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**SENATE BILL NO. 601**

Offered January 21, 2004

A *BILL* to amend the Code of Virginia by adding sections numbered 8.01-581.15:1, 8.01-581.15:2 and 8.01-581.15:3, relating to medical malpractice.

Patrons—Newman and Cuccinelli; Delegates: Bryant and Byron

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding sections numbered 8.01-581.15:1, 8.01-581.15:2 and 8.01-581.15:3 as follows:**

§ 8.01-581.15:1. Noneconomic damages; limitation.

A. In any jury verdict returned against a health care provider in an action for malpractice where the act or acts occurred on or after July 1, 2004, or in any judgment entered against a health care provider in such an action that is tried without a jury, the total amount of noneconomic damages shall not exceed \$250,000.

B. For the purposes of applying the limitation set forth in subsection A, future noneconomic damages shall not be discounted to present value. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed \$250,000, the future noneconomic damages shall be reduced first. There shall be no jury instruction regarding this limitation.

C. As used in this section, "noneconomic damages" shall include but not be limited to: physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship and loss of consortium.

§ 8.01-581.15:2. Periodic payment for future damages.

A. In any jury verdict returned against a health care provider in an action for malpractice where the act or acts occurred on or after July 1, 2004, or in any judgment entered against a health care provider in such an action that is tried without a jury, the court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds \$50,000 in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor to post security adequate to ensure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

B. The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall be subject to modification only in the event of the death of the judgment creditor. In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including court costs and attorney's fees. However, money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In such cases the court that rendered the original judgment, may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subdivision. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security given, pursuant to subsection A shall revert to the judgment debtor.

C. As used in this section:

"Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

"Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

§ 8.01-581.15:3. Collateral benefits in medical malpractice actions.

INTRODUCED

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59        *In an action under this chapter where the act or acts occurred on or after July 1, 2004, a defendant*  
60 *may introduce evidence of any amount payable as a benefit to the plaintiff due to the personal injury*  
61 *sustained as a result of the alleged act of medical malpractice, pursuant to the United States Social*  
62 *Security Act, any state or federal income disability or worker's compensation act, any health, sickness or*  
63 *income-disability insurance, accident insurance that provides health benefits or income-disability*  
64 *coverage, and any contract or agreement of any group, organization, partnership, or corporation to*  
65 *provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services. Where*  
66 *the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount*  
67 *which the plaintiff has paid or contributed to secure his right to any insurance benefits concerning*  
68 *which the defendant has introduced evidence. No source of collateral benefits introduced pursuant to*  
69 *this section shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the*  
70 *plaintiff against a defendant.*