

HOUSE BILL NO. 275

INTRODUCED BY S. REICHNER

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT ECONOMIC CONSUMPTION BE DEDUCTED FROM AN AWARD OF DAMAGES IN A MEDICAL MALPRACTICE ACTION; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the provision of medical services to Montana residents is imperative to their health and happiness; and

WHEREAS, it is increasingly difficult for Montana communities to attract and retain qualified medical providers; and

WHEREAS, the acquisition of reasonably priced medical malpractice insurance coverage is a factor in attracting medical providers to Montana and in retaining them; and

WHEREAS, medical malpractice insurance premium rates are negatively impacted by the lack of a provision requiring deduction of personal consumption expenses from damage awards in survivor actions; and

WHEREAS, the Legislature has determined that a shortage of health care providers in the state and an inability to attract health care providers to the state would pose a serious threat to the health, welfare, and safety of Montanans; and

WHEREAS, the number of insurance carriers that provide liability insurance for hospitals, physicians, and dentists has declined significantly in the past decade; and

WHEREAS, insurance premiums for liability insurance for health care providers have historically forced physicians and other providers in Montana to consider either curtailing certain medical services or, in the alternative, relocating to other states where premiums are stabilized; and

WHEREAS, Montana and its residents have a compelling state interest in ensuring that Montana residents receive quality and reasonably priced health care; and

WHEREAS, recently enacted federal health care reform failed to address tort reform measures, defensive medicine costs, and abusive litigation practices; and

WHEREAS, in a wrongful death action brought by a person's spouse or heirs under Montana law, a jury awarding damages deducts from the award all the normal, daily expenses a person would have consumed during the person's lifetime; and



1 WHEREAS, in a survivor action brought by a person's estate under Montana law, these personal
2 consumption expenses are not deducted from the award, thereby creating an unfair windfall to the estate; and

3 WHEREAS, the Legislature has determined it is an important public policy to treat the deduction of
4 personal consumption expenses the same in both wrongful death and survivor actions in the context of medical
5 malpractice actions; and

6 WHEREAS, the Legislature declares that it is the policy of the State of Montana to attempt to attract and
7 retain qualified health care providers to care for the residents of Montana and that personal consumption
8 expenses must be deducted from damages relating to survivor actions.

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 **NEW SECTION. Section 1. Economic consumption to be deducted from award.** If damages are
13 awarded for a malpractice claim, as defined in 25-9-411, for a deceased party's lost future earnings, the deceased
14 party's economic consumption must be deducted from the award. Economic consumption is the part of the
15 projected earnings that the deceased party would have spent on basic necessities and personal expenditures
16 throughout the party's lifetime.

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18 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 25, chapter 9, part 4, and the provisions of Title 25, chapter 9, part 4, apply to [section 1].

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21 **NEW SECTION. Section 3. Applicability.** [This act] applies to civil actions filed on or after [the effective
22 date of this act].

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