



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by David Luechtefeld, Frank C. Watson,  
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**SYNOPSIS AS INTRODUCED:**

735 ILCS 5/2-101.5 new	
735 ILCS 5/2-622	from Ch. 110, par. 2-622
735 ILCS 5/8-2501	from Ch. 110, par. 8-2501
745 ILCS 49/26 new	

Amends the Code of Civil Procedure. Provides that every medical malpractice action must be commenced in the country where the medical care that is the subject of the cause of action took place. Changes the standards to determine if a witness qualifies as an expert witness. Provides that an expert witness shall provide proof of active practice, teaching, or engagement in university-based research and must provide, if retired, proof of continuing education. Provides that an expert who has not actively practiced, taught, or been engaged in university-based research within the 10 years previous to giving testimony may not be qualified as an expert witness. Provides that an affidavit from a reviewing health professional must contain his or her name, address, profession, and professional license number. Provides that, to qualify as a reviewing health professional for purposes of giving an affidavit for a petitioner in a pro se action, the professional must meet the expert witness standards. Provides that a reviewing health professional who provides a frivolous or improper review of a case is liable to the parties for the reasonable costs and attorneys' fees expended in resolving the case. Provides that a review is frivolous if it is substantially lacking in factual support, is based upon a standard of care or practice that lacks substantial use in the relevant specialty or field of practice, or is made for an improper purpose, such as to harass or cause needless increase in the cost of litigation. Amends the Good Samaritan Act. Provides that a licensed physician and a licensed hospital and the hospital's employees, agents, apparent agents, and independent contractors who in good faith provide emergency care or services to a person who is in need of emergency medical treatment and has presented to a hospital for emergency medical care is not liable for civil damages as a result of acts or omissions, except for willful or wanton misconduct in providing the care. Effective July 1, 2004.

LRB093 21021 LCB 47034 b

1 AN ACT concerning 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 Sections 2-622 and 8-2501 and by adding Section  
6 2-101.5 as follows:

7 (735 ILCS 5/2-101.5 new)

8 Sec. 2-101.5. Medical malpractice. Every medical  
9 malpractice action must be commenced in the county where the  
10 medical care that is the subject of the cause of action took  
11 place.

12 This amendatory Act of the 93rd General Assembly applies to  
13 causes of action filed on or after its effective date.

14 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

17 Sec. 2-622. Healing art malpractice.

18 (a) In any action, whether in tort, contract or otherwise,  
19 in which the plaintiff seeks damages for injuries or death by  
20 reason of medical, hospital, or other healing art malpractice,  
21 the plaintiff's attorney or the plaintiff, if the plaintiff is  
22 proceeding pro se, shall file an affidavit, attached to the  
23 original and all copies of the complaint, declaring one of the  
24 following:

25 1. That the affiant has consulted and reviewed the  
26 facts of the case with a health professional who the  
27 affiant reasonably believes: (i) is knowledgeable in the  
28 relevant issues involved in the particular action; (ii)  
29 practices or has practiced within the last 6 years or  
30 teaches or has taught within the last 6 years in the same  
31 area of health care or medicine that is at issue in the

