

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 182 Session of 2011

INTRODUCED BY GODSHALL, BAKER, BOYD, CLYMER, CREIGHTON, CUTLER, EVERETT, GINGRICH, GROVE, HORNAMAN, KAUFFMAN, KNOWLES, OBERLANDER, O'NEILL, PAYNE, PICKETT, REED, REICHLEY, ROAE, ROCK, SAYLOR, SCHRODER, SWANGER, TALLMAN AND VULAKOVICH, JANUARY 24, 2011

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 24, 2011

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled
2 "An act reforming the law on medical professional liability;
3 providing for patient safety and reporting; establishing the
4 Patient Safety Authority and the Patient Safety Trust Fund;
5 abrogating regulations; providing for medical professional
6 liability informed consent, damages, expert qualifications,
7 limitations of actions and medical records; establishing the
8 Interbranch Commission on Venue; providing for medical
9 professional liability insurance; establishing the Medical
10 Care Availability and Reduction of Error Fund; providing for
11 medical professional liability claims; establishing the Joint
12 Underwriting Association; regulating medical professional
13 liability insurance; providing for medical licensure
14 regulation; providing for administration; imposing penalties;
15 and making repeals," providing for hospital care or
16 assistance necessitated by traumatic injury immunity.

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

19 Section 1. The act of March 20, 2002 (P.L.154, No.13), known
20 as the Medical Care Availability and Reduction of Error (Mcare)
21 Act, is amended by adding a section to read:

22 Section 517. Hospital care or assistance necessitated by
23 traumatic injury immunity.

1 (a) General rule.--Except as provided in subsection (b), a
2 hospital that in good faith renders care or assistance
3 necessitated by a traumatic injury demanding immediate medical
4 attention, for which the patient enters the hospital through its
5 emergency room or trauma center, may not be held liable for
6 noneconomic and punitive damages to or for the benefit of any
7 claimant arising out of any act or omission in rendering that
8 care or assistance if the care or assistance is rendered in good
9 faith and in a manner not amounting to gross negligence or
10 reckless, willful or wanton conduct.

11 (b) Exception.--The limitation on liability provided
12 pursuant to this section does not apply to any act or omission
13 in rendering care or assistance:

14 (1) which occurs after the patient is stabilized and is
15 capable of receiving medical treatment as a nonemergency
16 patient, unless surgery is required as a result of the
17 emergency within a reasonable time after the patient is
18 stabilized, in which case the limitation on liability
19 provided by subsection (a) applies to any act or omission in
20 rendering care or assistance which occurs before the
21 stabilization of the patient following the surgery; or

22 (2) unrelated to the original traumatic injury.

23 (c) Rebuttable presumption.--There is a rebuttable
24 presumption that a medical condition that arises during the
25 course of follow-up care was the result of the original
26 traumatic injury and that the limitation on liability provided
27 by subsection (a) applies with respect to the medical condition
28 that arises during the course of the follow-up care if:

29 (1) a physician provides follow-up care to a patient to
30 whom he rendered care or assistance pursuant to subsection

1 (a);

2 (2) a medical condition arises during the course of the
3 follow-up care that is directly related to the original
4 traumatic injury for which care or assistance was rendered
5 pursuant to subsection (a); and

6 (3) the patient files medical professional liability
7 action based on the medical condition that arises during the
8 course of the follow-up care.

9 (d) Definitions.--As used in this section, the following
10 words and phrases shall have the meanings given to them in this
11 subsection:

12 "Hospital." The term includes any of the following:

13 (1) A hospital accredited as a Level I or Level II or
14 pediatric trauma center by the Pennsylvania Trauma Systems
15 Foundation under 35 Pa.C.S. Ch. 81 (relating to emergency
16 medical services system) and which is a nonprofit
17 organization.

18 (2) An employee of a hospital described in paragraph (1)
19 who renders care or assistance to patients.

20 (3) A physician who renders care or assistance in a
21 hospital described in paragraph (1), whether or not the care
22 or assistance was rendered gratuitously or for a fee.

23 (4) A physician who renders care or assistance in a
24 hospital of a governmental entity that has been designated as
25 a center for the treatment of traumatic injuries, whether or
26 not the care or assistance was rendered gratuitously or for a
27 fee.

28 (5) A hospital as defined in section 103.

29 "Reckless, willful or wanton conduct." That conduct which a
30 person knew or should have known at the time he rendered the

1 care or assistance would be likely to result in injury so as to
2 affect the life or health of another person, taking into
3 consideration to the extent applicable:

4 (1) the extent or serious nature of the prevailing
5 circumstances;

6 (2) the lack of time or ability to obtain appropriate
7 consultation;

8 (3) the lack of a prior medical relationship with the
9 patient;

10 (4) the inability to obtain an appropriate medical
11 history of the patient; and

12 (5) the time constraints imposed by coexisting
13 emergencies.

14 "Traumatic injury." Any acute injury which, according to
15 standardized criteria for triage in the field, involves a
16 significant risk of death or the precipitation of complications
17 or disabilities.

18 Section 2. All acts and parts of acts are repealed insofar
19 as they are inconsistent with the provisions of this act.

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