## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL No. 565 Session of 2011

INTRODUCED BY VANCE, SCARNATI, BAKER, KITCHEN, ORIE, BOSCOLA, ROBBINS, YAW, EARLL, RAFFERTY, PIPPY, BROWNE, D. WHITE, M. WHITE, FOLMER, VOGEL, BRUBAKER, WAUGH, PICCOLA AND EICHELBERGER, FEBRUARY 17, 2011

REFERRED TO JUDICIARY, FEBRUARY 17, 2011

## AN ACT

Amending the act of March 20, 2002 (P.L.154, No.13), entitled 1 "An act reforming the law on medical professional liability; 2 providing for patient safety and reporting; establishing the 3 Patient Safety Authority and the Patient Safety Trust Fund; 4 abrogating regulations; providing for medical professional 5 liability informed consent, damages, expert qualifications, 6 limitations of actions and medical records; establishing the 7 Interbranch Commission on Venue; providing for medical 8 9 professional liability insurance; establishing the Medical Care Availability and Reduction of Error Fund; providing for 10 medical professional liability claims; establishing the Joint 11 Underwriting Association; regulating medical professional 12 liability insurance; providing for medical licensure 13 regulation; providing for administration; imposing penalties; 14 and making repeals, " in medical professional liability, 15 16 providing for benevolent gesture or admission by health care provider or assisted living residence. 17 18 The General Assembly of the Commonwealth of Pennsylvania 19 hereby enacts as follows: 20 Section 1. The act of March 20, 2002 (P.L.154, No.13), known 21 as the Medical Care Availability and Reduction of Error (Mcare)

22 Act, is amended by adding a section to read:

23 <u>Section 503.1.</u> Benevolent gesture or admission by health care

24 provider, assisted living residence or ostensible

1	agent.
2	(a) AdmissibilityIn any liability action, any benevolent
3	gesture or admission made prior to the commencement of a medical
4	professional liability action by:
5	(1) a health care provider or an officer, employee or
6	agent thereof to a patient or resident or the patient's or
7	resident's relative or representative regarding the patient's
8	or resident's discomfort, pain, suffering, injury or death,
9	regardless of the cause, resulting from any treatment,
10	consultation, care or service or omission of treatment,
11	consultation, care or service provided by the health care
12	provider, assisted living residence, its employees, agents or
13	contractors, prior to the commencement of a medical
14	professional liability action, liability action,
15	administrative action, mediation or arbitration shall be
16	inadmissible as evidence of liability or as evidence of an
17	<u>admission against interest; or</u>
18	(2) an assisted living residence or an officer, employee
19	or agent thereof, to a patient or resident or the patient's
20	or resident's relative or representative regarding the
21	patient's or resident's discomfort, pain, suffering, injury
22	or death, regardless of the cause, resulting from any
23	treatment, consultation, care or service or omission of
24	treatment, consultation, care or service provided by the
25	health care provider, assisted living residence or its
26	employees, agents or contractors, prior to the commencement
27	of a medical professional liability action, liability action,
28	administrative action, mediation or arbitration shall be
29	inadmissible as evidence of liability or as evidence of an
30	admission against interest.

20110SB0565PN0574

1	(b) DefinitionsAs used in this section, the following
2	words and phrases shall have the meanings given to them in this
3	subsection:
4	"Assisted living residence." As defined under section 1001
5	of the act of June 13, 1967 (P.L.31, No.21), known as the Public
6	Welfare Code.
7	"Benevolent gesture." Any and all action, conduct, statement
8	or gesture that conveys a sense of apology, condolence,
9	explanation, compassion or commiseration emanating from humane
10	impulses.
11	"Relative." A patient's spouse, parent, stepparent,
12	grandparent, child, stepchild, grandchild, brother, sister,
13	half-brother, half-sister, spouse's parents or any person who
14	has a family-type relationship with a patient.
15	"Representative." A legal guardian, attorney, an agent
16	designated to make medical decisions under a power of attorney
17	over health care matters or a health care representative who is
18	authorized to make health care decisions for a principal under
19	applicable law or a surrogate designated in an advance directive
20	for health care or any person recognized in law or custom as a
21	patient's agent.
22	Section 2. The addition of section 503.1 of the act shall
23	apply to actions pending on the effective date of this section.
24	Section 3. This act shall take effect in 60 days.

20110SB0565PN0574

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