1 particular action; and (iii) is qualified by experience or  
2 demonstrated competence in the subject of the case; that  
3 the reviewing health professional has determined in a  
4 written report, after a review of the medical record and  
5 other relevant material involved in the particular action  
6 that there is a reasonable and meritorious cause for the  
7 filing of such action; and that the affiant has concluded  
8 on the basis of the reviewing health professional's review  
9 and consultation that there is a reasonable and meritorious  
10 cause for filing of such action. If the affidavit is filed  
11 as to a defendant who is a physician licensed to treat  
12 human ailments without the use of drugs or medicines and  
13 without operative surgery, a dentist, a podiatrist, a  
14 psychologist, or a naprapath, the written report must be  
15 from a health professional licensed in the same profession,  
16 with the same class of license, as the defendant. For  
17 affidavits filed as to all other defendants, the written  
18 report must be from a physician licensed to practice  
19 medicine in all its branches. In either event, the  
20 affidavit must identify the ~~profession of the~~ reviewing  
21 health professional's name, address, profession, and  
22 professional license number. Any reviewing health  
23 professional under this Section must satisfy the expert  
24 witness standards of Section 8-2501 of this Code  
25 ~~professional.~~ A copy of the written report, clearly  
26 identifying the plaintiff and the reasons for the reviewing  
27 health professional's determination that a reasonable and  
28 meritorious cause for the filing of the action exists, must  
29 be attached to the affidavit, including ~~but~~ information  
30 which would identify the reviewing health professional and  
31 the reasons this health professional satisfies the expert  
32 witness conditions of Section 8-2501 of this Code ~~may be~~  
33 ~~deleted from the copy so attached.~~ Any reviewing health  
34 professional that provides a frivolous or improper review  
35 of a case shall be liable to each of the parties for the  
36 reasonable costs and attorneys' fees the parties expended

1 in resolving the case. A review shall be found frivolous if  
2 it is substantially lacking in factual support, is based  
3 upon a standard of care or practice that lacks substantial  
4 use in the relevant specialty or field of practice, or is  
5 made for an improper purpose, such as to harass or cause  
6 needless increase in the cost of litigation.

7 2. That the affiant was unable to obtain a consultation  
8 required by paragraph 1 because a statute of limitations  
9 would impair the action and the consultation required could  
10 not be obtained before the expiration of the statute of  
11 limitations. If an affidavit is executed pursuant to this  
12 paragraph, the certificate and written report required by  
13 paragraph 1 shall be filed within 90 days after the filing  
14 of the complaint. The defendant shall be excused from  
15 answering or otherwise pleading until 30 days after being  
16 served with a certificate required by paragraph 1.

17 3. That a request has been made by the plaintiff or his  
18 attorney for examination and copying of records pursuant to  
19 Part 20 of Article VIII of this Code and the party required  
20 to comply under those Sections has failed to produce such  
21 records within 60 days of the receipt of the request. If an  
22 affidavit is executed pursuant to this paragraph, the  
23 certificate and written report required by paragraph 1  
24 shall be filed within 90 days following receipt of the  
25 requested records. All defendants except those whose  
26 failure to comply with Part 20 of Article VIII of this Code  
27 is the basis for an affidavit under this paragraph shall be  
28 excused from answering or otherwise pleading until 30 days  
29 after being served with the certificate required by  
30 paragraph 1.

31 (b) Where a certificate and written report are required  
32 pursuant to this Section a separate certificate and written  
33 report shall be filed as to each defendant who has been named  
34 in the complaint and shall be filed as to each defendant named  
35 at a later time.

36 (c) Where the plaintiff intends to rely on the doctrine of

1 "res ipsa loquitur", as defined by Section 2-1113 of this Code,  
2 the certificate and written report must state that, in the  
3 opinion of the reviewing health professional, negligence has  
4 occurred in the course of medical treatment. The affiant shall  
5 certify upon filing of the complaint that he is relying on the  
6 doctrine of "res ipsa loquitur".

7 (d) When the attorney intends to rely on the doctrine of  
8 failure to inform of the consequences of the procedure, the  
9 attorney shall certify upon the filing of the complaint that  
10 the reviewing health professional has, after reviewing the  
11 medical record and other relevant materials involved in the  
12 particular action, concluded that a reasonable health  
13 professional would have informed the patient of the  
14 consequences of the procedure.

15 (e) Allegations and denials in the affidavit, made without  
16 reasonable cause and found to be untrue, shall subject the  
17 party pleading them or his attorney, or both, to the payment of  
18 reasonable expenses, actually incurred by the other party by  
19 reason of the untrue pleading, together with reasonable  
20 attorneys' fees to be summarily taxed by the court upon motion  
21 made within 30 days of the judgment or dismissal. In no event  
22 shall the award for attorneys' fees and expenses exceed those  
23 actually paid by the moving party, including the insurer, if  
24 any. In proceedings under this paragraph (e), the moving party  
25 shall have the right to depose and examine any and all  
26 reviewing health professionals who prepared reports used in  
27 conjunction with an affidavit required by this Section.

