

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, BAKER, SMUCKER, SCHWANK, WARD AND DINNIMAN, JANUARY 31, 2013

AS AMENDED ON THIRD CONSIDERATION, JUNE 24, 2013

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An <--
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds-
6 associations, reciprocal and inter insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," adding provisions PROVIDING FOR <--
12 BENEVOLENT GESTURES relating to medical professional
13 liability insurance; and further providing for the expiration <--
14 of children's health care provisions.

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

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

ARTICLE VI C

Medical Professional Liability Insurance

Section 601 C. Statement of policy.

23 The General Assembly finds and declares that the Commonwealth

~~1 has an interest in controlling medical professional liability~~
~~2 costs and ensuring the medical professional liability insurance~~
~~3 market is robust. Requiring medical professional liability~~
~~4 insurance carriers to encourage benevolent gestures by insured~~
~~5 health care providers will help to promote early resolution of~~
~~6 issues and help to control medical professional liability~~
~~7 insurance costs.~~

~~8 Section 602 C. Definitions.~~

~~9 The following words and phrases when used in this article~~
~~10 shall have the meanings given to them in this section unless the~~
~~11 context clearly indicates otherwise:~~

~~12 "Assisted living residence." As defined in section 1001 of~~
~~13 the act of June 13, 1967 (P.L.31, No.21), known as the Public~~
~~14 Welfare Code.~~

~~15 "Benevolent gesture." Any action, conduct, statement or~~
~~16 gesture that conveys a sense of apology, condolence,~~
~~17 explanation, compassion or commiseration emanating from humane~~
~~18 impulses.~~

~~19 "Health care provider." A primary health care center, a~~
~~20 personal care home licensed by the Department of Public Welfare~~
~~21 under the act of June 13, 1967 (P.L.31, No.21), known as the~~
~~22 Public Welfare Code, or a person, including a corporation,~~
~~23 university or other educational institution licensed or approved~~
~~24 by the Commonwealth to provide health care or professional~~
~~25 medical services as a physician, certified nurse midwife,~~
~~26 podiatrist, hospital, nursing home, birth center and an officer,~~
~~27 employee or agent of any of them acting in the course and scope~~
~~28 of employment.~~

~~29 "Relative." A patient's spouse, parent, stepparent,~~
~~30 grandparent, child, stepchild, grandchild, brother, sister,~~

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

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

10 ~~Section 603 C. Requirement.~~

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

13 ~~Section 604 C. Benevolent gesture or admission by health care~~
14 ~~provider, assisted living residence or ostensible~~
15 ~~agent.~~

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

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

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

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

13 ~~Section 605 C. Applicability.~~

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

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

18 ~~Section 2362. Expiration. This article shall expire~~
19 ~~December 31, [2013] 2018.~~

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

21 SECTION 1. SHORT TITLE.

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22 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE BENEVOLENT
23 GESTURE MEDICAL PROFESSIONAL LIABILITY ACT.

24 SECTION 2. DEFINITIONS.

25 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
26 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
27 CONTEXT CLEARLY INDICATES OTHERWISE:

28 "ASSISTED LIVING RESIDENCE." AS DEFINED IN SECTION 1001 OF
29 THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC
30 WELFARE CODE.

1 "BENEVOLENT GESTURE." ANY ACTION, CONDUCT, STATEMENT OR
2 GESTURE THAT CONVEYS A SENSE OF APOLOGY, CONDOLENCE,
3 EXPLANATION, COMPASSION OR COMMISERATION EMANATING FROM HUMANE
4 IMPULSES.

5 "HEALTH CARE PROVIDER." A PRIMARY HEALTH CARE CENTER; A
6 PERSONAL CARE HOME LICENSED BY THE DEPARTMENT OF PUBLIC WELFARE
7 UNDER THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE
8 PUBLIC WELFARE CODE; A PERSON, INCLUDING A CORPORATION,
9 UNIVERSITY OR OTHER EDUCATIONAL INSTITUTION LICENSED OR APPROVED
10 BY THE COMMONWEALTH TO PROVIDE HEALTH CARE OR PROFESSIONAL
11 MEDICAL SERVICES AS A PHYSICIAN, CERTIFIED NURSE MIDWIFE,
12 PODIATRIST, HOSPITAL, NURSING HOME OR BIRTH CENTER; OR AN
13 OFFICER, EMPLOYEE OR AGENT OF ANY OF THEM ACTING IN THE COURSE
14 AND SCOPE OF EMPLOYMENT.

