PRINTER'S NO. 302

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 379 Session of 2013

INTRODUCED BY VANCE, SCARNATI, WHITE, VOGEL, MENSCH, HUTCHINSON, BROWNE, YAW, VULAKOVICH, ROBBINS, EICHELBERGER, WAUGH, RAFFERTY, BRUBAKER, BOSCOLA AND BAKER, JANUARY 31, 2013

REFERRED TO BANKING AND INSURANCE, JANUARY 31, 2013

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," adding provisions relating to medical professional liability insurance; and further providing for the expiration of children's health care provisions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding an article to read:

ARTICLE VI-C

Medical Professional Liability Insurance

Section 601-C. Statement of policy.

The General Assembly finds and declares that the Commonwealth

has an interest in controlling medical professional liability costs and ensuring the medical professional liability insurance market is robust. Requiring medical professional liability insurance carriers to encourage benevolent gestures by insured health care providers will help to promote early resolution of issues and help to control medical professional liability insurance costs.

Section 602-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assisted living residence." As defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Benevolent gesture." Any action, conduct, statement or gesture that conveys a sense of apology, condolence, explanation, compassion or commiseration emanating from humane impulses.

"Health care provider." A primary health care center, a personal care home licensed by the Department of Public Welfare under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, certified nurse midwife, podiatrist, hospital, nursing home, birth center and an officer, employee or agent of any of them acting in the course and scope of employment.

"Relative." A patient's spouse, parent, stepparent, grandparent, child, stepchild, grandchild, brother, sister,

half-brother, half-sister, spouse's parents or any person who has a family-type relationship with a patient.

"Representative." A legal guardian, attorney, agent designated to make medical decisions under a power of attorney over health care matters, a health care representative who is authorized to make health care decisions for a principal under applicable law, a surrogate designated in an advance directive for health care or any person recognized in law or custom as a patient's agent.

Section 603-C. Requirement.

Medical professional liability insurance carriers shall encourage benevolent gestures by insured health care providers.

Section 604-C. Benevolent gesture or admission by health care provider, assisted living residence or ostensible agent.

In any liability action, any benevolent gesture or admission made prior to the commencement of a medical professional liability action by:

(1) a health care provider or an officer, employee or agent thereof, to a patient or resident or the patient's or resident's relative or representative regarding the patient's or resident's discomfort, pain, suffering, injury or death, regardless of the cause, resulting from any treatment, consultation, care or service or omission of treatment, consultation, care or service provided by the health care provider, assisted living residence, its employees, agents or contractors, prior to the commencement of a medical professional liability action, liability action, administrative action, mediation or arbitration; or

(2) an assisted living residence or an officer, employee

or agent thereof to a patient or resident or the patient's or resident's relative or representative regarding the patient's or resident's discomfort, pain, suffering, injury or death, regardless of the cause, resulting from any treatment, consultation, care or service or omission of treatment, consultation, care or service provided by the health care provider, assisted living residence or its employees, agents or contractors, prior to the commencement of a medical professional liability action, liability action, administrative action, mediation or arbitration shall be inadmissible as evidence of liability or as evidence of an admission against interest.

Section 605-C. Applicability.

The addition of section 604-C shall apply to actions pending on the effective date of this section.

Section 2. Section 2363 of the act, amended March 22, 2010 (P.L.147, No.14), is amended to read:

Section 2362. Expiration.--This article shall expire December 31, [2013] 2018.

Section 3. This act shall take effect in 60 days.