



General Assembly

Amendment

January Session, 2011

LCO No. 8668

HB0648708668SR0

Offered by:

SEN. SUZIO, 13th Dist.

SEN. BOUCHER, 26th Dist.

To: Subst. House Bill No. 6487

File No. 865

Cal. No. 576

"AN ACT CONCERNING CERTIFICATES OF MERIT."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 52-184c of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2011*):

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

13 (2) In any civil action to recover damages resulting from personal
14 injury or wrongful death occurring on or after October 1, 2011, in

15 which it is alleged that such injury or death resulted from the
16 negligence of a health care provider, as defined in section 52-184b, the
17 claimant shall have the burden of proving by clear and convincing
18 evidence that the alleged actions of the health care provider
19 represented a breach of the prevailing professional standard of care for
20 that health care provider.

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

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

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

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

68 Sec. 502. Subsection (a) of section 52-557b of the general statutes is
69 repealed and the following is substituted in lieu thereof (*Effective*
70 *October 1, 2011*):

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

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