
Judiciary Committee

HJR 4209

Brief Description: Authorizing the legislature to place limits on civil damages in lawsuits involving health care.

Sponsors: Representatives Schual-Berke, Pflug, Carrell, Ahern, Chandler, Cox, Alexander, Mastin, DeBolt, Holmquist and Woods.

Brief Summary of Bill

- Amends the Constitution to allow the Legislature to place limitations on the amount of non-economic damages that may be awarded in medical malpractice actions.

Hearing Date: 3/3/03

Staff: Edie Adams (786-7180).

Background:

Article I, Section 21 of the Washington Constitution provides that the right to a trial by jury shall be inviolate. In 1989 the Washington Supreme Court (Court) interpreted this provision in a case challenging a limit on non-economic damages in civil actions as violating the right to a trial by jury.

In 1986 the Legislature, as part of broader tort reform legislation, placed limitations on the amount of non-economic damages that may be awarded in a civil action for personal injury or death. "Economic damages" are monetary losses such as medical expenses and loss of earnings or employment. "Non-economic damages" are subjective, non-monetary losses such as pain and suffering, mental anguish or emotional distress, disability or disfigurement, loss of consortium, loss of companionship, and destruction of the parent-child relationship.

The Court struck down this limit on non-economic damages as a violation of the constitutional right to trial by jury. *Sofie v. Fibreboard*. The Court found that the jury's fact-finding role is the essence of the right to a trial by jury contained in the constitution. In addition, the Court held that the determination of damages, especially non-economic damages, is a factual issue within the role of the jury's fact-finding function.

Medical malpractice actions are civil tort actions for the recovery of damages for injury or

death resulting from the provision of health care. A health care provider may be found liable in a medical malpractice action if: the health care provider failed to follow the standard of care; the health care provider promised that the injury suffered would not occur; or the injury resulted from health care to which the patient did not consent.

An amendment to the Constitution requires passage by the Legislature by two-thirds vote of each house and approval by a majority of the voters of the state at the next general election.

Summary of Bill:

Article I, Section 21 of the Constitution is amended to provide that the Legislature may limit the amount of non-economic damages recoverable in a civil action for injury or death occurring as the result of health care.

The provisions of the act are to be submitted to the voters at the next general election for approval and ratification, or for rejection.

Appropriation: None.

Fiscal Note: Not requested.