

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

553J0350

HOUSE BILL NO. 1139

Introduced by: Representatives Glenski, Bartling, Hunhoff, Kraus, McCoy, Schafer, Smidt,
Van Etten, and Van Gerpen and Senators Olson (Ed) and Kleven

1 FOR AN ACT ENTITLED, An Act to limit general damages and attorneys' fees in medical
2 malpractice actions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 21-3-11 be amended to read as follows:

5 21-3-11. In any action for damages for personal injury or death alleging malpractice against
6 any physician licensed pursuant to chapter 36-4, chiropractor, optometrist, dentist, dental
7 hygienist, dental assistant, hospital, critical access hospital, registered nurse, licensed practical
8 nurse, certified registered nurse anesthetist, clinical nurse specialist, nurse practitioner, nurse
9 midwife, or physician's assistant, or against the practitioner's corporate, limited liability
10 partnership, or limited liability company employer based upon the acts or omissions of the
11 practitioner, under the laws of this state, whether taken through the court system or by binding
12 arbitration, the total general damages which may be awarded may not exceed the sum of ~~five~~
13 ~~hundred~~ two hundred fifty thousand dollars. There is no limitation on the amount of special
14 damages which may be awarded. This section applies only to causes of action arising from
15 injuries or death occurring after July 1, 1976. However, in the case of chiropractors, it applies



1 only to the causes of action arising from injuries or death occurring after July 1, 1978. In the
2 case of optometrists, it applies only to causes of action arising from injuries or death occurring
3 after July 1, 2002.

4 Section 2. That chapter 21-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The total amount for all contingent fees for representing all plaintiffs in any action pursuant
7 to § 21-3-11, through the court system or by binding arbitration, may not exceed the following
8 limits:

- 9 (1) Forty percent of the first fifty thousand dollars recovered;
- 10 (2) Thirty-three and one-third percent of the next fifty thousand dollars recovered;
- 11 (3) Twenty-five percent of the next five hundred thousand recovered; and
- 12 (4) Fifteen percent of any amount by which the recovery exceeds six hundred thousand
13 dollars.

14 For the purposes of this section, the amount recovered or the term, recovery, refers to the
15 net sum after deducting any disbursements or costs incurred in connection with the prosecution
16 or settlement of the action, including all costs paid or advanced.