

**Montana Bill Capping Damages in Trauma Cases Originating in ED
(passes House Feb 19, 2005 fails to pass Senate)**

2005 Montana Legislature

HOUSE BILL NO. 222

INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A LIMIT ON CIVIL NONECONOMIC LOSS DAMAGES FOR LIABILITY ARISING FROM HOSPITAL CARE RELATED TO A TRAUMATIC CONDITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Limit on civil NONECONOMIC LOSS damages for liability arising from care related to traumatic condition. (1) A hospital OR CRITICAL ACCESS HOSPITAL, AS DEFINED IN 50-5-101, an employee of a hospital, ~~a physician, or a dentist~~ OR CRITICAL ACCESS HOSPITAL, OR A PHYSICIAN OR DENTIST LICENSED UNDER TITLE 37 is not liable for more than ~~\$50,000~~ \$100,000 in civil NONECONOMIC LOSS damages for a claim arising from care that was necessitated by a traumatic condition that demanded immediate attention and that was rendered in good faith at ~~the~~ A hospital OR CRITICAL ACCESS HOSPITAL to a patient who entered the hospital OR CRITICAL ACCESS HOSPITAL through an emergency ~~room~~ DEPARTMENT. This limit does not apply to:

(a) care rendered after stabilization of a patient, except as provided in subsection (2) and except for surgery after the stabilization when the need for surgery was caused by the traumatic condition and it was necessary to perform the surgery as soon as possible after the stabilization;
or

(b) damages for gross negligence or reckless or willful misconduct.

(2) If a physician or dentist who provided care for a traumatic condition provides followup care and the patient files a claim for damages arising from the followup care, there is a rebuttable presumption that the damages arose from the original traumatic condition and the ~~\$50,000~~ \$100,000 civil NONECONOMIC LOSS damages limitation applies.

(3) For purposes of this section, "traumatic condition" means an acute condition that according to the ~~standardized criteria for triage in the field of trauma care~~ NATIONAL TRAUMA REGISTRY SYSTEM OF THE AMERICAN COLLEGE OF SURGEONS involves a significant risk of death or the precipitation of complications or disabilities.

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 3. Applicability.** [This act] applies to causes of action arising after [the effective date of this act].