

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2851

To impose certain requirements on the resolution of medical malpractice liability claims, to amend the Internal Revenue Code of 1986 to require persons making certain medical malpractice payments to report such payments to the Secretary of the Treasury, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1993

Mr. THOMAS of California introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

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## A BILL

To impose certain requirements on the resolution of medical malpractice liability claims, to amend the Internal Revenue Code of 1986 to require persons making certain medical malpractice payments to report such payments to the Secretary of the Treasury, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical Liability Im-  
5 provement Act of 1993”.

6 **SEC. 2. GENERAL PROVISIONS.**

7 (a) CONGRESSIONAL FINDINGS.—

1           (1) EFFECT ON INTERSTATE COMMERCE.—The  
2 Congress finds that the health care and insurance  
3 industries are industries affecting interstate com-  
4 merce and the medical malpractice litigation systems  
5 existing throughout the United States affect inter-  
6 state commerce by contributing to the high cost of  
7 health care and premiums for malpractice insurance  
8 purchased by health care providers.

9           (2) EFFECT ON FEDERAL SPENDING.—The  
10 Congress finds that the medical malpractice litiga-  
11 tion systems existing throughout the United States  
12 have a significant effect on the amount, distribution,  
13 and use of Federal funds because of—

14           (A) the large number of individuals who  
15 receive health care benefits under programs op-  
16 erated or financed by the Federal Government;

17           (B) the large number of individuals who  
18 benefit because of the exclusion from Federal  
19 taxes of the amounts spent by their employers  
20 to provide them with health insurance benefits;

21           (C) the large number of health care provid-  
22 ers and health care professionals who provide  
23 items or services for which the Federal Govern-  
24 ment makes payments; and

1 (D) the large number of such providers  
2 and professionals who have received direct or  
3 indirect financial assistance from the Federal  
4 Government because of their status as such  
5 professionals or providers.

6 (b) APPLICABILITY.—This Act shall apply with re-  
7 spect to any medical malpractice liability claim and to any  
8 medical malpractice liability action brought in any State  
9 or Federal court, except that this Act shall not apply to—

10 (1) a claim or action for damages arising from  
11 a vaccine-related injury or death to the extent that  
12 title XXI of the Public Health Service Act applies to  
13 the action; or

14 (2) a claim or action in which the claimant's  
15 sole allegation is an allegation of an injury arising  
16 from the use of a medical product.

17 (c) PREEMPTION OF STATE LAW.—Subject to section  
18 12, this Act supersedes State law only to the extent that  
19 State law differs from any provision of law established by  
20 or under this Act. Any issue that is not governed by any  
21 provision of law established by or under this Act shall be  
22 governed by otherwise applicable State or Federal law.

23 (d) FEDERAL COURT JURISDICTION NOT ESTAB-  
24 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in  
25 this Act shall be construed to establish any jurisdiction

1 in the district courts of the United States over medical  
2 malpractice liability actions on the basis of sections 1331  
3 or 1337 of title 28, United States Code.

4 **SEC. 3. DEFINITIONS.**

5 As used in this Act:

6 (1) CLAIMANT.—The term “claimant” means  
7 any person who alleges a medical malpractice liability  
8 claim, or, in the case of an individual who is de-  
9 ceased, incompetent, or a minor, the person on  
10 whose behalf such a claim is alleged.

11 (2) ECONOMIC DAMAGES.—The term “economic  
12 damages” means damages paid to compensate an in-  
13 dividual for losses for hospital and other medical ex-  
14 penses, lost wages, lost employment, and other pecu-  
15 niary losses.

16 (3) HEALTH CARE PROFESSIONAL.—The term  
17 “health care professional” means any individual who  
18 provides health care services in a State and who is  
19 required by State law or regulation to be licensed or  
20 certified by the State to provide such services in the  
21 State.

22 (4) HEALTH CARE PROVIDER.—The term  
23 “health care provider” means any organization or  
24 institution that is engaged in the delivery of health  
25 care services in a State and that is required by State

1 law or regulation to be licensed or certified by the  
2 State to engage in the delivery of such services in  
3 the State.

4 (5) INJURY.—The term “injury” means any ill-  
5 ness, disease, or other harm that is the subject of  
6 a medical malpractice liability action or claim.

