

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH80465-RU-42 (04/05)

Short Title: Periodic Payments for Medical Malpractice. (Public)

Sponsors: Representatives England, Nye, Wright, Rapp (Primary Sponsors); Tucker and Hollo.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR PAYMENT OF FUTURE EXPENSES ARISING FROM MEDICAL MALPRACTICE ACTIONS TO BE BY PERIODIC PAYMENTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH CARE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1B of Chapter 90 is amended by adding the following new section to read:

**"§ 90-21.18E. Periodic payment of future economic damages in medical malpractice actions.**

(a) As used in this section, the following terms mean:

(1) Future economic damages. – Damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, and any other pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award exceeds one hundred thousand dollars (\$100,000) in future economic damages. In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall

1 make a specific finding as to the dollar amount of periodic payments that will  
2 compensate the plaintiff for such future economic damages. The calculation of any  
3 attorney contingency fee for representing the plaintiff in connection with the medical  
4 malpractice action shall be based upon the present value of such future economic  
5 damages.

6 (d) As a condition to authorizing periodic payments of future economic damages,  
7 the court shall require that such payments be made through the establishment of a trust  
8 fund or the purchase of an annuity for the life of the plaintiff or during the continuance  
9 of the compensable injury or disability of the plaintiff. The establishment of a trust fund  
10 or the purchase of an annuity, as required and approved by the court, shall constitute the  
11 satisfaction of the defendant's judgment for future economic damages.

12 (e) The judgment ordering the payment of future economic damages by periodic  
13 payments shall specify the recipient of the payments, the dollar amount of the payments,  
14 the interval between payments, and the number of payments or the period of time over  
15 which payment shall be made. Payments shall only be subject to modification by the  
16 court in the event of the death of the plaintiff, as provided in subsection (f) of this  
17 section.

18 (f) In any judgment where future economic damages are payable in periodic  
19 payments, liability for payment of future economic damages not yet due shall terminate  
20 upon the death of the plaintiff. Provided, however, that the court which rendered the  
21 original judgment may modify the judgment to provide that damages awarded for loss  
22 of future earnings shall not be reduced or payments terminated by reason of the death of  
23 the plaintiff, but shall be paid to persons to whom the plaintiff owed a duty of support,  
24 as provided by law, immediately prior to the plaintiff's death if such persons have  
25 survived the plaintiff."

26 **SECTION 2.** This act becomes effective October 1, 2006, and applies to  
27 actions filed on or after that date.