

# Senate Joint Resolution 28

Sponsored by COMMITTEE ON HEALTH CARE AND VETERANS' AFFAIRS (at the request of Senator Frank Morse)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Proposes amendment to Oregon Constitution to impose limitation on noneconomic damages in claims against health care providers based on provision of medical care or failure to provide medical care. Provides that limit is \$1 million for claims arising in calendar year 2011. Provides for adjustment based on cost of living in subsequent calendar years.

Refers proposed amendment to people for their approval or rejection at next regular general election.

## JOINT RESOLUTION

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2 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

3 **PARAGRAPH 1.** The Constitution of the State of Oregon is amended by creating a new section  
4 12 to be added and made a part of Article XV, such section to read:

5 **SECTION 12. (1) In any personal injury action against a health care provider based on**  
6 **the provision of medical care or the failure to provide medical care, a plaintiff may not re-**  
7 **cover noneconomic damages in an amount that exceeds the limitation imposed under sub-**  
8 **section (2) of this section for all claims arising from personal injury to any one patient**  
9 **regardless of the number of health care providers against whom the claim is asserted, or the**  
10 **number of separate claims brought with respect to the injury. The limitation imposed by this**  
11 **section applies to actions brought by injured patients, actions brought by the legal repre-**  
12 **sentatives of patients and actions brought by persons claiming loss of consortium or loss of**  
13 **care, comfort, companionship or society.**

14 **(2) The limitation on noneconomic damages imposed under this section for claims arising**  
15 **in calendar year 2011 is \$1 million. Not later than February 1 of each calendar year after**  
16 **2011 the State Court Administrator shall adjust the limitation based on the immediately**  
17 **preceding December monthly Portland-Salem, OR-WA, Consumer Price Index for All Urban**  
18 **Consumers Not Seasonally Adjusted as published by the Bureau of Labor Statistics of the**  
19 **United States Department of Labor. The adjusted limitation applies to all claims arising in**  
20 **the calendar year in which the adjustment is made.**

21 **(3) The limitation imposed by this section applies to all subjective nonmonetary losses**  
22 **suffered by the plaintiff, including but not limited to pain, mental suffering, emotional dis-**  
23 **tress, loss of care, comfort, companionship and society, loss of consortium, inconvenience**  
24 **and interference with normal and usual activities apart from gainful employment.**

25 **(4) The limitation on noneconomic damages imposed by this section applies only to a**  
26 **health care provider acting within the scope of the health care provider's license.**

27 **(5) The limitation on noneconomic damages imposed by this section does not apply to**  
28 **claims based on intentional injury.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1       **(6) For the purposes of this section, “health care provider” means a person licensed,**  
2       **certified or otherwise authorized or permitted by the laws of this state to administer health**  
3       **care services in the ordinary course of business or practice of a profession, including but not**  
4       **limited to hospitals, health care clinics, physicians, psychologists and nurses.**

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6       **PARAGRAPH 2.** **The amendment proposed by this resolution shall be submitted to the**  
7       **people for their approval or rejection at the next regular general election held throughout**  
8       **this state.**

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