

1 AN ACT concerning civil law.

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

4 Section 1. Purpose.

5 (a) In *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997),  
6 the Illinois Supreme Court held that Public Act 89-7 was void  
7 in its entirety.

8 In *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217  
9 (2010), the Illinois Supreme Court held that Public Act 94-677  
10 was void in its entirety.

11 (b) The purpose of this Act is to re-enact and repeal  
12 statutory provisions so the text of those provisions conforms  
13 to the decisions of the Illinois Supreme Court in *Best v.*  
14 *Taylor Machine Works* and *Lebron v. Gottlieb Memorial Hospital*.

15 (c) Except as explained in subsection (h) of this Section  
16 1, this Act is not intended to supersede any Public Act of the  
17 97th General Assembly that amends the text of a statutory  
18 provision that appears in this Act.

19 (d) If Public Act 89-7 or Public Act 94-677 amended the  
20 text of a Section included in this Act, the text of the Section  
21 is shown in this Act with the changes made by those Public Acts  
22 omitted, as existing text (without striking and underscoring),  
23 with the exception of changes of a substantive nature.

24 (e) Provisions that were purportedly added to the statutes

1 by Public Act 89-7 and Public Act 94-677 are repealed in this  
2 Act to conform to the decisions of the Illinois Supreme Court.

3 (f) If Public Act 89-7 or Public Act 94-677 purportedly  
4 amended the text of a Section of the statutes and that Section  
5 of the statutes was later repealed by another Public Act, the  
6 text of that Section is not shown in this Act.

7 (g) This Act is intended to re-enact and repeal only those  
8 statutory provisions affected by Public Act 89-7 or Public Act  
9 94-677 which concern civil procedure for medical malpractice  
10 cases.

11 (h) This Act also makes substantive changes to the Code of  
12 Civil Procedure unrelated to Public Act 89-7 or Public Act  
13 94-677, specifically by amending Sections 2-622 and 2-1114 and  
14 by adding Section 2-1306.

15 Section 5. Section 2-622 of the Code of Civil Procedure is  
16 re-enacted and amended and Sections 8-1901 and 8-2501 of the  
17 Code of Civil Procedure are re-enacted as follows:

18 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

19 Sec. 2-622. Healing art malpractice.

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

1 original and all copies of the complaint, declaring one of the  
2 following:

3 1. That the affiant has consulted and reviewed the  
4 facts of the case with a health professional who the  
5 affiant reasonably believes: (i) is knowledgeable in the  
6 relevant issues involved in the particular action; (ii)  
7 practices or has practiced within the last 6 years or  
8 teaches or has taught within the last 6 years in the same  
9 area of health care or medicine that is at issue in the  
10 particular action; and (iii) is qualified by experience or  
11 demonstrated competence in the subject of the case; that  
12 the reviewing health professional has determined in a  
13 written report, after a review of the medical record and  
14 other relevant material involved in the particular action  
15 that there is a reasonable and meritorious cause for the  
16 filing of such action; and that the affiant has concluded  
17 on the basis of the reviewing health professional's review  
18 and consultation that there is a reasonable and meritorious  
19 cause for filing of such action. If the affidavit is filed  
20 as to a defendant who is a physician licensed to treat  
21 human ailments without the use of drugs or medicines and  
22 without operative surgery, a dentist, a podiatrist, a  
23 psychologist, or a naprapath, the written report must be  
24 from a health professional licensed in the same profession,  
25 with the same class of license, as the defendant. For  
26 affidavits filed as to all other defendants, the written

1 report must be from a physician licensed to practice  
2 medicine in all its branches. In either event, the  
3 affidavit must identify the profession of the reviewing  
4 health professional. A copy of the written report, clearly  
5 identifying the plaintiff and the reasons for the reviewing  
6 health professional's determination that a reasonable and  
7 meritorious cause for the filing of the action exists, must  
8 be attached to the affidavit, but information which would  
9 identify the reviewing health professional may be deleted  
10 from the copy so attached.

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

21 3. That a request has been made by the plaintiff or his  
22 attorney for examination and copying of records pursuant to  
23 Part 20 of Article VIII of this Code and the party required  
24 to comply under those Sections has failed to produce such  
25 records within 60 days of the receipt of the request. If an  
26 affidavit is executed pursuant to this paragraph, the

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

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

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

21 (d) When the attorney intends to rely on the doctrine of  
22 failure to inform of the consequences of the procedure, the  
23 attorney shall certify upon the filing of the complaint that  
24 the reviewing health professional has, after reviewing the  
25 medical record and other relevant materials involved in the  
26 particular action, concluded that a reasonable health

1 professional would have informed the patient of the  
2 consequences of the procedure.

3 (e) Allegations and denials in the affidavit, made without  
4 reasonable cause and found to be untrue, shall subject the  
5 party pleading them or his attorney, or both, to the payment of  
6 reasonable expenses, actually incurred by the other party by  
7 reason of the untrue pleading, together with reasonable  
8 attorneys' fees to be summarily taxed by the court upon motion  
9 made within 30 days of the judgment or dismissal. In no event  
10 shall the award for attorneys' fees and expenses exceed those  
11 actually paid by the moving party, including the insurer, if  
12 any. In proceedings under this paragraph (e), the moving party  
13 shall have the right to depose and examine any and all  
14 reviewing health professionals who prepared reports used in  
15 conjunction with an affidavit required by this Section.

