

2026 Regular Session

SENATE BILL NO. 366

BY SENATOR HARRIS

MALPRACTICE. Provides relative to the Medical Malpractice Act. (8/1/26)

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AN ACT

To amend and reenact R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3), and 1231.8(A)(1)(a) and (B)(1)(a)(i), to enact R.S. 40:1231.3(B)(3) and (4), and to repeal R.S. 40:1231.3(G) and (H), relative to medical malpractice; to provide for limitation of liability for medical malpractice; to provide relative to the amount of recovery; to provide for future medical care and related benefits; to provide relative to the patient's compensation fund and medical review panel; to provide for procedures; to provide relative to prescription; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3), and 1231.8(A)(1)(a) and (B)(1)(a)(i) are hereby amended and reenacted and R.S. 40:1231.3(B)(3) and (4) are hereby enacted to read as follows:

§1231.2. Limitation of recovery

\* \* \*

B.(1) The total amount recoverable for all malpractice claims for injuries to or death of a patient, exclusive of ~~future medical care and related benefits as provided in R.S. 40:1231.3,~~ **economic loss including loss of income or earning**

1        **capacity and past or future medical expenses**, shall not exceed ~~five hundred~~  
 2        ~~thousand~~ **one million** dollars plus interest and cost. **This limitation shall be**  
 3        **adjusted annually for inflation by a percentage increase equal to the change in**  
 4        **the Consumer Price Index published by the United States Bureau of Labor**  
 5        **Statistics for the preceding year.**

6                (2) A ~~health-care~~ **healthcare** provider qualified under this Part is not liable  
 7        for an amount in excess of ~~one hundred~~ **two hundred fifty** thousand dollars plus  
 8        interest thereon accruing after April 1, 1991, and costs specifically provided for by  
 9        this Paragraph for all malpractice claims because of injuries to or death of any one  
 10       patient. The sole cost for which a ~~health-care~~ **healthcare** provider qualified under  
 11       this Part may be assessed by a trial court shall be limited to the cost incurred prior  
 12       to the rendering of a final judgment against the ~~health-care~~ **healthcare** provider, not  
 13       as a nominal defendant, after a trial on a malpractice claim, including but not limited  
 14       to; costs assessed pursuant to Code of Civil Procedure Article 970 in any instance  
 15       where the board was not the offeror or offeree of the proposed settlement amount.  
 16       The ~~health-care~~ **healthcare** provider shall not be assessed costs in any action in  
 17       which the fund intervenes or the ~~health-care~~ **healthcare** provider is a nominal  
 18       defendant after there has been a settlement between the ~~health-care~~ **healthcare**  
 19       provider and the claimant. **This limitation shall be adjusted annually for inflation**  
 20       **by a percentage increase equal to the change in the Consumer Price Index**  
 21       **published by the United States Bureau of Labor Statistics for the preceding**  
 22       **year.**

\* \* \*

D. \* \* \*

25                (5) In the event that a partial settlement is executed between the defendant  
 26        ~~and/or~~ **or** his insurer, **or both**, with a plaintiff for the sum of ~~one hundred thousand~~  
 27        ~~dollars or less~~ **equal to the limitation provided by Paragraph (B)(2) of this**  
 28        **Section**, written notice of such settlement shall **promptly** be sent to the board **by the**  
 29        **defendant or his insurer.** Such settlement shall not bar the continuation of the

1 action against the patient's compensation fund for ~~excess sums in which event the~~  
 2 court shall reduce any judgment to the plaintiff in the amount of malpractice liability  
 3 insurance in force as provided for in R.S. 40:1231.2(B)(2) **damages in excess of the**  
 4 **partial settlement, but any subsequent judgment awarded to the claimant shall**  
 5 **be reduced by the court in an amount equivalent to the partial settlement.**

6 \* \* \*

7 §1231.3. Future medical care and related benefits

8 A.(1) In all malpractice claims filed with the board which proceed to trial, the  
 9 **court or jury shall be given a special interrogatory asking if the patient is in need of**  
 10 ~~future medical care and related benefits that will be incurred after the date of the~~  
 11 ~~response to the special interrogatory, and~~ **required to make a specific finding of**  
 12 **fact regarding the amount, if any, of future medical expenses and related**  
 13 **benefits that are due the claimant after the date of the conclusion of the trial,**  
 14 **and if so, the amount thereof.**

15 (2) ~~In actions upon malpractice claims tried by the court, the court's finding~~  
 16 ~~shall include a recitation that the patient is or is not in need of future medical care~~  
 17 ~~and related benefits that will be incurred after the date of the court's finding and the~~  
 18 ~~amount thereof~~ **If the award pursuant to Paragraph (1) of this Subsection,**  
 19 **together with all other recoverable elements of damage awarded, does not**  
 20 **exceed one million dollars, as adjusted for inflation as provided by R.S.**  
 21 **40:1231.2(B)(1), the full amount awarded shall be due and payable to the**  
 22 **patient without regard to this Section as any other element of damage.**

23 (3)(a) ~~If the total amount is for the maximum amount recoverable, exclusive~~  
 24 ~~of the value of future medical care and related benefits that will be incurred after the~~  
 25 ~~date of the response to the special interrogatory by the jury or the court's finding, the~~  
 26 ~~cost of all future medical care and related benefits that will be incurred after the date~~  
 27 ~~of the response to the special interrogatory by the jury or the court's finding shall be~~  
 28 ~~paid in accordance with R.S. 40:1231.3(C).~~ **If the court or jury award pursuant**  
 29 **to Paragraph (1) of this Subsection, together with all other recoverable elements**

1 of damage awarded, exceeds one million dollars, as adjusted for inflation as  
 2 provided by R.S. 40:1231.2(B)(1), the court shall make a determination whether  
 3 it is in the best interest of the patient for the excess of the award to be payable  
 4 to the claimant by the Patient's Compensation Fund without regard to this  
 5 Section as any other element of damage, or should be held in trust with the  
 6 Patient's Compensation Fund to be paid as reimbursement to the patient for  
 7 future medical expenses and related benefits as incurred, or by direct payment  
 8 to the provider, at the option of the patient.

