

February 6, 2007

S 72. HEALTH CARE LIABILITY CLAIMS. Filed 2/6/07. *TO LIMIT THE AMOUNT OF DAMAGES THAT MAY BE AWARDED IN CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS FOR HEALTH CARE LIABILITY CLAIMS, TO OTHERWISE REFORM HEALTH CARE LIABILITY, AND TO MAKE CONFORMING CHANGES.* As title indicates, enacts new GS Chapter 90, Article 1H (Health Care Liability Claims), which establishes procedures and standards of proof for health care liability claims, establishes a medical disclosure panel, and sets limits for non-economic damages, future losses, and attorneys' fees recoverable in these actions, applicable to all claims filed on or after October 1, 2008. Defines "health care liability claim" as a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical or health care. Provides that GS Chapter 75, Article 1 (Monopolies, Trusts, and Consumer Protection) does not apply to negligence claims against physicians or health care providers involving personal injury or death. Makes conforming changes. ¶ *Notice and Pleadings:* Requires that an individual making a health care liability claim ("claimant") provide written notice of the claim to the physician or health care provider at least 60 days before filing suit. The notice must include authorization for release of medical information, the language of which is specified in the act. Notice tolls the statute of limitation up to 75 days from the date of notice. Provides that pleadings filed in a subsequent lawsuit must not state the amount claimed as damages, but that the defendant may obtain this information upon request. ¶ *Informed Consent:* In an action in which the claimant states that a physician or health provider failed to adequately disclose risks of care, limits the theory of recovery to a claim that the failure to disclose was negligent and that disclosure could have influenced a reasonable person in making the decision to undergo the procedure. Establishes a nine-member NC Medical Disclosure Panel composed of three lawyers and six physicians appointed by the Secretary of Health and Human Services. Requires that the panel publish in the NC Register separate lists of medical treatments and surgical procedures that do and do not require disclosure of medical risks, and specify the degree and nature of the disclosure required in each case. Requires that physicians and health care providers provide this information to patients. Provides that in a suit asserting negligent failure to disclose, the fact that the Disclosure Panel does not require a certain disclosure creates a rebuttable presumption that the section has been complied with and must be included in jury charges, and that a failure to disclose risks that the Disclosure Panel requires is admissible and creates a rebuttable presumption of negligence. Requires the Disclosure Panel, in consultation with the NC Medical Board, to develop written information designed to inform patients of the risk of hysterectomies and outlines specific statements that should be included. ¶ *Emergency and Volunteer Medical Care:* Limits recovery in actions arising out of the provision of emergency care to situations in which the claimant can show by a preponderance of the evidence that the physician or health care provider deviated from the standard of care in a willful and wanton manner. Delineates instructions to be provided to jury considering such claims. ¶ *Statute of Limitations:* Requires that regardless of a claimant's minority or legal disability, all health care liability claims must be filed within two years after the occurrence of the breach or tort or from the date of treatment or hospitalization, except that minors who were under 12 have until their 14th birthday to file claims. States that all claims must be brought no later than 10 years after the date of the act or omission. ¶ *Liability Limits:* Limits the amount of noneconomic damages that may be awarded against a physician or health care provider to \$250,000 per claimant, regardless of the number of defendants named or causes of action asserted. Limits noneconomic damages that may be awarded against a health care institution to \$250,000 per claimant, except that where judgment is rendered against more than one institution, the limit is \$500,000 per claimant. In the event the damage limitations are invalidated, establishes an alternative limitation on noneconomic damages which takes into account the amount of the defendant's financial responsibility. Limits the amount of all damages, including punitive damages awarded in a wrongful death or survival action against physician or health care provider to \$500,000 per claimant, except that the limit does not apply to damages awarded for expenses of future care. Provides that the limit is increased or decreased in accordance with the consumer price index. Also sets a liability limit of \$500,000 for action against hospitals providing "free care" if the claimant signs an acknowledgment of the liability limitation or

if the claimant could not sign the acknowledgment because he or she was incapacitated or a minor and the guardian was unavailable. ¶ *Procedural Provisions:* Requires a claimant to serve at least one expert report on each defendant no later than 120 days from filing of action, and provides that failure to comply with this requirement results in dismissal of the action and an award of reasonable attorney's fees to the defendant. Establishes qualifications for experts in health care liability claims and procedures for challenging the adequacy of expert reports. ¶

Arbitration Agreements: Specifies the form to be used for arbitration agreements and provides that violations are subject to the GS 90-14 enforcement provisions. ¶ *Payment for Future Losses:* In health care liability claims where the present value of future damages equals or exceeds \$100,000, requires that the court order periodic payments upon the defendant's request. ¶

Attorneys Fees: Limits contingency fees according to the amount of damages recovered as follows: 40% of the first \$50,000; 33 1/3% of the next \$50,000; 25% of the next \$500,000; and 15% of the amount over \$600,000. Amends GS 131E-44 to require that claims brought against a public hospital district be brought in the county in which the district is established.

Intro. by Pittenger.

GS 1, 1A, 8C, 90, 119, 131E