



General Assembly

Amendment

January Session, 2009

LCO No. 6190

SB0096106190SRO

Offered by:

SEN. FASANO, 34th Dist.

SEN. BOUCHER, 26th Dist.

To: Senate Bill No. 961

File No. 294

Cal. No. 263

"AN ACT CONCERNING MEDICAL MALPRACTICE DATA REPORTING."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 52-572h of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective*
5 *October 1, 2009, and applicable to actions filed on or after said date*):

6 (a) For the purposes of this section: (1) "Economic damages" means
7 compensation determined by the trier of fact for pecuniary losses
8 including, but not limited to, the cost of reasonable and necessary
9 medical care, rehabilitative services, custodial care and loss of earnings
10 or earning capacity excluding any noneconomic damages; (2)
11 "noneconomic damages" means compensation determined by the trier
12 of fact for all nonpecuniary losses including, but not limited to,
13 physical pain and suffering and mental and emotional suffering; (3)
14 "recoverable economic damages" means the economic damages

15 reduced by any applicable findings including but not limited to
16 set-offs, credits, comparative negligence, additur and remittitur, and
17 any reduction provided by section 52-225a; (4) "recoverable
18 noneconomic damages" means the noneconomic damages reduced by
19 any applicable findings including but not limited to set-offs, credits,
20 comparative negligence, additur and remittitur; (5) "health care
21 institution" means a health care institution licensed pursuant to
22 chapter 368v; and (6) "health care provider" means an individual
23 provider of health care licensed pursuant to chapters 370 to 373,
24 inclusive, 375 to 383c, inclusive, or chapter 400j.

25 Sec. 502. Section 52-572h of the general statutes is amended by
26 adding subsection (p) as follows (*Effective October 1, 2009, and applicable*
27 *to actions filed on or after said date*):

28 (NEW) (p) In any action filed on or after October 1, 2009, to recover
29 damages resulting from personal injury or wrongful death, whether in
30 tort or in contract, in which it is alleged that such injury or death
31 resulted from the professional negligence of a health care provider or
32 health care institution in the medical diagnosis, care or treatment of the
33 claimant, the amount of recoverable noneconomic damages shall not
34 exceed seven hundred fifty thousand dollars with respect to such
35 injury or death.

36 Sec. 503. Section 52-225d of the general statutes is repealed and the
37 following is substituted in lieu thereof (*Effective October 1, 2009, and*
38 *applicable to actions filed on or after said date*):

39 (a) In any civil action wherein the claimant seeks to recover
40 damages resulting from personal injury, wrongful death or damage to
41 property occurring on or after October 1, 1987, and wherein liability is
42 admitted or determined by the trier of fact, the court shall proceed to
43 enter judgment as follows: (1) The trier of fact shall make separate
44 findings for each claimant specifying the amount of any economic
45 damages and noneconomic damages, as defined in subsection (a) of
46 section 52-572h. (2) The court shall take into account any applicable

47 findings made by the court or jury and shall specify for each claimant
48 the amount of recoverable economic damages and recoverable
49 noneconomic damages, as defined in subsection (a) of section 52-572h.
50 (3) [The] Except as provided in subdivision (4) of this subsection, the
51 court shall enter judgment in a lump sum for all such recoverable
52 economic damages and recoverable noneconomic damages up to an
53 aggregate of two hundred thousand dollars. If the amount of such
54 damages remaining is in excess of two hundred thousand dollars, the
55 court shall provide the parties sixty days to negotiate and consent to an
56 agreement to be incorporated into an amended judgment to provide
57 for the payment of all such damages remaining in excess of two
58 hundred thousand dollars in a lump sum or in periodic installment
59 payments or in any combination thereof without regard to the
60 provisions of this section. (4) In a civil action brought to recover
61 damages resulting from personal injury or wrongful death occurring
62 on or after the effective date of this section, whether in tort or in
63 contract, resulting from the negligence of a health care provider in the
64 medical diagnosis, care or treatment of any person, if the parties do not
65 consent to an agreement pursuant to subdivision (3) of this subsection,
66 the court shall enter judgment for the payment in periodic installment
67 payments of all recoverable noneconomic damages over at least a
68 three-year period if the award equals or exceeds two hundred
69 thousand dollars, provided no individual annual payment may exceed
70 two hundred fifty thousand dollars.

71 (b) (1) If the parties agree on the terms of payment pursuant to
72 subdivision (3) of subsection (a) of this section, with respect to
73 recoverable economic damages and recoverable noneconomic damages
74 in excess of two hundred thousand dollars, the court shall, subject to a
75 determination by the court that the terms of subsection [(e)] (f) of this
76 section have been satisfied, enter an amended judgment incorporating
77 such agreement of the parties into the amended judgment. (2) If the
78 parties fail to agree on the terms of payment pursuant to subdivision
79 (3) of subsection (a) of this section, with respect to the payment of
80 damages in excess of two hundred thousand dollars, the court shall

81 enter an amended judgment to provide for the payment of such
82 damages in a lump sum.

83 (c) If a judgment or amended judgment for periodic installment
84 payments is entered pursuant to subsection (a) or (b) of this section,
85 the court shall consider evidence submitted by either party as to the
86 terms and conditions of such periodic installment payments and shall
87 order such payments on terms the court deems just and equitable to
88 both parties in accordance with generally accepted actuarial practices.

89 [(c) If an] (d) If a judgment or amended judgment for periodic
90 installment payments is entered pursuant to subsection (a) or (b) of
91 this section, that portion of the contingency fee or any other payment
92 arranged between the claimant and the attorney for professional
93 services relating to recoverable economic damages and recoverable
94 noneconomic damages subject to periodic installment payments as
95 required under such judgment or amended judgment shall be payable
96 in periodic installment payments in accordance with an order to be
97 entered by the court simultaneously with but separate and apart from
98 the judgment or amended judgment, unless prior to the entry of that
99 order the claimant and such attorney have otherwise agreed and so
100 informed the court.

101 [(d)] (e) The time within which any party aggrieved by a judgment
102 or amended judgment of the court made under this section may appeal
103 shall run from the issuance of notice of the rendition of the later-filed
104 of the judgment or amended judgment prescribed by subsection (a) of
105 this section or the amended judgment prescribed by subsection (b) of
106 this section.

107 [(e)] (f) The court shall require any party liable for the payment of
108 damages in periodic installment payments to demonstrate to the court
109 its ability to make such periodic installment payments and, if
110 appropriate, at the discretion of the court, require such party to post
111 and maintain security adequate to assure full payment of such party's
112 portion of the unpaid damages.

113 [(f)] (g) If the court enters a judgment or amended judgment for
114 periodic installment payments pursuant to subsection (a) or (b) of this
115 section and a claimant dies before the end of the period during which
116 such periodic installment payments are to be made, the obligation of
117 the defendant or defendants to make such periodic installment
118 payments shall not cease until the remaining financial obligation of the
119 defendant or defendants has, in accordance with an order of a court
120 having jurisdiction in the matter, been paid into the estate of the
121 claimant in periodic installment payments or distributed to the
122 beneficiary or beneficiaries of the estate as such court may direct and
123 such distribution shall be binding as to any party making periodic
124 installment payments [hereunder] pursuant to this section.

125 [(g)] (h) Nothing in this section shall be construed to limit the right
126 of a claimant, defendant or defendants and insurers to settle claims as
127 they consider appropriate and in their complete discretion at any time.

128 [(h)] (i) Following the fulfillment of all obligations specified in the
129 judgment or amended judgment for periodic installment payments,
130 any obligation of the defendant or any other person to make further
131 payments pursuant to this section shall cease."