



General Assembly

January Session, 2011

Raised Bill No. 6622

LCO No. 4851

04851_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE BURDEN OF PROOF IN MEDICAL MALPRACTICE CASES AND THE STANDARD OF CARE RELATED TO EMERGENCY MEDICAL CARE AND TREATMENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-184c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) (1) In any civil action to recover damages resulting from personal
4 injury or wrongful death occurring on or after October 1, 1987, but
5 prior to October 1, 2011, in which it is alleged that such injury or death
6 resulted from the negligence of a health care provider, as defined in
7 section 52-184b, the claimant shall have the burden of proving by the
8 preponderance of the evidence that the alleged actions of the health
9 care provider represented a breach of the prevailing professional
10 standard of care for that health care provider.

11 (2) In any civil action to recover damages resulting from personal
12 injury or wrongful death occurring on or after October 1, 2011, in
13 which it is alleged that such injury or death resulted from the
14 negligence of a health care provider, as defined in section 52-184b, the

15 claimant shall have the burden of proving by clear and convincing
16 evidence that the alleged actions of the health care provider
17 represented a breach of the prevailing professional standard of care for
18 that health care provider.

19 (3) The prevailing professional standard of care for a given health
20 care provider shall be that level of care, skill and treatment which, in
21 light of all relevant surrounding circumstances, is recognized as
22 acceptable and appropriate by reasonably prudent similar health care
23 providers, except that a given health care provider who provides care
24 and treatment in the emergency department of an acute care hospital
25 licensed under chapter 368v shall not be held liable for any damages as
26 a result of such care or treatment unless such damages result from
27 providing, or failing to provide, care or treatment under circumstances
28 demonstrating a reckless disregard for the consequences so as to affect
29 the life or health of another. For purposes of this subdivision, "reckless
30 disregard" as it applies to a given health care provider rendering care
31 and treatment in such emergency department is conduct that a health
32 care provider knew or should have known, at the time such care or
33 treatment was rendered, created an unreasonable risk of injury so as to
34 affect the life or health of another, and such risk was substantially
35 greater than that which is necessary to make the conduct negligent.

36 (b) If the defendant health care provider is not certified by the
37 appropriate American board as being a specialist, is not trained and
38 experienced in a medical specialty, or does not hold himself out as a
39 specialist, a "similar health care provider" is one who: (1) Is licensed by
40 the appropriate regulatory agency of this state or another state
41 requiring the same or greater qualifications; and (2) is trained and
42 experienced in the same discipline or school of practice and such
43 training and experience shall be as a result of the active involvement in
44 the practice or teaching of medicine within the five-year period before
45 the incident giving rise to the claim.

46 (c) If the defendant health care provider is certified by the

47 appropriate American board as a specialist, is trained and experienced
48 in a medical specialty, or holds himself out as a specialist, a "similar
49 health care provider" is one who: (1) Is trained and experienced in the
50 same specialty; and (2) is certified by the appropriate American board
51 in the same specialty; provided if the defendant health care provider is
52 providing treatment or diagnosis for a condition which is not within
53 his specialty, a specialist trained in the treatment or diagnosis for that
54 condition shall be considered a "similar health care provider".

55 (d) Any health care provider may testify as an expert in any action if
56 he: (1) Is a "similar health care provider" pursuant to subsection (b) or
57 (c) of this section; or (2) is not a similar health care provider pursuant
58 to subsection (b) or (c) of this section but, to the satisfaction of the
59 court, possesses sufficient training, experience and knowledge as a
60 result of practice or teaching in a related field of medicine, so as to be
61 able to provide such expert testimony as to the prevailing professional
62 standard of care in a given field of medicine. Such training, experience
63 or knowledge shall be as a result of the active involvement in the
64 practice or teaching of medicine within the five-year period before the
65 incident giving rise to the claim.

66 Sec. 2. Subsection (a) of section 52-557b of the general statutes is
67 repealed and the following is substituted in lieu thereof (*Effective*
68 *October 1, 2011*):

69 (a) A person licensed to practice medicine and surgery under the
70 provisions of chapter 370 or dentistry under the provisions of section
71 20-106 or members of the same professions licensed to practice in any
72 other state of the United States, a person licensed as a registered nurse
73 under section 20-93 or 20-94 or certified as a licensed practical nurse
74 under section 20-96 or 20-97, a medical technician or any person
75 operating a cardiopulmonary resuscitator or a person trained in
76 cardiopulmonary resuscitation in accordance with the standards set
77 forth by the American Red Cross or American Heart Association, or a
78 person operating an automatic external defibrillator, who, voluntarily

79 and gratuitously and other than in the ordinary course of such person's
80 employment or practice, renders emergency medical or professional
81 assistance to a person in need thereof, shall not be liable to such person
82 assisted for civil damages for any personal injuries which result from
83 acts or omissions by such person in rendering the emergency care,
84 which may constitute [ordinary] negligence. A person or entity that
85 provides or maintains an automatic external defibrillator shall not be
86 liable for the acts or omissions of the person or entity in providing or
87 maintaining the automatic external defibrillator, which may constitute
88 [ordinary] negligence. The immunity provided in this subsection [does
89 not apply to acts or omissions constituting gross, wilful or wanton
90 negligence] shall not apply to acts or omissions which may constitute
91 reckless disregard, as defined in subdivision (3) of subsection (a) of
92 section 52-184c, as amended by this act. With respect to the use of an
93 automatic external defibrillator, the immunity provided in this
94 subsection shall only apply to acts or omissions involving the use of an
95 automatic external defibrillator in the rendering of emergency care.
96 Nothing in this subsection shall be construed to exempt paid or
97 volunteer firefighters, police officers or emergency medical services
98 personnel from completing training in cardiopulmonary resuscitation
99 or in the use of an automatic external defibrillator in accordance with
100 the standard set forth by the American Red Cross or American Heart
101 Association. For the purposes of this subsection, "automatic external
102 defibrillator" means a device that: (1) Is used to administer an electric
103 shock through the chest wall to the heart; (2) contains internal
104 decision-making electronics, microcomputers or special software that
105 allows it to interpret physiologic signals, make medical diagnosis and,
106 if necessary, apply therapy; (3) guides the user through the process of
107 using the device by audible or visual prompts; and (4) does not require
108 the user to employ any discretion or judgment in its use.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	52-184c

Sec. 2	October 1, 2011	52-557b(a)
--------	-----------------	------------

Statement of Purpose:

To: (1) Provide that a claimant in a medical malpractice action establish the negligence of a health care provider by clear and convincing evidence; and (2) provide that health care providers who render care in emergency departments of acute care hospitals and licensed medical professionals who render emergency care voluntarily and gratuitously be liable for acts or omissions constituting a reckless disregard for the consequences.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]