

## AMENDMENTS TO SENATE BILL NO. 379

Sponsor: SENATOR YAW

Printer's No. 302

1 Amend Bill, page 1, lines 1 through 11, by striking out all  
2 of lines 1 through 10 and "repealing existing laws," adding  
3 provisions" in line 11 and inserting

4 Providing for benevolent gestures

5 Amend Bill, page 1, lines 12 through 14, by striking out "  
6 and further" in line 12, all of line 13 and "provisions" in line  
7 14

8 Amend Bill, page 1, lines 17 through 23; pages 2 and 3, lines  
9 1 through 30; page 4, lines 1 through 20, by striking out all of  
10 said lines on said pages and inserting

11 Section 1. Short title.

12 This act shall be known and may be cited as the Benevolent  
13 Gesture Medical Professional Liability Act.

14 Section 2. Definitions.

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

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

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

25 "Health care provider." A primary health care center; a  
26 personal care home licensed by the Department of Public Welfare  
27 under the act of June 13, 1967 (P.L.31, No.21), known as the  
28 Public Welfare Code; a person, including a corporation,  
29 university or other educational institution licensed or approved  
30 by the Commonwealth to provide health care or professional  
31 medical services as a physician, certified nurse midwife,  
32 podiatrist, hospital, nursing home or birth center; or an

1 officer, employee or agent of any of them acting in the course  
2 and scope of employment.

3 "Relative." A patient's spouse, parent, stepparent,  
4 grandparent, child, stepchild, grandchild, brother, sister,  
5 half-brother, half-sister or spouse's parent or any person who  
6 has a family-type relationship with a patient.

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

14 Section 3. Benevolent gesture by health care provider, assisted  
15 living residence or ostensible agent.

16 (a) Scope.--This section applies to any benevolent gesture  
17 made prior to the commencement of a medical professional  
18 liability action, administrative action, mediation or  
19 arbitration:

20 (1) by a health care provider or an officer, employee or  
21 agent of a health care provider, to a patient or resident or  
22 the patient's or resident's relative or representative  
23 regarding the patient's or resident's discomfort, pain,  
24 suffering, injury or death, regardless of the cause,  
25 resulting from any treatment, consultation, care or service  
26 or omission of treatment, consultation, care or service  
27 provided by the health care provider, assisted living  
28 residence or its employees, agents or contractors; or

29 (2) by an assisted living residence or an officer,  
30 employee or agent of an assisted living residence to a  
31 patient or resident or the patient's or resident's relative  
32 or representative regarding the patient's or resident's  
33 discomfort, pain, suffering, injury or death, regardless of  
34 the cause, resulting from any treatment, consultation, care  
35 or service or omission of treatment, consultation, care or  
36 service provided by the health care provider, assisted living  
37 residence or its employees, agents or contractors.

38 (b) Admissibility.--

39 (1) Except as set forth in paragraph (2), any benevolent  
40 gesture described in subsection (a) shall be inadmissible as  
41 evidence of liability.

42 (2) Notwithstanding any other provision of this act  
43 relating to benevolent gestures, paragraph (1) shall not  
44 apply to a communication, including an excited utterance,  
45 which also includes a statement or statements of negligence  
46 or fault pertaining to an accident or event.

47 (c) Applicability.--This section shall apply to actions  
48 commenced after the effective date of this section.

49 Section 20. Effective date.

50 This act shall take effect in 60 days.