

SENATE JOINT RESOLUTION NO. SJ0002

Medical errors commission-constitutional amendment.

Sponsored by: Senator(s) Scott and Boggs

A BILL

for

1 A JOINT RESOLUTION proposing to amend the Wyoming
2 Constitution; requiring the creation of a commission on
3 health care errors; establishing procedures; providing for
4 and limiting compensation for health care errors; and
5 conforming a constitutional provision.

6

7 *BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF WYOMING,*
8 *two-thirds of all the members of the two houses, voting*
9 *separately, concurring therein:*

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11 **Section 1.** The following proposal to amend Wyoming
12 Constitution Article 10, Section 4 and by creating a new
13 Article 10, Section 20 is proposed for submission to the
14 electors of the State of Wyoming at the next general
15 election for approval or rejection to become valid as a
16 part of the Constitution if ratified by a majority of the
17 electors at the election:

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2 **Article 10, Section 4. Damages for personal injuries**
3 **or death not to be limited; worker's compensation.**

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5 Except as provided by this section and section 20 of this
6 article, no law shall be enacted limiting the amount of
7 damages to be recovered for causing the injury or death of
8 any person. Any contract or agreement with any employee
9 waiving any right to recover damages for causing the death
10 or injury of any employee shall be void. As to all
11 extrahazardous employments the legislature shall provide by
12 law for the accumulation and maintenance of a fund or funds
13 out of which shall be paid compensation as may be fixed by
14 law according to proper classifications to each person
15 injured in such employment or to the dependent families of
16 such as die as the result of such injuries, except in case
17 of injuries due solely to the culpable negligence of the
18 injured employee. The fund or funds shall be accumulated,
19 paid into the state treasury and maintained in such manner
20 as may be provided by law. Monies in the fund shall be
21 expended only for compensation authorized by this section,
22 for administration and management of the Worker's
23 Compensation Act, debt service related to the fund and for
24 workplace safety programs conducted by the state as

1 authorized by law. The right of each employee to
2 compensation from the fund shall be in lieu of and shall
3 take the place of any and all rights of action against any
4 employer contributing as required by law to the fund in
5 favor of any person or persons by reason of the injuries or
6 death. Subject to conditions specified by law, the
7 legislature may allow employments not designated
8 extrahazardous to be covered by the state fund at the
9 option of the employer. To the extent an employer elects
10 to be covered by the state fund and contributes to the fund
11 as required by law, the employer shall enjoy the same
12 immunity as provided for extrahazardous employments.

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14 **Article 10, Section 20. Commission on health care**
15 **errors.**

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17 The legislature shall provide by law for a commission on
18 health care errors. The primary purpose of the commission
19 shall be to improve the quality of health care through the
20 identification of health care errors, the identification of
21 the causes of the errors and the prevention of future
22 errors and improvement in the system of health care
23 delivery. The commission shall have the right on its own
24 motion, independent of any claim for benefits, to make any

1 inquiries it deems appropriate into health care errors and
2 quality improvement needs of the health care system. The
3 legislature shall by law provide the commission those
4 powers the legislature deems appropriate to achieve these
5 purposes. Any person who, in good faith, reports a medical
6 error or suspected error to the commission shall be immune
7 from civil liability for having made the report. When an
8 individual suffers death or injury from health care due to
9 a degree of negligence specified by law, the commission
10 shall determine if health care negligence has occurred and
11 shall determine the compensation for the death or injury
12 according to a schedule or formula provided by law and the
13 commission may also require the health care provider not
14 receive compensation for the services that included the
15 error. The legislature shall by law provide a system for
16 any person injured as a result of a medical error to file a
17 claim for benefits with the commission and have his claim
18 heard and decided, including specifying the nature of any
19 procedural rules to be followed and the degree to which
20 proceedings shall be kept confidential to protect the
21 privacy of the injured individual. The legislature shall
22 provide by law for a fund or funds out of which shall be
23 paid only the expenses of the commission, the
24 administration and management of the commission and the

1 fund, and the compensation authorized by this section for
2 individuals and families suffering death or injury from
3 health care. The legislature shall provide for the payment
4 of premiums to the fund by all health care providers, both
5 persons and institutions, and the amount of premiums paid
6 may be varied by type of provider or institution, by volume
7 of business, by claims experience and any other factor
8 provided by law. The right to compensation from the fund
9 shall be in lieu of and shall take the place of any and all
10 rights of action against any health care provider
11 contributing as required by law to the fund. Any party
12 aggrieved by a final action of the commission may appeal to
13 the courts as provided by law. The appeal shall be that the
14 action of the commission was contrary to law or constituted
15 an abuse of discretion and shall be on the record of the
16 final action of the commission and any other record as is
17 provided for by law. Attorneys for any appeal from an
18 action of the commission shall be paid by the fund
19 according to a fee schedule set by law. The legislature may
20 by law provide for any subordinate commissions and
21 administrative agencies as may be useful in implementing
22 this section. Any subordinate commissions shall be deemed
23 part of the commission as appropriate.

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1 **Section 2.** That the Secretary of State shall endorse
2 the following statement on the proposed amendment:

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4 This amendment would require the Wyoming legislature to
5 create a commission on health care errors to identify
6 errors and their causes and prevent future errors and to
7 provide by law for procedures the commission would use to
8 resolve complaints alleging health care errors, including
9 establishing awards for injuries or death caused by health
10 care errors. The amendment provides that application to the
11 commission for compensation for death or injury caused by a
12 health care error is an exclusive remedy and amends the
13 general provisions of Article 10, Section 4 of the Wyoming
14 Constitution to specify that new Article 10, Section 20,
15 created by this amendment governs compensation for health
16 care errors.

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(END)