

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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PJK:lmk:rs

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I don't think this concept is workable. If the noneconomic damages limit can be temporarily modified by the Joint Committee on Finance at the recommendation of the Commissioner of Insurance if the balance in the fund falls below a certain level, how will judges know what the limit is at any given time? Would they have to contact someone to find out whenever a jury verdict in a medical malpractice case provides for noneconomic damages? Who would they contact? What effect would a limit that is subject to change have on settlements? All participants would have to know the relevant amount on the day of the occurrence. How would anyone know exactly when the fund balance is returned to its "previous level" so that the statutory limit applies again?

I'm not quite sure what you mean by "previous level" of the fund. Is that the balance at the beginning of the fiscal year in which the fund balance was reduced by 30 percent? That's what I used in the draft. How are judges, attorneys, plaintiffs, and claimants supposed to find out what limit applies to a particular claim? One day it is one amount and the next day it may be a different amount.

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