

1 AN ACT in relation to civil procedure.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Section 2-622 as follows:

6 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,  
8 which has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or  
11 otherwise, in which the plaintiff seeks damages for injuries  
12 or death by reason of medical, hospital, or other healing art  
13 malpractice, the plaintiff's attorney or the plaintiff, if  
14 the plaintiff is proceeding pro se, shall file an affidavit,  
15 attached to the original and all copies of the complaint,  
16 declaring one of the following:

17 1. That the affiant has consulted and reviewed the  
18 facts of the case with a health professional who the  
19 affiant reasonably believes: (i) is knowledgeable in the  
20 relevant issues involved in the particular action; (ii)  
21 practices or has practiced within the last 6 years or  
22 teaches or has taught within the last 6 years in the same  
23 area of health care or medicine that is at issue in the  
24 particular action; and (iii) is qualified by experience  
25 or demonstrated competence in the subject of the case;  
26 that the reviewing health professional has determined in  
27 a written report, after a review of the medical record  
28 and other relevant material involved in the particular  
29 action that there is a reasonable and meritorious cause  
30 for the filing of such action; and that the affiant has  
31 concluded on the basis of the reviewing health

1 professional's review and consultation that there is a  
2 reasonable and meritorious cause for filing of such  
3 action. If the affidavit is filed as to a defendant who  
4 is a physician licensed to treat human ailments without  
5 the use of drugs or medicines and without operative  
6 surgery, a dentist, a podiatrist, a psychologist, or a  
7 naprapath, the written report must be from a health  
8 professional licensed in the same profession, with the  
9 same class of license, as the defendant. For affidavits  
10 filed as to all other defendants, the written report must  
11 be from a physician licensed to practice medicine in all  
12 its branches. In either event, the affidavit must  
13 identify the profession of the reviewing health  
14 professional. A copy of the written report, clearly  
15 identifying the plaintiff and the reasons for the  
16 reviewing health professional's determination that a  
17 reasonable and meritorious cause for the filing of the  
18 action exists, must be attached to the affidavit, but  
19 information which would identify the reviewing health  
20 professional may be deleted from the copy so attached.

21 2. That the affiant was unable to obtain a  
22 consultation required by paragraph 1 because a statute of  
23 limitations would impair the action and the consultation  
24 required could not be obtained before the expiration of  
25 the statute of limitations. If an affidavit is executed  
26 pursuant to this paragraph, the certificate and written  
27 report required by paragraph 1 shall be filed within 90  
28 days after the filing of the complaint. The defendant  
29 shall be excused from answering or otherwise pleading  
30 until 30 days after being served with a certificate  
31 required by paragraph 1.

32 3. That a request has been made by the plaintiff or  
33 his attorney for examination and copying of records  
34 pursuant to Part 20 of Article VIII of this Code and the

1 party required to comply under those Sections has failed  
2 to produce such records within 60 days of the receipt of  
3 the request. If an affidavit is executed pursuant to  
4 this paragraph, the certificate and written report  
5 required by paragraph 1 shall be filed within 90 days  
6 following receipt of the requested records. All  
7 defendants except those whose failure to comply with Part  
8 20 of Article VIII of this Code is the basis for an  
9 affidavit under this paragraph shall be excused from  
10 answering or otherwise pleading until 30 days after being  
11 served with the certificate required by paragraph 1.

12 (b) Where a certificate and written report are required  
13 pursuant to this Section a separate certificate and written  
14 report shall be filed as to each defendant who has been named  
15 in the complaint and shall be filed as to each defendant  
16 named at a later time.

17 (c) Where the plaintiff intends to rely on the doctrine  
18 of "res ipsa loquitur", as defined by Section 2-1113 of this  
19 Code, the certificate and written report must state that, in  
20 the opinion of the reviewing health professional, negligence  
21 has occurred in the course of medical treatment. The affiant  
22 shall certify upon filing of the complaint that he is relying  
23 on the doctrine of "res ipsa loquitur".

