

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE JOINT RESOLUTION NO. [BILL NUMBER]

Limitations on damages for personal injury or death.

Sponsored by: Joint Labor, Health & Social Services Interim
Committee

A JOINT RESOLUTION

for

1 A JOINT RESOLUTION to modify the constitutional prohibition
2 against the legislature limiting the amount of damages that
3 may be recovered from a health care provider for causing
4 personal injury or death.

5

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

9

10 **Section 1.** The following proposal to amend Wyoming
11 Constitution, Article 10, Section 4(b) by creating new
12 paragraphs (ii) and (iii) and by repealing Article 10, Section

1 4(c) is proposed for submission to the electors of the State
2 of Wyoming at the next general election for approval or
3 rejection to become valid as a part of the Constitution if
4 ratified by a majority of the electors at the election:

5

6 **Article 10, Section 4 Damages for personal injuries or**
7 **death; worker's compensation.**

8

9 (b) Any section of this constitution to the contrary
10 notwithstanding, for any civil action where a person alleges
11 that a health care provider's act or omission in the provision
12 of health care resulted in death or injury, the legislature
13 may by general law:

14

15 (i) Mandate alternative dispute resolution or
16 review by a medical review panel before the filing of a civil
17 action against the health care provider-;

18

19 (ii) Limit the amount of damages to be recovered
20 from a health care provider for noneconomic loss resulting
21 from the death or injury;

22

1 (iii) No law shall be enacted limiting the amount
2 to be recovered against a health care provider for an act or
3 omission that resulted in death or injury for:

4

5 (A) Economic loss;

6

7 (B) Exemplary or punitive damages.

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

11

12 This amendment would allow the Wyoming Legislature to enact
13 laws limiting the amount of damages for noneconomic loss that
14 could be awarded for injury or death caused by a health care
15 provider. "Noneconomic loss" generally means losses such as
16 pain and suffering, inconvenience, mental anguish, loss of
17 capacity for enjoyment of life, loss of consortium and other
18 losses the claimant would otherwise be entitled to recover as
19 damages under general law.

20

21 This amendment will not affect the recovery of damages for
22 economic loss under Wyoming law. "Economic loss" generally
23 includes monetary losses such as past and future medical

1 expenses, loss of past and future earnings, loss of use of
2 property, costs of repair or replacement and loss of
3 employment or business opportunities.

4

5 This amendment expressly does not impact the recovery of any
6 additional damages known under Wyoming law as exemplary or
7 punitive damages, which are damages allowed by law to punish
8 a defendant and to deter persons from engaging in similar
9 conduct in the future.

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12 *****

13 **STAFF COMMENT**

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15 This joint resolution is modeled after House Enrolled Joint
16 Resolution No. 1 that was brought during Wyoming's 2004
17 Special Session and Texas' 2003 House Joint Resolution No. 3
18 (also known as Proposition 12).

19

20 One notable difference between the two resolutions that the
21 Committee may wish to consider is that in Texas' resolution,
22 it granted the legislature the authority to limit the amount
23 of all other types of damages and losses that be recovered
24 that are not economic or noneconomic in nature, such as
25 exemplary or punitive damages. Wyoming's 2004 resolution and
26 this version of the bill note that those types of damages
27 will not be affected by this joint resolution.

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32 The adoption of this amendment would remove requirements
33 related to the relationship between employers and employees

1 for damages for personal injury or death in favor of allowing
 2 the legislature to set limits for certain types of actions
 3 and damages that may be recovered from health care providers
 4 in the event of a person's injury or death. This amendment
 5 would remove constitutionally set requirements for funds to
 6 be established and paid out for purposes of the Worker's
 7 Compensation Act.

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9 *****
 10 *****

STAFF COMMENT

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 13 This resolution repeals Article 10, Section 4(c) in favor of
 14 the new language above. For reference, Section 4(c) reads as
 15 follows:

16
 17 "(c) Any contract or agreement with any employee
 18 waiving any right to recover damages for causing the death or
 19 injury of any employee shall be void. As to all
 20 extrahazardous employments the legislature shall provide by
 21 law for the accumulation and maintenance of a fund or funds
 22 out of which shall be paid compensation as may be fixed by
 23 law according to proper classifications to each person
 24 injured in such employment or to the dependent families of
 25 such as die as the result of such injuries, except in case of
 26 injuries due solely to the culpable negligence of the injured
 27 employee. The fund or funds shall be accumulated, paid into
 28 the state treasury and maintained in such manner as may be
 29 provided by law. Monies in the fund shall be expended only
 30 for compensation authorized by this section, for
 31 administration and management of the Worker's Compensation
 32 Act, debt service related to the fund and for workplace safety
 33 programs conducted by the state as authorized by law. The
 34 right of each employee to compensation from the fund shall be
 35 in lieu of and shall take the place of any and all rights of
 36 action against any employer contributing as required by law
 37 to the fund in favor of any person or persons by reason of

1 the injuries or death. Subject to conditions specified by
 2 law, the legislature may allow employments not designated
 3 extrahazardous to be covered by the state fund at the option
 4 of the employer. To the extent an employer elects to be
 5 covered by the state fund and contributes to the fund as
 6 required by law, the employer shall enjoy the same immunity
 7 as provided for extrahazardous employments."
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9 The Committee may wish to consider whether this subsection
 10 should be repealed in order to meet the policy preferences
 11 for medical malpractice expressed in this joint resolution.
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 14 *****
 15

16 (END)