

SENATE FILE NO. SF0168

Closed claim reporting-malpractice.

Sponsored by: Senator(s) Scott

A BILL

for

1 AN ACT relating to health care malpractice claims;  
 2 providing for disclosure of contingent fee agreements,  
 3 legal and litigation costs by attorneys as specified;  
 4 providing for reporting and disclosure of claims  
 5 settlements and judgments paid and legal and other expenses  
 6 related thereto by malpractice insurers; providing for data  
 7 compilation and report to the legislature by the Wyoming  
 8 insurance department; and providing for an effective date.

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10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 1-14-129 is created to read:

13

14 **1-14-129. Attorneys; contingent fees.**

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16 (a) In any action against a health care provider  
 17 alleging malpractice, any attorney filing the civil

1 complaint shall, if there is a contingency fee agreement  
2 between the attorney and his client, file a copy of the  
3 agreement and any subsequent modifications of the agreement  
4 with the court at the time of filing the complaint or  
5 within thirty (30) days of making the agreement or  
6 modification, whichever is later. Except as provided by  
7 subsection (b) of this section, the agreement and any  
8 modification of the agreement shall be a public document.

9

10 (b) The court in which the action is filed may, on  
11 motion of the attorney, designate any portion of the  
12 agreement containing information subject to attorney client  
13 privilege as confidential and protect that portion from  
14 release to anyone except an employee of the court, an  
15 employee of the insurance department or the attorney or the  
16 client involved. The identity of the case and the formula  
17 for computing the contingency fee shall not be subject to  
18 attorney client privilege and shall remain a public  
19 document.

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21 (c) If a contingency fee agreement is not filed as  
22 required by this section, the agreement shall be void and  
23 the attorney shall not be entitled to recover any fee under

1 it or withhold from the client any amount of any recovery  
2 pursuant to such agreement.

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4 (d) For purposes of this section, a contingency fee  
5 agreement is any agreement or contract between an attorney  
6 and a client pursuant to which the client's obligation to  
7 pay a fee to the attorney or to pay any costs or expenses  
8 of the suit depends on the fact of recovery from another  
9 person or entity or is measured by the amount of recovery  
10 from another person or entity.

11

12 (e) The court shall require attorneys involved in the  
13 settlement or receiving payment of a judgment involving  
14 health care malpractice to disclose in a court filing the  
15 following information:

16

17 (i) The total amount of the settlement or the  
18 judgment paid;

19

20 (ii) The total amount of costs and expenses  
21 payable from the settlements pursuant to contingent fee  
22 agreements or otherwise;

23

1           (iii) The total amount of attorney fees payable  
2 from the settlement or judgment pursuant to contingent fee  
3 agreements or otherwise;

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5           (iv) A reconciliation of the payments pursuant  
6 to paragraphs (i), (ii) and (iii) of this subsection and  
7 any contingency fee agreements filed pursuant to this  
8 subsection. The reconciliation shall include an explanation  
9 of any differences between the payments as computed  
10 pursuant to the contingency fee agreements and the actual  
11 payments.

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13           (f) In the case of differences between the results  
14 required by the agreement and the final results, the court  
15 shall take any action it deems necessary to protect the  
16 rights of the attorneys' clients. The court shall report  
17 the information received pursuant to paragraphs (e)(i),  
18 (ii) and (iii) of this section to the insurance department.  
19 It shall be the duty of the insurance department to hold  
20 the information confidential and report it publicly only  
21 without identifying individual clients, or attorneys and in  
22 such a way that the likely individual clients and attorneys  
23 cannot be identified. Other than as required by this  
24 subsection or to protect the parties involved or discipline

1 attorneys, the court shall hold the information received  
2 confidential.

3

4 (g) If a health care malpractice claim is settled  
5 without an action being filed, the attorney involved shall  
6 file the information required by paragraphs (e)(i), (ii)  
7 and (iii) of this section with the insurance department  
8 which shall treat the information in the same manner as  
9 similar information received from a court.

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11 (h) The court shall report to the state insurance  
12 department any claim for malpractice against a health care  
13 provider which is dismissed.

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15 **Section 2.** W.S. 26-3-124 by creating new subsections  
16 (c) and (d) is amended to read:

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18 **26-3-124. Annual statement; mandatory reporting of**  
19 **claims against health care providers; confidentiality;**  
20 **abstract of statistics.**

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22 (c) The commissioner shall reconcile the information  
23 received pursuant to subsection (a) of this section with

1 the information received from the courts and attorneys  
2 pursuant to W.S. 1-14-129.

3  
4 (d) Before July 1 of each year the commissioner shall  
5 publish a report to the legislature concerning health care  
6 malpractice claims for the previous calendar year. The  
7 report shall be sufficiently aggregated to prevent the  
8 identification of individual attorneys and clients or  
9 claimants. The report to the legislature shall be posted  
10 on an appropriate governmental website for access by the  
11 general public. Copies of the report shall be furnished to  
12 the joint judiciary interim committee and the joint labor,  
13 health and social services interim committee and any other  
14 legislator requesting a copy. The report shall show:

15  
16 (i) The total number of claims filed, broken  
17 down as the commissioner deems appropriate;

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19 (ii) The total amounts paid in settlement or  
20 discharge of claims, broken down by type of claim as the  
21 commissioner deems appropriate and matched with defense and  
22 other allocated loss adjustment costs and with net payment  
23 to injured parties, payments for contingency fees and other

1 legal fees and payments of expenses and other costs from  
2 amounts received by claimants;

3  
4 (iii) The numbers of actions or claims that were  
5 dismissed or settled with no payment and any legal and  
6 other allocated loss adjustment expenses associated with  
7 those claims;

8  
9 (iv) The totals for each category, broken down  
10 as the commissioner deems appropriate, where the  
11 commissioner was unable to reconcile the reports received  
12 from the courts and individual attorneys with those  
13 received from the insurance companies;

14  
15 (v) The share of malpractice insurers' overhead,  
16 administrative expenses, other expenses and profit  
17 reasonably allocated to Wyoming business;

18  
19 (vi) The percentages of total insurer costs and  
20 profits going to:

21  
22 (A) Insurance company profits;

23

1                   (B) Insurance company administration and  
2 other costs;

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4                   (C) Defense legal costs and other allocated  
5 loss adjustment expenses;

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7                   (D) Claimants litigation and other costs  
8 not including attorney fees;

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10                   (E) Claimants attorney fees;

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12                   (F) Net payments to claimants.

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14           **Section 3.** This act is effective July 1, 2005.

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(END)