9 (b) The court shall make such determination at a post-trial hearing at  
 10 which time all affected parties shall have the opportunity to present evidence  
 11 and to be heard before the determination is made by the court. The court shall  
 12 then render a final judgment with written reasons.

13 (c) In support of the judgment, the court shall consider the competence  
 14 of the patient and his family in managing the medical care and related benefits  
 15 of the patient, including the creation of a special needs trust fund, annuities for  
 16 future maintenance and support and other means of structuring the award that  
 17 assures the patient or his family can manage the patient's future needs without  
 18 the necessity of the Patient's Compensation Fund.

19 \* \* \*

20 B. \* \* \*

21 (3) "Future medical care and benefits" as used in this Section shall  
 22 include the payment of custodial care at fair and reasonable market value of  
 23 such services in the parish in which the patient customarily resides.

24 (4) The necessity of future medical care to be paid or reimbursed to the  
 25 patient under this Section, including the nature of any therapy to be afforded  
 26 to the patient, shall be deemed reasonable if it is prescribed by a duly licensed  
 27 physician in the state of Louisiana or of any other state where the patient  
 28 customarily resides.

29 \* \* \*

1 §1231.8. Medical review panel

2 A.(1)(a) All malpractice claims against health care providers covered by this  
3 Part, other than claims validly agreed for submission to a lawfully binding arbitration  
4 procedure, ~~shall~~ **may** be reviewed by a medical review panel established as  
5 hereinafter provided for in this Section. The filing of a request for review by a  
6 medical review panel as provided for in this Section shall not be reportable by any  
7 ~~health care~~ **healthcare** provider, the Louisiana Patient's Compensation Fund, or any  
8 other entity to the Louisiana State Board of Medical Examiners, to any licensing  
9 authority, committee, or board of any other state, or to any credentialing or similar  
10 agency, committee, or board of any clinic, hospital, health insurer, or managed care  
11 company.

12 \* \* \*

13 B.(1)(a)(i) No action against a ~~health care~~ **healthcare** provider covered by  
14 this Part, or his insurer, may be commenced in any court before the claimant's  
15 proposed complaint has been presented to a medical review panel established  
16 pursuant to this Section **or, alternatively, an affidavit by a board certified medical**  
17 **doctor, holding a valid and unrestricted license to practice in his specialty in the**  
18 **state in which he resides or practices, certifies that adequate medical records of**  
19 **the patient have been provided and reviewed by him, the records are sufficient**  
20 **for him to state that the allegations of malpractice against each defendant**  
21 **healthcare provider named in the petition constitute a breach of the standard**  
22 **of care, and that the breach caused or contributed to injury or death of the**  
23 **patient. The affidavit shall be notarized by a suitable authority for the state in**  
24 **which the medical doctor resides or practices and filed contemporaneously with**  
25 **the petition in the record of the district court in which the action is filed. If**  
26 **subsequent to the filing of the petition, additional healthcare providers are**  
27 **named as defendants, one of the alternative procedures required by this**  
28 **Subsection shall be followed for the new parties. The prescriptive period for**  
29 **actions initiated by affidavit shall be as provided by Civil Code Article 3493.1,**

1           **provided that any action against a healthcare provider subject to this Part, even**  
 2           **as to claims filed within two years from the date of discovery, shall in all events**  
 3           **be filed at the latest within a period of three years from the date of the alleged**  
 4           **act, omission, or neglect.**

\*       \*       \*

6           Section 2. R.S. 40:1231.3(G) and (H) are hereby repealed in their entirety.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Senate Legislative Services. The keyword, summary, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

DIGEST

SB 366 Original

2026 Regular Session

Harris

Present law provides that the maximum amount recoverable for a claim is \$500,000 plus interest and cost.

Proposed law raises the amount recoverable per claim to \$1,000,000 plus interest and cost and excludes economic damages.

Present law allows a qualified healthcare provider to be liable for up to \$100,000 in damages plus interest and costs.

Proposed law raises a qualified healthcare provider's potential liability from \$100,000 plus interest and costs to \$250,000 plus interest and costs.

Proposed law requires a court or fact finder to find a specific amount of future medical expenses and related benefits for a claimant.

Proposed law allows a court, after determining that a total award exceeds the \$1,000,000 cap, to hold excess damages in a trust with the Patient Compensation Fund to be paid in reimbursement to a patient or to his provider for future medical care.

Proposed law defines future medical care and benefits.

Proposed law changes the present law requirement that all medical malpractice claims against healthcare providers be heard by a medical review panel, and offers a claimant an alternative to initiate a claim through an affidavit by a board certified doctor. The affidavit shall certify that the doctor has reviewed the necessary records and that there was a breach of the standard of care which caused or contributed to the injury or death of a patient.

Proposed law provides a prescriptive period for actions initiated by the affidavit process.

Effective August 1, 2026.

(Amends R.S. 40:1231.2(B)(1) and (2) and (D)(5), 1231.3(A)(1), (2), and (3), and 1231.8(A)(1)(a) and (B)(1)(a)(i); adds R.S. 40:1231.3(B)(3) and (4); repeals R.S. 40:1231.3(G) and (H))