

HOUSE BILL NO. 695
INTRODUCED BY R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN A NEGLIGENCE ACTION AGAINST A HEALTH CARE PROVIDER, NONECONOMIC DAMAGES ARISING FROM EMERGENCY CARE ARE LIMITED TO \$50,000 AND A MEDICAL EXPERT WHO TESTIFIES MUST HAVE HAD AT LEAST 5 YEARS OF EXPERIENCE PRIOR TO THE TIME OF THE ACT OR OMISSION THAT IS THE BASIS FOR THE ACTION IN A PRACTICE THAT IS THE SAME OR SUBSTANTIALLY THE SAME AS THE DEFENDANT'S; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the State of Montana is experiencing difficulty in attracting and maintaining a network of physicians sufficient to meet the needs of the people of the state; and

WHEREAS, the Legislature had determined that the shortage of physicians in the state and the inability to attract more physicians to the state poses a serious threat to the health, welfare, and safety of the people of the state; and

WHEREAS, it is recognized that persons who have been injured by medical malpractice must be afforded appropriate access to legal remedies for their injuries and that any resulting damages awards should be directed to the injured persons; and

WHEREAS, unfettered lawsuits serve to further exacerbate a congested judicial system and delay timely payment of just claims; and

WHEREAS, the State of Montana has a compelling state interest in ensuring that affordable health care is available for its citizens and stabilization of medical malpractice insurance premiums will contribute toward cost containment for health care for Montana citizens.

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

NEW SECTION. Section 1. Negligence action against health care provider -- limit on noneconomic damages arising from emergency care -- qualifications of person giving medical expert testimony. (1) In an action against a health care provider for negligent diagnosis, prognosis, or treatment:

(a) relating to emergency care provided in a physician's or dentist's office or a hospital or other health care facility, a plaintiff may not recover more than \$50,000 in noneconomic damages from the health care

provider;

(b) a health care provider may not give expert medical testimony for a plaintiff or defendant unless the provider, for at least 5 years prior to the time of the act or omission that is the basis for the action, spent at least one-half of the provider's professional practice time in a practice that is the same or substantially the same as the defendant health care provider's practice or primary practice.

(2) For purposes of this section, the following definitions apply:

(a) "Emergency care" means an attempt to stabilize the condition, prevent or slow down the deterioration of the condition, or reverse or otherwise medically address the condition of a person to prevent bodily damage or serious bodily damage, impairment of bodily functions, death, or other adverse health consequences.

(b) "Health care facility" has the meaning provided in 50-5-101.

(c) "Health care provider" has the meaning provided in 27-6-103.

NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 4. Applicability. [This act] applies to causes of action arising on or after [the effective date of this act].

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