

1 SENATE BILL NO. 184

2 INTRODUCED BY B. TUTVEDT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MEDICAL MALPRACTICE LAWS TO REQUIRE THAT
5 ECONOMIC CONSUMPTION BE DEDUCTED FROM AN AWARD OF DAMAGES IN A MEDICAL
6 MALPRACTICE ACTION; AND PROVIDING AN APPLICABILITY DATE."

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

11 WHEREAS, in a survivor action brought by a person's estate under Montana law, these economic
12 consumption expenses are not deducted from the award, thereby creating an inconsistent system of damages;
13 and

14 WHEREAS, the purpose of a damage award is to put the person in the same position the person would
15 have been in but for the occurrence, and without the occurrence, the person would have consumed part of the
16 person's earnings; and

17 WHEREAS, the lack of a provision requiring the deduction of economic consumption expenses from
18 damage awards in survivor actions is a factor in increasing medical malpractice insurance premium rates, and
19 these high premiums have historically forced providers in Montana to consider curtailing certain medical services
20 or to relocate to states where premiums are stabilized; and

21 WHEREAS, Montana and its residents have a compelling state interest in ensuring that Montana
22 residents receive quality health care at a reasonable price; and

23 WHEREAS, the Legislature has determined that the health, welfare, and safety of Montanans would be
24 threatened by a shortage of health care providers and declares that it is the policy of the State of Montana to
25 attract and retain qualified health care providers to care for the residents of Montana and that economic
26 consumption expenses must be deducted from damage awards in survivor actions.

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

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30 NEW SECTION. **Section 1. Economic consumption to be deducted from award.** If damages are

1 awarded for a malpractice claim, as defined in 25-9-411, for a deceased party's lost future earnings, the deceased
2 party's economic consumption must be deducted from the award. Economic consumption is the part of the
3 projected earnings that the deceased party would have spent on basic necessities and personal expenditures
4 throughout the party's lifetime but does not include expenses necessary to care for dependents of the deceased
5 party.

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7 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
8 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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10 **NEW SECTION. Section 3. Applicability.** [This act] applies to civil actions filed on or after [the effective
11 date of this act].

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