

Regular Session, 2011

SENATE BILL NO. 61

BY SENATOR MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MALPRACTICE. Provides relative to medical malpractice claims. (2/3 - CA13s1(A))

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A JOINT RESOLUTION

Proposing to add Article XII, Section 16, of the Constitution of Louisiana, to authorize the legislature to determine limitations on liability damages in medical or health care liability claims and other claims against health care providers; to provide for submission of the proposed amendment to the electors; and to provide for related matters.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state of Louisiana, for their approval or rejection in the manner provided by law, a proposal to add Article XII, Section 16 of the Constitution of Louisiana, to read as follows:

**§16. Medical Malpractice**

**Section 16. Medical Malpractice. Notwithstanding any other provision of this constitution, the legislature by law may limit or provide for the extent of liability of a health care provider in all cases, including the circumstances giving rise to liability and kinds and amounts of recoverable damages. This limitation of liability shall apply to all damages and losses, however characterized, of a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care**

1        **of safety, however characterized, claimed or is claimed to be a cause of, or**  
2        **contributes or is claimed to contribute to, disease, injury, or death of an**  
3        **individual. This Article applies without regard to whether the claim or cause**  
4        **of action arises under or is derived from a statute or other law, including any**  
5        **claim or cause of action based in tort, contract, or any other theory or any**  
6        **combination of theories of liability. The claim or cause of action includes a**  
7        **medical or health care liability claim as defined by the legislature.**

8        Section 2. Be it further resolved that this proposed amendment, if approved by the  
9        electors, shall become effective on January 1, 2012, and that this proposed amendment shall  
10       be applied retroactively to all existing acts of the legislature establishing a limitation of  
11       liability for all damages incurred in medical or health care claims or against health care  
12       providers.

13       Section 3. Be it further resolved that this proposed amendment shall be submitted  
14       to the electors of the state of Louisiana at the statewide election to be held on October 22,  
15       2011.

16       Section 4. Be it further resolved that on the official ballot to be used at said election  
17       there shall be printed a proposition, upon which the electors of the state shall be permitted  
18       to vote FOR or AGAINST, to amend the Constitution of Louisiana, which proposition shall  
19       read as follows:

20                To authorize the legislature to determine limitations on professional medical  
21                liability damages and losses of a provider of medical or health care with  
22                respect to treatment, lack of treatment, or other claimed departure from an  
23                accepted standard of medical or health care claimed to be a cause of, or  
24                claimed to contribute to, disease, injury, or death of an individual. Provides  
25                for retroactive application to legislative acts existing on or after January 1,  
26                2012. (Effective January 1, 2012)(Adds Article XII, Section 16)

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

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DIGEST

Proposed constitutional amendment provides that the legislature by law may limit or provide for the extent of liability of a health care provider in all cases, and provides that the limitation of liability shall apply to all damages and losses, however characterized, of a provider of medical or health care with respect to treatment, lack of treatment, or other claimed departure from an accepted standard of medical or health care.

Proposed constitutional amendment provides that the claim or cause of action includes a medical or health care liability claim as defined by the legislature.

Proposed constitutional amendment provides that a law effective on or after January 1, 2012, the legislature by law may limit or provide for the extent of liability for all damages and losses.

Proposed constitutional amendment provides for retroactive application.

Provides for submission of the proposed amendment to the voters at the statewide election to be held October 22, 2011.

Effective January 1, 2012.

(Adds Const. Art. XII, §16)