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HOUSE BILL NO. 1694

Offered January 12, 2005

Prefiled December 22, 2004

A *BILL to amend and reenact § 8.01-581.15 of the Code of Virginia, relating to medical malpractice; limit on attorney fees.*

Patron—Purkey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-581.15 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-581.15. Limitation on recovery in certain medical malpractice actions.

A. In any verdict returned against a health care provider in an action for malpractice where the act or acts of malpractice occurred on or after August 1, 1999, which is tried by a jury or in any judgment entered against a health care provider in such an action which is tried without a jury, the total amount recoverable for any injury to, or death of, a patient shall not exceed \$1.5 million. The maximum recovery limit of \$1.5 million shall increase on July 1, 2000, and each July 1 thereafter by \$50,000 per year; however, the annual increase on July 1, 2007, and the annual increase on July 1, 2008, shall be \$75,000 per year. Each annual increase shall apply to the act or acts of malpractice occurring on or after the effective date of the increase. The July 1, 2008, increase shall be the final annual increase.

Where the act or acts of malpractice occurred prior to August 1, 1999, the total amount recoverable for any injury to, or death of, a patient shall not exceed the limitation on recovery set forth in this statute as it was in effect when the act or acts of malpractice occurred.

B. *The following provisions shall govern attorney fees in medical malpractice actions under this chapter.*

1. *An attorney who represents a claimant in a medical malpractice action shall not receive attorney fees for the representation that exceed the amounts set forth in the following fee schedule ("schedule"):*

a. *33 and one-third percent of the first \$300,000 of the sum recovered;*

b. *25 percent of the next \$300,000 of the sum recovered;*

c. *20 percent of the next \$300,000 of the sum recovered;*

d. *15 percent of the next \$300,000 of the sum recovered; or*

e. *10 percent of any sum recovered in the amount of at least \$2.5 million but less than \$5 million;*

or

f. *5 percent of any sum recovered in the amount of \$5 million or more.*

2. *For the purposes of this subsection:*

"Schedule fee" means the fee for legal services established by the schedule.

"Sum recovered" means any award of funds to the plaintiff resulting from trial, settlement, or arbitration of the action, less any expenses for expert testimony and investigative or other services properly chargeable to the action, but including any lien, assignments, or claims in favor of hospitals, for medical care or treatment, or of self-insurers or insurance carriers. If any portion of the sum recovered is in the form of future, periodic payments, such payments shall be reduced to their present value for purposes of calculating the schedule fee.

3. *This subsection shall govern those actions for medical malpractice that accrue on or after July 1, 2005.*

C. In interpreting this section, the definitions found in § 8.01-581.1 shall be applicable.