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 "An act reforming the law on medical professional liability; providing for patient safety and reporting; establishing the Patient Safety Authority and the Patient Safety Trust Fund; abrogating regulations; providing for medical professional liability informed consent, damages, expert qualifications, limitations of actions and medical records; establishing the Interbranch Commission on Venue; providing for medical professional liability insurance; establishing the Medical Care Availability and Reduction of Error Fund; providing for medical professional liability claims; establishing the Joint Underwriting Association; regulating medical professional liability insurance; providing for medical licensure regulation; providing for administration; imposing penalties; and making repeals," in medical professional liability, providing for benevolent gesture or admission by health care provider or assisted living residence.

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

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

Section 503.1. Benevolent gesture or admission by health care provider, assisted living residence or ostensible
agent.

(a) Admissibility.--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 shall be inadmissible as evidence of liability or as evidence of an admission against interest; 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.
(b) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:


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

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

Section 2. The addition of section 503.1 of the act shall apply to actions pending on the effective date of this section.

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