24 (d) When the attorney intends to rely on the doctrine of  
25 failure to inform of the consequences of the procedure, the  
26 attorney shall certify upon the filing of the complaint that  
27 the reviewing health professional has, after reviewing the  
28 medical record and other relevant materials involved in the  
29 particular action, concluded that a reasonable health  
30 professional would have informed the patient of the  
31 consequences of the procedure.

32 (e) Allegations and denials in the affidavit, made  
33 without reasonable cause and found to be untrue, shall  
34 subject the party pleading them or his attorney, or both, to

1 the payment of reasonable expenses, actually incurred by the  
2 other party by reason of the untrue pleading, together with  
3 reasonable attorneys' fees to be summarily taxed by the court  
4 upon motion made within 30 days of the judgment or dismissal.  
5 In no event shall the award for attorneys' fees and expenses  
6 exceed those actually paid by the moving party, including the  
7 insurer, if any. In proceedings under this paragraph (e), the  
8 moving party shall have the right to depose and examine any  
9 and all reviewing health professionals who prepared reports  
10 used in conjunction with an affidavit required by this  
11 Section.

12 (f) A reviewing health professional who in good faith  
13 prepares a report used in conjunction with an affidavit  
14 required by this Section shall have civil immunity from  
15 liability which otherwise might result from the preparation  
16 of such report.

17 (g) The failure to file a certificate required by this  
18 Section shall be grounds for dismissal under Section 2-619.

19 (g-5) If after reasonable notice and an opportunity to  
20 respond, a party or an attorney for a party or parties is  
21 determined to have willfully failed to comply with any  
22 requirement of this Section, appropriate sanctions may be  
23 imposed on the party or attorney for the failure to comply  
24 with the requirement, in addition to any other sanctions  
25 authorized under this Section. Appropriate sanctions for  
26 violations of this Section may include an order that (i) a  
27 party be barred from presenting a claim or defense relating  
28 to any issue to which refusal or failure to comply with the  
29 requirement relates, (ii) judgment be entered on that issue  
30 as to the other party, (iii) a dismissal of a party's action  
31 as to that issue be entered, or (iv) any portion of a party's  
32 brief relating to that issue be stricken. Additionally,  
33 sanctions involving an order to pay a fine, if appropriate,  
34 may also be ordered against any party or attorney for a party

1 or parties.

2 If the court determines that an action to which this  
3 Section applies is frivolous, or that the action was not  
4 commenced in good faith, or that the action was commenced for  
5 an improper purpose, such as to harass or to cause  
6 unnecessary delay or needless increase in the cost of  
7 litigation, or that the manner of prosecuting or defending  
8 the action is for such a purpose, then the court may impose  
9 an appropriate sanction on any party or the attorney or  
10 attorneys of the party or parties. An action will be deemed  
11 frivolous if it is not reasonably well grounded in fact and  
12 not warranted by existing law or a good-faith argument for  
13 the extension, modification, or reversal of existing law. An  
14 action will be deemed to have been commenced for an improper  
15 purpose if the primary purpose of the action is to delay,  
16 harass, or cause needless expense.

17 Appropriate sanctions for violations of this Section may  
18 include an order to pay to the other party or parties  
19 damages, the reasonable costs of prosecuting or defending the  
20 action, and any other expenses necessarily incurred by the  
21 filing of the action, including reasonable attorney's fees.

22 The court may impose a sanction on a party or an attorney  
23 for a party on the motion of another party or parties, or on  
24 the court's own initiative if the court deems it appropriate.  
25 If the court initiates the sanction, it shall require the  
26 party or attorney, or both, to show cause why such a sanction  
27 should not be imposed before imposing the sanction. When a  
28 sanction is imposed, the court shall set forth the reasons  
29 and basis for the sanction in its opinion or in a separate  
30 written order.

31 (h) This Section does not apply to or affect any actions  
32 pending at the time of its effective date, but applies to  
33 cases filed on or after its effective date.

34 (i) This amendatory Act of 1997 does not apply to or

1 affect any actions pending at the time of its effective date,  
2 but applies to cases filed on or after its effective date.  
3 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.