

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH70443-LD-196 (04/10)

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

Sponsors: Representatives England, Rapp, and Goforth (Primary Sponsors).

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.

The General Assembly of North Carolina enacts:

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

**"§ 90-21.19. 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
make a specific finding as to the dollar amount of periodic payments that will
compensate the plaintiff for such future economic damages. The calculation of any
attorney contingency fee for representing the plaintiff in connection with the medical

1 malpractice action shall be based upon the present value of such future economic
2 damages.

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

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

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

23 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
24 actions filed on or after that date.