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

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

23 (h) (Blank) ~~This Section does not apply to or affect any~~  
24 ~~actions pending at the time of its effective date, but applies~~  
25 ~~to cases filed on or after its effective date.~~

26 (i) (Blank) ~~This amendatory Act of 1997 does not apply to~~

1 ~~or affect any actions pending at the time of its effective~~  
2 ~~date, but applies to cases filed on or after its effective~~  
3 ~~date.~~

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

5 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

6 Sec. 8-1901. Admission of liability - Effect. The providing  
7 of, or payment for, medical, surgical, hospital, or  
8 rehabilitation services, facilities, or equipment by or on  
9 behalf of any person, or the offer to provide, or pay for, any  
10 one or more of the foregoing, shall not be construed as an  
11 admission of any liability by such person or persons.  
12 Testimony, writings, records, reports or information with  
13 respect to the foregoing shall not be admissible in evidence as  
14 an admission of any liability in any action of any kind in any  
15 court or before any commission, administrative agency, or other  
16 tribunal in this State, except at the instance of the person or  
17 persons so making any such provision, payment or offer.

18 (Source: P.A. 82-280.)

19 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

1 (a) Relationship of the medical specialties of the witness  
2 to the medical problem or problems and the type of treatment  
3 administered in the case;

4 (b) Whether the witness has devoted a substantial portion  
5 of his or her time to the practice of medicine, teaching or  
6 University based research in relation to the medical care and  
7 type of treatment at issue which gave rise to the medical  
8 problem of which the plaintiff complains;

9 (c) whether the witness is licensed in the same profession  
10 as the defendant; and

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

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

15 Section 10. The Code of Civil Procedure is amended by  
16 changing Section 2-1114 and by adding Section 2-1306 as  
17 follows:

18 (735 ILCS 5/2-1114) (from Ch. 110, par. 2-1114)

19 Sec. 2-1114. Contingent fees for attorneys in medical  
20 malpractice actions.

21 (a) In all medical malpractice actions the total contingent  
22 fee for plaintiff's attorney or attorneys shall not exceed 33  
23 1/3% of all sums recovered. ~~the following amounts:~~

24 ~~33 1/3% of the first \$150,000 of the sum recovered;~~



1       ~~25% of the next \$850,000 of the sum recovered; and~~  
2       ~~20% of any amount recovered over \$1,000,000 of the sum~~  
3 ~~recovered.~~

4       (b) For purposes of determining any lump sum contingent  
5 fee, any future damages recoverable by the plaintiff in  
6 periodic installments shall be reduced to a lump sum value.

7       (c) (Blank) ~~The court may review contingent fee agreements~~  
8 ~~for fairness. In special circumstances, where an attorney~~  
9 ~~performs extraordinary services involving more than usual~~  
10 ~~participation in time and effort the attorney may apply to the~~  
11 ~~court for approval of additional compensation.~~

12       (d) As used in this Section, "contingent fee basis"  
13 includes any fee arrangement under which the compensation is to  
14 be determined in whole or in part on the result obtained.

15       (Source: P.A. 84-7.)

16       (735 ILCS 5/2-1306 new)

17       Sec. 2-1306. Supersedeas bonds.

18       (a) In civil litigation under any legal theory involving a  
19 signatory, a successor to a signatory, or a parent or an  
20 affiliate of a signatory to the Master Settlement Agreement  
21 described in Section 6z-43 of the State Finance Act, execution  
22 of the judgment shall be stayed during the entire course of  
23 appellate review upon the posting of a supersedeas bond or  
24 other form of security in accordance with applicable laws or  
25 court rules, except that the total amount of the supersedeas

1 bond or other form of security that is required of all  
2 appellants collectively shall not exceed \$250,000,000,  
3 regardless of the amount of the judgment, provided that this  
4 limitation shall apply only if appellants file at least 30% of  
5 the total amount in the form of cash, a letter of credit, a  
6 certificate of deposit, or other cash equivalent with the  
7 court. The cash or cash equivalent shall be deposited by the  
8 clerk of the court in the account of the court, and any  
9 interest earned shall be utilized as provided by law.

10 (b) Notwithstanding subsection (a) of this Section, if an  
11 appellee proves by a preponderance of the evidence that an  
12 appellant is dissipating assets outside the ordinary course of  
13 business to avoid payment of a judgment, a court may require  
14 the appellant to post a supersedeas bond in an amount up to the  
15 total amount of the judgment.

16 (c) This Section applies to pending actions as well as  
17 actions commenced on or after its effective date, and to  
18 judgments entered or reinstated on or after its effective date.

19 (735 ILCS 5/2-624 rep.)

20 (735 ILCS 5/2-1704.5 rep.)

21 (735 ILCS 5/2-1706.5 rep.)

22 Section 15. The Code of Civil Procedure is amended by  
23 repealing Sections 2-624, 2-1704.5, and 2-1706.5.

24 Section 95. Applicability. The changes made by this

1 amendatory Act of the 97th General Assembly apply to actions  
2 commenced or pending on or after the effective date of this  
3 amendatory Act of the 97th General Assembly.

4 Section 97. Severability. The provisions of this Act are  
5 severable under Section 1.31 of the Statute on Statutes.

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.