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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1363**

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

A bill for an act

relating to civil actions; regulating the liability of certain health care providers for providing emergency care and treatment; regulating affidavits of expert review in malpractice actions against health care providers; amending Minnesota Statutes 2008, sections 145.682, subdivisions 2, 3, 6; 604A.01, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 145.682, subdivision 2, is amended to read:

Subd. 2. **Requirement.** In an action alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider which includes a cause of action as to which expert testimony is necessary to establish a prima facie case, the plaintiff must: (1) unless otherwise provided in subdivision 3, ~~paragraph (b) clause (2)~~, serve upon defendant with the summons and complaint an affidavit as provided in subdivision 3; and (2) serve upon defendant within 180 days after commencement of the suit an affidavit as provided by subdivision 4.

Sec. 2. Minnesota Statutes 2008, section 145.682, subdivision 3, is amended to read:

Subd. 3. **Affidavit of expert review.** The affidavit required by subdivision 2, clause (1), must be by the plaintiff's attorney and state that:

~~(a) (1) the facts of the case have been reviewed by the plaintiff's attorney with an expert whose qualifications provide a reasonable expectation that the expert's opinions could be admissible at trial~~ who is board certified if board certification is available to that particular specialty and currently practicing in the specialty or specialty areas of practice from which the applicable standard of care arises and that, in the opinion of this expert, one or more defendants deviated from the applicable standard of care and by that action caused injury to the plaintiff; or

2.1 ~~(b) (2)~~ the expert review required by ~~paragraph (a) clause (1)~~ could not reasonably be
 2.2 obtained before the action was commenced because of the applicable statute of limitations.
 2.3 If an affidavit is executed pursuant to this paragraph, the affidavit in ~~paragraph (a) clause~~
 2.4 ~~(1)~~ must be served on defendant or the defendant's counsel within 90 days after service
 2.5 of the summons and complaint.

2.6 Sec. 3. Minnesota Statutes 2008, section 145.682, subdivision 6, is amended to read:

2.7 Subd. 6. **Penalty for noncompliance.** (a) Failure to comply with subdivision
 2.8 2, clause (1), within 60 days after demand for the affidavit results, upon motion, in
 2.9 mandatory dismissal with prejudice of each cause of action as to which expert testimony is
 2.10 necessary to establish a prima facie case.

2.11 (b) Failure to comply with subdivision 2, clause (2), and subdivision 4 results, upon
 2.12 motion, in mandatory dismissal with prejudice of each cause of action as to which expert
 2.13 testimony is necessary to establish a prima facie case.

2.14 ~~(c) Failure to comply with subdivision 4 because of deficiencies in the affidavit or~~
 2.15 ~~answers to interrogatories results, upon motion, in mandatory dismissal with prejudice~~
 2.16 ~~of each action as to which expert testimony is necessary to establish a prima facie case,~~
 2.17 ~~provided that:~~

2.18 ~~(1) the motion to dismiss the action identifies the claimed deficiencies in the affidavit~~
 2.19 ~~or answers to interrogatories;~~

2.20 ~~(2) the time for hearing the motion is at least 45 days from the date of service of~~
 2.21 ~~the motion; and~~

2.22 ~~(3) before the hearing on the motion, the plaintiff does not serve upon the defendant~~
 2.23 ~~an amended affidavit or answers to interrogatories that correct the claimed deficiencies.~~

2.24 **EFFECTIVE DATE.** This section is effective the day following final enactment
 2.25 and applies to causes of action commenced on or after that date.

2.26 Sec. 4. Minnesota Statutes 2008, section 604A.01, subdivision 2, is amended to read:

2.27 Subd. 2. **General immunity from liability.** (a) A person who, without
 2.28 compensation or the expectation of compensation, renders emergency care, advice, or
 2.29 assistance at the scene of an emergency or during transit to a location where professional
 2.30 medical care can be rendered, is not liable for any civil damages as a result of acts or
 2.31 omissions by that person in rendering the emergency care, advice, or assistance, unless the
 2.32 person acts in a willful and wanton or reckless manner in providing the care, advice, or
 2.33 assistance. This subdivision does not apply to a person rendering emergency care, advice,

3.1 or assistance during the course of regular employment, and receiving compensation or
 3.2 expecting to receive compensation for rendering the care, advice, or assistance.

3.3 (b) Any hospital licensed under chapter 144, any employee of the hospital working
 3.4 in a clinical area within the facility and providing patient care, and any person licensed
 3.5 to practice medicine who in good faith renders medical care and treatment necessitated
 3.6 by a sudden, unexpected situation or occurrence resulting in a serious medical condition
 3.7 demanding immediate medical attention, for which the patient enters the hospital through
 3.8 its emergency room or trauma center, including but not limited to medical care and
 3.9 treatment rendered in an obstetrical unit, is not held liable for any civil damages as a
 3.10 result of this medical care and treatment unless the damages result from providing, or
 3.11 failing to provide, medical care and treatment under circumstances demonstrating gross
 3.12 negligence for the consequences so as to affect the life or health of another. The immunity
 3.13 from liability described in this paragraph shall not be construed to include any claim
 3.14 in a civil action that is based solely on intentional denial of medical treatment that a
 3.15 patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient
 3.16 is incompetent, against the wishes of the patient's guardian, on the basis of the patient's
 3.17 present or predicted age, disability, degree of medical dependency, or quality of life.

3.18 ~~(b)~~ (c) For the purposes of this section, the scene of an emergency is an area outside
 3.19 the confines of a hospital or other institution that has hospital facilities, or an office of
 3.20 a person licensed to practice one or more of the healing arts under chapter 147, 147A,
 3.21 148, 150A, or 153. The scene of an emergency includes areas threatened by or exposed to
 3.22 spillage, seepage, fire, explosion, or other release of hazardous materials, and includes
 3.23 ski areas and trails.

3.24 ~~(c)~~ (d) For the purposes of this section, "person" includes a public or private
 3.25 nonprofit volunteer firefighter, volunteer police officer, volunteer ambulance attendant,
 3.26 volunteer first provider of emergency medical services, volunteer ski patroller, and any
 3.27 partnership, corporation, association, or other entity.

3.28 ~~(d)~~ (e) For the purposes of this section, "compensation" does not include payments,
 3.29 reimbursement for expenses, or pension benefits paid to members of volunteer
 3.30 organizations.

3.31 ~~(e)~~ (f) For purposes of this section, "emergency care" includes providing emergency
 3.32 medical care by using or providing an automatic external defibrillator, unless the person
 3.33 on whom the device is to be used objects; or unless the person is rendering this care
 3.34 during the course of regular employment, the person is receiving or expects to receive
 3.35 compensation for rendering this care, and the usual and regular duties of the person

4.1 include the provision of emergency medical care. "Automatic external defibrillator"
4.2 means a medical device heart monitor and defibrillator that:

4.3 (1) has received approval of its premarket notification, filed pursuant to United States
4.4 Code, title 21, section 360(k), from the United States Food and Drug Administration;

4.5 (2) is capable of recognizing the presence or absence of ventricular fibrillation or
4.6 rapid ventricular tachycardia, and is capable of determining, without intervention by an
4.7 operator, whether defibrillation should be performed; and

4.8 (3) upon determining that defibrillation should be performed, automatically charges
4.9 and requests delivery of an electrical impulse to an individual's heart.

4.10 **EFFECTIVE DATE.** This section is effective the day following final enactment
4.11 and applies to actions arising from incidents occurring on or after that date.