a physician;

 (b) require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

 (c) are furnished directly by, or under the supervision of such personnel.

HISTORY: 2005 Act No. 32, Section 2, eff July 1, 2005, for causes of action arising after that date.

**SECTION 15‑32‑220.** Noneconomic damages limit; exceptions; annual adjustment based on Consumer Price Index.

 (A) In an action on a medical malpractice claim when final judgment is rendered against a single health care provider, the limit of civil liability for noneconomic damages of the health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection (E).

 (B) In an action on a medical malpractice claim when final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection (E).

 (C) In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant, except as provided in subsection (E).

 (D)(1) The provisions of this section do not limit the amount of compensation for economic damages suffered by each claimant in a medical malpractice claim.

 (2) The provisions of this section do not limit the amount of punitive damages in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law.

 (E) The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was grossly negligent, wilful, wanton, or reckless, and such conduct was the proximate cause of the claimant’s noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant.

 (F) At the end of each calendar year, the Revenue and Fiscal Affairs Office, Board of Economic Advisors must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December 31 of the previous year, and the limitation on compensation for noneconomic damages pursuant to subsection (A), (B), or (C) must be increased or decreased accordingly. As soon as practicable after this adjustment is calculated, the Director of the Revenue and Fiscal Affairs Office shall submit the revised limitation on compensation to the State Register for publication pursuant to Section 1‑23‑40(2), and the revised limitation becomes effective upon publication in the State Register. For purposes of this subsection, “Consumer Price Index” means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics.

HISTORY: 2005 Act No. 32, Section 2, eff July 1, 2005, for causes of action arising after that date; 2005 Act No. 144, Section 1, eff July 1, 2005, applicable to causes of action arising thereafter.

**SECTION 15‑32‑230.** Emergency medical and obstetrical care exceptions.

 (A) In an action involving a medical malpractice claim arising out of care rendered in a genuine emergency situation involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, no physician may be held liable unless it is proven that the physician was grossly negligent.

 (B) In an action involving a medical malpractice claim arising out of obstetrical care rendered by a physician on an emergency basis when there is no previous doctor/patient relationship between the physician or a member of his practice with a patient or the patient has not received prenatal care, such physician is not liable unless it is proven such physician is grossly negligent.

 (C) The limitation on physician liability established by subsections (A) and (B) shall only apply if the patient is not medically stable and:

 (1) in immediate threat of death; or

 (2) in immediate threat of serious bodily injury.

 Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient’s discharge from the emergency department or obstetrical or surgical suite.

HISTORY: 2005 Act No. 32, Section 2, eff July 1, 2005, for causes of action arising after that date.

**SECTION 15‑32‑240.** Rights under other acts.

 The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33.

HISTORY: 2005 Act No. 32, Section 2, eff July 1, 2005, for causes of action arising after that date.

ARTICLE 5

Punitive Damages

**SECTION 15‑32‑510.** Claims for punitive damages must be prayed for in complaint; amount shall not be specifically plead.

 (A) A claim for punitive damages must be specifically prayed for in the complaint.

 (B) The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.

HISTORY: 2011 Act No. 52, Section 2, eff January 1, 2012.

**SECTION 15‑32‑520.** Bifurcated trials; clear and convincing evidence standard; factors for liability determination; review of jury determination; multiple defendants.

 (A) All actions tried before a jury involving punitive damages, if requested by any defendant against whom punitive damages are sought, must be conducted in a bifurcated manner before the same jury.

 (B) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory or nominal damages. Evidence relevant only to the issues of punitive damages is not admissible at this stage.

 (C) Punitive damages may be considered if compensatory or nominal damages have been awarded in the first stage of the trial.

 (D) Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant’s wilful, wanton, or reckless conduct.

 (E) In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages and, if determined to be liable, the amount of punitive damages. In determining the amount of punitive damages, the jury may consider all relevant evidence, including, but not limited to:

 (1) the defendant’s degree of culpability;

 (2) the severity of the harm caused by the defendant;

 (3) the extent to which the plaintiff’s own conduct contributed to the harm;

 (4) the duration of the conduct, the defendant’s awareness, and any concealment by the defendant;

 (5) the existence of similar past conduct;

 (6) the profitability of the conduct to the defendant;

 (7) the defendant’s ability to pay;

 (8) the likelihood the award will deter the defendant or others from like conduct;

 (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff;

 (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and

 (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

 (F) If punitive damages are awarded, the trial court shall review the jury’s decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice.

 (G) In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant.

HISTORY: 2011 Act No. 52, Section 2, eff January 1, 2012.

**SECTION 15‑32‑530.** Awards not to exceed certain limits; Revenue and Fiscal Affairs Office to calculate adjustments to maximum awards; publication in State Register.

 (A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.

 (B) The limitation provided in subsection (A) may not be disclosed to the jury. If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether:

 (1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant; or

 (2) the defendant’s actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff’s damages;

 If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars and, if necessary, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by this subsection. If the trial court determines that neither item (1) or (2) apply, then the award of punitive damages shall be subject to the maximum amount provided by subsection (A) and the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by subsection (A).

 (C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages:

 (1) at the time of injury the defendant had an intent to harm and determines that the defendant’s conduct did in fact harm the claimant; or

 (2) the defendant has pled guilty to or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is a proximate cause of the plaintiff’s damages; or

 (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant’s judgment is substantially impaired.

 (D) At the end of each calendar year, the Revenue and Fiscal Affairs Office must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December thirty‑one of the previous year, and the maximum amount recoverable for punitive damages pursuant to subsection (A) must be increased or decreased accordingly. As soon as practicable after this adjustment is calculated, the Executive Director of the Revenue and Fiscal Affairs Office shall submit the revised maximum amount recoverable for punitive damages to the State Register for publication, pursuant to Section 1‑23‑40(2), and the revised maximum amount recoverable for punitive damages becomes effective upon publication in the State Register. For purposes of this subsection, “Consumer Price Index” means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics.

HISTORY: 2011 Act No. 52, Section 2, eff January 1, 2012.

**SECTION 15‑32‑540.** Applicability of article.

 The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33.

HISTORY: 2011 Act No. 52, Section 2, eff January 1, 2012.