7 (6) MEDICAL MALPRACTICE LIABILITY AC-  
8 TION.—The term “medical malpractice liability ac-  
9 tion” means a civil action (other than an action in  
10 which the claimant’s sole allegation is an allegation  
11 of an intentional tort) brought in a State or Federal  
12 court against a health care provider or health care  
13 professional (regardless of the theory of liability on  
14 which the action is based) in which the claimant al-  
15 leges a medical malpractice liability claim.

16 (7) MEDICAL MALPRACTICE LIABILITY  
17 CLAIM.—The term “medical malpractice liability  
18 claim” means a claim in which the claimant alleges  
19 that injury was caused by the provision of (or the  
20 failure to provide) health care services.

21 (8) MEDICAL PRODUCT.—The term “medical  
22 product” means a device (as defined in section  
23 201(h) of the Federal Food, Drug, and Cosmetic  
24 Act) or a drug (as defined in section 201(g)(1) of  
25 the Federal Food, Drug, and Cosmetic Act).

1           (9) NONECONOMIC DAMAGES.—The term “non-  
2           economic damages” means damages paid to com-  
3           pensate an individual for losses for physical and  
4           emotional pain, suffering, inconvenience, physical  
5           impairment, mental anguish, disfigurement, loss of  
6           enjoyment of life, loss of consortium, and other  
7           nonpecuniary losses, but does not include punitive  
8           damages.

9           (10) SECRETARY.—The term “Secretary”  
10          means the Secretary of Health and Human Services.

11          (11) STATE.—The term “State” means each of  
12          the several States, the District of Columbia, the  
13          Commonwealth of Puerto Rico, and any other terri-  
14          tory or possession of the United States.

15 **SEC. 4. EFFECTIVE DATE.**

16          (a) IN GENERAL.—Except as provided in subsection  
17          (b), this Act shall apply with respect to claims accruing  
18          or actions brought on or after the expiration of the 3-year  
19          period that begins on the date of the enactment of this  
20          Act.

21          (b) EXCEPTION FOR STATES REQUESTING EARLIER  
22          IMPLEMENTATION OF REFORMS.—

23                  (1) APPLICATION.—A State may submit an ap-  
24          plication to the Secretary requesting the early imple-

1       mentation of this Act with respect to claims or ac-  
2       tions brought in the State.

3           (2) DECISION BY SECRETARY.—The Secretary  
4       shall issue a response to a State’s application under  
5       paragraph (1) not later than 90 days after receiving  
6       the application. If the Secretary determines that the  
7       State meets the requirements of this Act at the time  
8       of submitting its application, the Secretary shall ap-  
9       prove the State’s application, and this Act shall  
10      apply with respect to actions brought in the State on  
11      or after the expiration of the 90-day period that be-  
12      gins on the date the Secretary issues the response.  
13      If the Secretary denies the State’s application, the  
14      Secretary shall provide the State with a written ex-  
15      planation of the grounds for the decision.

16 **SEC. 5. ATTORNEYS’ FEES.**

17      (a) LIMITATION ON CONTINGENCY FEES.—An attor-  
18      ney shall not contract for or collect a contingency fee for  
19      representing a claimant in a medical malpractice liability  
20      action in excess of the following:

21           (1) 40 percent of the first \$50,000 (or portion  
22      thereof) of the amount recovered by the claimant.

23           (2) 33 $\frac{1}{3}$  percent of the next \$50,000 (or por-  
24      tion thereof) of the amount recovered by the claim-  
25      ant.

1           (3) 25 percent of the next \$500,000 (or portion  
2 thereof) of the amount recovered by the claimant.

3           (4) 15 percent of any amounts recovered by the  
4 claimant in excess of \$600,000.

5 This subsection applies whether the recovery is by settle-  
6 ment, arbitration, or judgment.

7           (b) CALCULATION OF PERIODIC PAYMENTS.—If peri-  
8 odic payments are awarded to the claimant pursuant to  
9 section 8(b), the court shall place a total value on these  
10 payments based upon the projected life expectancy of the  
11 claimant and include this amount in computing the total  
12 award from which attorneys' fees are calculated under  
13 subsection (a).

14           (c) SPECIAL RULE FOR DETERMINING AMOUNT RE-  
15 COVERED.—In subsection (a), the term "recovered"  
16 means the net sum recovered after deducting any dis-  
17 bursements or costs incurred in connection with prosecu-  
18 tion or settlement of the claim, except that costs of medi-  
19 cal care incurred by the claimant and the attorney's office  
20 overhead costs or charges shall not be deductible disburse-  
21 ments under this subsection.

