

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS35179-LD-41A* (02/19)

Short Title: Periodic Payments for Medical Malpractice.

(Public)

Sponsors: Senator Rouzer.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE PAYMENT OF FUTURE EXPENSES ARISING FROM
3 MEDICAL MALPRACTICE ACTIONS TO BE PAID PERIODICALLY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1B of Chapter 90 of the General Statutes is amended by
6 adding the following new section to read:

7 "§ 90-21.19. Periodic payment of future economic damages in medical malpractice
8 actions.

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

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

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

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

18 (c) Upon the award of future economic damages in any medical malpractice action, the
19 presiding judge shall, at the request of either party, enter a judgment ordering that the future
20 economic damages of the plaintiff be paid in whole or in part by periodic payments rather than
21 by a lump-sum payment if the award exceeds one hundred thousand dollars (\$100,000) in
22 future economic damages. In entering a judgment ordering the payment of future economic
23 damages by periodic payments, the court shall make a specific finding as to the dollar amount
24 of periodic payments that will compensate the plaintiff for such future economic damages. The
25 calculation of any attorney contingency fee for representing the plaintiff in connection with the
26 medical malpractice action shall be based upon the present value of such future economic
27 damages.

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

34 (e) The judgment ordering the payment of future economic damages by periodic
35 payments shall specify the recipient of the payments, the dollar amount of the payments, the



1 interval between payments, and the number of payments or the period of time over which
2 payment shall be made. Payments shall only be subject to modification by the court in the event
3 of the death of the plaintiff, as provided in subsection (f) of this section.

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

11 **SECTION 2.** This act becomes effective October 1, 2009, and applies to actions
12 filed on or after that date.