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HOUSE BILL NO. 1282

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend the Code of Virginia by adding in Chapter 21.1 of Title 8.01 an article numbered 1.1, consisting of sections numbered 8.01-581.12:3 through 8.01-581.12:6, relating to the Medical Malpractice Settlement Offer and Recovery Act.*

Patrons—Athey, Carrico, Cole, Lingamfelter and Sherwood

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 in Chapter 21.1 of Title 8.01 an article numbered 1.1, consisting of sections numbered 8.01-581.12:3 through 8.01-581.12:6, as follows:

*Article 1.1.**Medical Malpractice Settlement Offer and Recovery Act.**§ 8.01-581.12:3. Settlement offer; contents; compensatory damages; attorney fees.*

A. At any time within 180 days from the filing of the responsive pleading in any action brought for malpractice against a health care provider, the defendant may serve upon the plaintiff a settlement offer. A copy of such offer shall also be filed with the court. After the settlement offer has been served, the defendant may not revoke it for any reason.

B. A settlement offer made in compliance with subsection A shall contain terms providing for the payment of the following:

1. The plaintiff's net compensatory damages, including lost wages and medical expenses, however the amount of damages shall not exceed the limits set forth in § 8.01-581.15; and

2. Attorney fees in an amount equal to 10 percent of the net compensatory damages.

C. No settlement offer made in compliance with subsection A shall contain terms providing for the payment of punitive or exemplary damages.

D. A settlement offer that fails to comply with the provisions of subsections B and C shall be considered invalid for the purposes of this article.

§ 8.01-581.12:4. Acceptance or rejection of offer.

The plaintiff may accept or reject any settlement offer made by a defendant. Notice of the plaintiff's acceptance or rejection of the settlement offer shall be served upon the defendant within 30 days from the receipt of a defendant's settlement offer. A copy of such notice shall also be filed with the court. If a plaintiff fails to file notice of his acceptance of the settlement offer within 30 days, the offer shall be deemed to be rejected and the plaintiff's claim shall proceed under the provisions set forth in § 8.01-581.12:5.

§ 8.01-581.12:5. Proceedings after rejection of offer.

The claim of a plaintiff who rejects a settlement offer, or who fails to accept such offer within the time period set forth in § 8.01-581.12:4, shall proceed in accordance with the provisions of this chapter, except that in order to recover any damages, whether compensatory, punitive, or exemplary, the plaintiff shall prove by clear and convincing evidence that the plaintiff's injuries resulted from the defendant's gross negligence or wanton and willful misconduct.

§ 8.01-581.12:6. Effect of settlement offer.

A. If prior to the service of a settlement offer pursuant to § 8.01-581.12:3, a party has requested a review by a medical malpractice review panel in accordance with § 8.01-581.2, such request or, if a panel has already been established, the actions of the panel shall be stayed until the plaintiff's rejection of the settlement offer or time for acceptance of the offer set forth in § 8.01-581.12:4 has expired.

B. The provisions of this article shall not affect any agreement of the parties to submit a claim to binding arbitration entered pursuant to § 8.01-581.12.

INTRODUCED

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