22 **SEC. 6. LIMITATION ON NONECONOMIC DAMAGES.**

23           The total amount of damages which may be awarded  
24 to an individual and the family members of such individual  
25 for noneconomic losses resulting from an injury which is

1 the subject of a medical malpractice liability claim may  
2 not exceed \$250,000, regardless of the number of health  
3 care professionals and health care providers against whom  
4 the claim is brought or the number of claims brought with  
5 respect to the injury.

6 **SEC. 7. STATUTE OF LIMITATIONS.**

7 (a) IN GENERAL.—No medical malpractice liability  
8 claim may be brought after the expiration of the 2-year  
9 period that begins on the date the alleged injury that is  
10 the subject of the action should reasonably have been dis-  
11 covered, but in no event after the expiration of the 4-year  
12 period that begins on the date the alleged injury occurred.

13 (b) EXCEPTION FOR MINORS.—In the case of an al-  
14 leged injury suffered by a minor who has not attained 6  
15 years of age, no medical malpractice liability claim may  
16 be brought after the expiration of the 2-year period that  
17 begins on the date the alleged injury that is the subject  
18 of the action should reasonably have been discovered, but  
19 in no event after the date on which the minor attains 10  
20 years of age.

21 **SEC. 8. PERIODIC PAYMENTS FOR FUTURE LOSSES.**

22 If more than \$50,000 in damages for expenses to be  
23 incurred in the future is awarded to the claimant in a  
24 medical malpractice liability action, the court shall at the  
25 request of either party, enter a judgment ordering such

1 damages to be paid on a periodic basis determined appro-  
2 priate by the court (based upon projections of when such  
3 expenses are likely to be incurred).

4 **SEC. 9. MANDATORY OFFSETS FOR DAMAGES PAID BY A**  
5 **COLLATERAL SOURCE.**

6 (a) IN GENERAL.—The total amount of damages re-  
7 ceived by a plaintiff in a medical malpractice liability ac-  
8 tion shall be reduced (in accordance with subsection (b))  
9 by any other payment that has been or will be made to  
10 the individual to compensate the plaintiff for the injury  
11 that was the subject of the action, including payment  
12 under—

13 (1) Federal or State disability or sickness pro-  
14 grams;

15 (2) Federal, State, or private health insurance  
16 programs;

17 (3) private disability insurance programs;

18 (4) employer wage continuation programs; and

19 (5) any other source of payment intended to  
20 compensate the plaintiff for such injury.

21 (b) AMOUNT OF REDUCTION.—The amount by which  
22 an award of damages to a plaintiff shall be reduced under  
23 subsection (a) shall be—

24 (1) the total amount of any payments (other  
25 than such award) that have been made or that will

1 be made to the plaintiff to compensate the plaintiff  
2 for the injury that was the subject of the action;  
3 minus

4 (2) the amount paid by the plaintiff (or by the  
5 spouse, parent, or legal guardian of the plaintiff) to  
6 secure the payments described in paragraph (1).

7 **SEC. 10. SPECIAL PROVISION FOR CERTAIN OBSTETRIC**  
8 **SERVICES.**

9 (a) IMPOSITION OF HIGHER STANDARD OF PROOF.—

10 (1) IN GENERAL.—In the case of a medical  
11 malpractice liability action relating to services pro-  
12 vided during labor or the delivery of a baby, if the  
13 defendant health care professional did not previously  
14 treat the plaintiff for the pregnancy, the trier of fact  
15 may not find that the defendant committed mal-  
16 practice and may not assess damages against the de-  
17 fendant unless the malpractice is proven by clear  
18 and convincing evidence.

19 (2) APPLICABILITY TO GROUP PRACTICES OR  
20 AGREEMENTS AMONG PROVIDERS.—For purposes of  
21 paragraph (1), a health care professional shall be  
22 considered to have previously treated an individual  
23 for a pregnancy if the professional is a member of  
24 a group practice whose members previously treated  
25 the individual for the pregnancy or is providing serv-

1        ices to the individual during labor or the delivery of  
2        a baby pursuant to an agreement with another pro-  
3        fessional.