28 (f) A reviewing health professional who in good faith  
29 prepares a report used in conjunction with an affidavit  
30 required by this Section shall have civil immunity from  
31 liability which otherwise might result from the preparation of  
32 such report.

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

35 (h) This Section does not apply to or affect any actions  
36 pending at the time of its effective date, but applies to cases

1 filed on or after its effective date.

2 (i) This amendatory Act of 1997 does not apply to or affect  
3 any actions pending at the time of its effective date, but  
4 applies to cases filed on or after its effective date.

5 (j) This amendatory Act of the 93rd General Assembly does  
6 not apply to or affect any actions pending at the time of its  
7 effective date, but does apply to cases filed on or after its  
8 effective date.

9 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

10 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

13 Sec. 8-2501. Expert Witness Standards. In any case in which  
14 the standard of care given by a medical profession is at issue,  
15 the court shall apply the following standards to determine if a  
16 witness qualifies as an expert witness and can testify on the  
17 issue of the appropriate standard of care.

18 (a) Whether the witness is board-certified or  
19 board-eligible in the same medical specialties as the defendant  
20 and is familiar with ~~Relationship of the medical specialties of~~  
21 ~~the witness to~~ the medical problem or problems and the type of  
22 treatment administered in the case;

23 (b) Whether the witness has devoted 75% ~~a substantial~~  
24 ~~portion~~ of his or her time to the practice of medicine,  
25 teaching or University based research in relation to the  
26 medical care and type of treatment at issue which gave rise to  
27 the medical problem of which the plaintiff complains;

28 (c) whether the witness is licensed by any state or the  
29 District of Columbia in the same profession as the defendant;  
30 and

31 (d) whether, in the case against a nonspecialist, the  
32 witness can demonstrate a sufficient familiarity with the  
33 standard of care practiced in this State.

34 An expert shall provide proof of active practice, teaching,  
35 or engagement in university-based research. If retired, an

1 expert must provide proof of attendance and completion of  
2 continuing education courses for 3 years previous to giving  
3 testimony. An expert who has not actively practiced, taught, or  
4 been engaged in university-based research within the 10 years  
5 previous to giving testimony may not be qualified as an expert  
6 witness.

7 This amendatory Act of the 93rd General Assembly applies to  
8 causes of action filed on or after its effective date.

9 (Source: P.A. 84-7.)

10 Section 10. The Good Samaritan Act is amended by adding  
11 Section 26 as follows:

12 (745 ILCS 49/26 new)

13 Sec. 26. Preservation of emergency medical care.

14 (a) The General Assembly acknowledges that many hospitals  
15 and physicians provide great benefits to the citizens of  
16 Illinois by operating emergency departments and trauma centers  
17 and providing services to individuals in need of emergency care  
18 throughout the State, without regard to their ability to pay  
19 for the care and often without payment for services. The  
20 General Assembly also acknowledges that many hospitals and  
21 physicians are discontinuing their status as trauma centers or  
22 reducing the scope of their emergency care due to the fear of  
23 lawsuits based on claims of medical negligence. The public and  
24 society in general will suffer if these trauma centers cease  
25 operations or hospital emergency departments reduce their  
26 level of emergency care.

27 (b) Any physician licensed under the Medical Practice Act  
28 of 1987 and any licensed hospital and any of the hospital's  
29 employees, agents, apparent agents, and independent  
30 contractors who in good faith provide emergency care or  
31 services to a person who is in need of emergency medical  
32 treatment and has presented to a hospital for emergency medical  
33 care shall not be liable for civil damages as a result of his,  
34 her, or its acts or omissions, except for willful or wanton

1 misconduct on the part of the physician, the hospital, or any  
2 of the hospital's employees, independent contractors, agents,  
3 or apparent agents, in providing the care.

4 Section 99. Effective date. This Act takes effect July 1,  
5 2004.