15 "RELATIVE." A PATIENT'S SPOUSE, PARENT, STEPPARENT,
16 GRANDPARENT, CHILD, STEPCHILD, GRANDCHILD, BROTHER, SISTER,
17 HALF-BROTHER, HALF-SISTER OR SPOUSE'S PARENT OR ANY PERSON WHO
18 HAS A FAMILY-TYPE RELATIONSHIP WITH A PATIENT.

19 "REPRESENTATIVE." ANY LEGAL GUARDIAN, ATTORNEY, AGENT
20 DESIGNATED TO MAKE MEDICAL DECISIONS UNDER A POWER OF ATTORNEY
21 OVER HEALTH CARE MATTERS, HEALTH CARE REPRESENTATIVE WHO IS
22 AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR A PRINCIPAL UNDER
23 APPLICABLE LAW, SURROGATE DESIGNATED IN AN ADVANCE DIRECTIVE FOR
24 HEALTH CARE OR PERSON RECOGNIZED IN LAW OR CUSTOM AS A PATIENT'S
25 AGENT.

26 SECTION 3. BENEVOLENT GESTURE BY HEALTH CARE PROVIDER, ASSISTED
27 LIVING RESIDENCE OR OSTENSIBLE AGENT.

28 (A) SCOPE.--THIS SECTION APPLIES TO ANY BENEVOLENT GESTURE
29 MADE PRIOR TO THE COMMENCEMENT OF A MEDICAL PROFESSIONAL
30 LIABILITY ACTION, ADMINISTRATIVE ACTION, MEDIATION OR

1 ARBITRATION:

2 (1) BY A HEALTH CARE PROVIDER OR AN OFFICER, EMPLOYEE OR
3 AGENT OF A HEALTH CARE PROVIDER, TO A PATIENT OR RESIDENT OR
4 THE PATIENT'S OR RESIDENT'S RELATIVE OR REPRESENTATIVE
5 REGARDING THE PATIENT'S OR RESIDENT'S DISCOMFORT, PAIN,
6 SUFFERING, INJURY OR DEATH, REGARDLESS OF THE CAUSE,
7 RESULTING FROM ANY TREATMENT, CONSULTATION, CARE OR SERVICE
8 OR OMISSION OF TREATMENT, CONSULTATION, CARE OR SERVICE
9 PROVIDED BY THE HEALTH CARE PROVIDER, ASSISTED LIVING
10 RESIDENCE OR ITS EMPLOYEES, AGENTS OR CONTRACTORS; OR

11 (2) BY AN ASSISTED LIVING RESIDENCE OR AN OFFICER,
12 EMPLOYEE OR AGENT OF AN ASSISTED LIVING RESIDENCE TO A
13 PATIENT OR RESIDENT OR THE PATIENT'S OR RESIDENT'S RELATIVE
14 OR REPRESENTATIVE REGARDING THE PATIENT'S OR RESIDENT'S
15 DISCOMFORT, PAIN, SUFFERING, INJURY OR DEATH, REGARDLESS OF
16 THE CAUSE, RESULTING FROM ANY TREATMENT, CONSULTATION, CARE
17 OR SERVICE OR OMISSION OF TREATMENT, CONSULTATION, CARE OR
18 SERVICE PROVIDED BY THE HEALTH CARE PROVIDER, ASSISTED LIVING
19 RESIDENCE OR ITS EMPLOYEES, AGENTS OR CONTRACTORS.

20 (B) ADMISSIBILITY.--

21 (1) EXCEPT AS SET FORTH IN PARAGRAPH (2), ANY BENEVOLENT
22 GESTURE DESCRIBED IN SUBSECTION (A) SHALL BE INADMISSIBLE AS
23 EVIDENCE OF LIABILITY.

24 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT
25 RELATING TO BENEVOLENT GESTURES, PARAGRAPH (1) SHALL NOT
26 APPLY TO A COMMUNICATION, INCLUDING AN EXCITED UTTERANCE,
27 WHICH ALSO INCLUDES A STATEMENT OR STATEMENTS OF NEGLIGENCE
28 OR FAULT PERTAINING TO AN ACCIDENT OR EVENT.

29 (C) APPLICABILITY.--THIS SECTION SHALL APPLY TO ACTIONS
30 COMMENCED AFTER THE EFFECTIVE DATE OF THIS SECTION.

1 SECTION 20. EFFECTIVE DATE.

2 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.