4        (b) CLEAR AND CONVINCING EVIDENCE DEFINED.—  
5        In subsection (a), the term “clear and convincing evi-  
6        dence” is that measure or degree of proof that will  
7        produce in the mind of the trier of fact a firm belief or  
8        conviction as to the truth of the allegations sought to be  
9        established, except that such measure or degree of proof  
10       is more than that required under preponderance of the evi-  
11       dence, but less than that required for proof beyond a rea-  
12       sonable doubt.

13       **SEC. 11. JOINT AND SEVERAL LIABILITY.**

14       The liability of each defendant in a medical mal-  
15       practice liability action shall be several only and shall not  
16       be joint, and each defendant shall be liable only for the  
17       amount of damages allocated to the defendant in direct  
18       proportion to the defendant’s percentage of responsibility  
19       (as determined by the trier of fact).

20       **SEC. 12. PREEMPTION.**

21       (a) IN GENERAL.—This Act supersedes any State  
22       law only to the extent that State law—

23                (1) permits the recovery of a greater amount of  
24       damages by a plaintiff;

1           (2) permits the collection of a greater amount  
2 of attorneys' fees by a plaintiff's attorney;

3           (3) establishes a longer period during which a  
4 medical malpractice liability claim may be initiated;  
5 or

6           (4) establishes a stricter standard for determin-  
7 ing whether a defendant was negligent or for deter-  
8 mining the liability of defendants described in sec-  
9 tion 10 in actions described in such section.

10       (b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE  
11 OF LAW OR VENUE.—Nothing in subsection (a) shall be  
12 construed to—

13           (1) waive or affect any defense of sovereign im-  
14 munity asserted by any State under any provision of  
15 law;

16           (2) waive or affect any defense of sovereign im-  
17 munity asserted by the United States;

18           (3) affect the applicability of any provision of  
19 the Foreign Sovereign Immunities Act of 1976;

20           (4) preempt State choice-of-law rules with re-  
21 spect to claims brought by a foreign nation or a citi-  
22 zen of a foreign nation; or

23           (5) affect the right of any court to transfer  
24 venue or to apply the law of a foreign nation or to  
25 dismiss a claim of a foreign nation or of a citizen

1 of a foreign nation on the ground of inconvenient  
2 forum.

3 **SEC. 13. RETURNS RELATING TO TAXABLE MEDICAL MAL-**  
4 **PRACTICE AWARDS.**

5 (a) IN GENERAL.—Subpart B of part III of sub-  
6 chapter A of chapter 61 of the Internal Revenue Code of  
7 1986 (relating to information concerning transactions  
8 with other persons) is amended by adding at the end  
9 thereof the following new section:

10 **“SEC. 60500. RETURNS RELATING TO TAXABLE MEDICAL**  
11 **MALPRACTICE AWARDS.**

12 “(a) IN GENERAL.—If—

13 “(1) any person makes medical malpractice  
14 payments to another person during any calendar  
15 year,

16 “(2) a portion of such payments is includible in  
17 gross income for purposes of chapter 1, and

18 “(3) the portion of such payments so includible  
19 exceeds \$600,

20 then the person making such payments shall make a re-  
21 turn (at such time and in such form as the Secretary may  
22 by regulations prescribe) setting forth the name, address,  
23 and TIN of the person to whom such payments were  
24 made, the aggregate amount of such payments, and the

1 portion of such payments includible in gross income for  
2 purposes of chapter 1.

3 “(b) STATEMENTS TO BE FURNISHED TO PERSONS  
4 WITH RESPECT TO WHOM INFORMATION IS REQUIRED  
5 TO BE FURNISHED.—Every person required to make a  
6 return under subsection (a) with respect to payments  
7 made to any person shall furnish to such person a written  
8 statement showing—

9 “(1) the name and address of the person re-  
10 quired to make such return, and

11 “(2) the information required to be shown on  
12 the return with respect to the person to whom such  
13 payments were made.

14 The written statement required under the preceding sen-  
15 tence shall be furnished to the person on or before Janu-  
16 ary 31 of the year following the calendar year for which  
17 the return under subsection (a) was made.

18 “(c) MEDICAL MALPRACTICE PAYMENTS.—For pur-  
19 poses of this section, the term ‘medical malpractice pay-  
20 ment’ means any payment (whether by suit or agreement  
21 and whether as a lump sum or periodic payment) on ac-  
22 count of a medical malpractice liability claim (as defined  
23 in section 3(7) of the Medical Liability Improvement Act  
24 of 1993).”

25 (b) PENALTIES.—





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