



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2382

Introduced 2/3/2016, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

55 ILCS 5/4-11001	from Ch. 34, par. 4-11001
735 ILCS 5/2-622	from Ch. 110, par. 2-622
735 ILCS 5/2-1105	from Ch. 110, par. 2-1105
735 ILCS 5/2-1205	from Ch. 110, par. 2-1205
735 ILCS 5/2-1205.1	from Ch. 110, par. 2-1205.1
735 ILCS 5/2-1303	from Ch. 110, par. 2-1303
735 ILCS 5/8-1901	from Ch. 110, par. 8-1901
735 ILCS 5/Art. VII Pt. 29 heading new	
735 ILCS 5/8-2901 new	

Amends the Counties Code and the Code of Civil Procedure to reverse the changes made by Public Act 98-1132 concerning jury compensation and composition. Further amends the Code of Civil Procedure. Makes changes in Sections concerning: the filing of affidavits in medical malpractice cases attesting to the merits of the cause of action; reductions in the amount of recovery; interest on judgments; and admissions of liability and expressions of sympathy. Adds provisions concerning the use of federal law pay or guidelines in medical malpractice and medical product liability cases. Effective immediately.

LRB099 15736 HEP 40035 b

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 5. The Counties Code is amended by changing Section
5 4-11001 as follows:

6 (55 ILCS 5/4-11001) (from Ch. 34, par. 4-11001)

7 Sec. 4-11001. Juror fees. Each county shall pay to grand
8 and petit jurors for their services in attending courts the sum
9 of \$4 ~~sums of \$25 for the first day and thereafter \$50~~ for each
10 day of necessary attendance at such courts as jurors in
11 counties of the first class, the sum of \$5 for each day in
12 counties of the second class, and the sum of \$10 for each day
13 in counties of the third class, or such higher amount as may be
14 fixed by the county board.

15 In addition, jurors shall receive such travel expense as
16 may be determined by the county board, provided that jurors in
17 counties of the first class and second class shall receive at
18 least 10 cents per mile for their travel expense. Mileage shall
19 be allowed for travel during a juror's term as well as for
20 travel at the opening and closing of his or her term.

21 If a judge so orders, a juror shall also receive
22 reimbursement for the actual cost of day care incurred by the
23 juror during his or her service on a jury.

1 The juror fees for service, transportation, and day care
2 shall be paid out of the county treasury.

3 The clerk of the court shall furnish to each juror without
4 fee whenever he is discharged a certificate of the number of
5 days' attendance at court, and upon presentation thereof to the
6 county treasurer, he shall pay to the juror the sum provided
7 for his service.

8 Any juror may elect to waive the fee paid for service,
9 transportation, or day care, or any combination thereof.

10 (Source: P.A. 97-840, eff. 1-1-13; 98-1132, eff. 6-1-15.)

11 Section 10. The Code of Civil Procedure is amended by
12 changing Sections 2-622, 2-1105, 2-1205, 2-1205.1, 2-1303,
13 8-1901, and 8-2501, by re-enacting by adding Part 29 to Article
14 VIII as follows:

15 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

16 Sec. 2-622. Healing art malpractice.

17 (a) In any action, whether in tort, contract or otherwise,
18 in which the plaintiff seeks damages for injuries or death by
19 reason of medical, hospital, or other healing art malpractice,
20 the plaintiff's attorney or the plaintiff, if the plaintiff is
21 proceeding pro se, shall file an affidavit, attached to the
22 original and all copies of the complaint, declaring that ~~one of~~
23 ~~the following: 1. That~~ the affiant has consulted and reviewed
24 the facts of the case with a health professional who the

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

1 determination that a reasonable and meritorious cause for the
2 filing of the action exists, must be attached to the affidavit,
3 but information which would identify the reviewing health
4 professional may be deleted from the copy so attached.

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

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

1 ~~after being served with the certificate required by~~
2 ~~paragraph 1.~~

3 (b) Where a certificate and written report are required
4 pursuant to this Section a separate certificate and written
5 report shall be filed as to each defendant who has been named
6 in the complaint and shall be filed as to each defendant named
7 at a later time.

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

15 (d) When the attorney intends to rely on the doctrine of
16 failure to inform of the consequences of the procedure, the
17 attorney shall certify upon the filing of the complaint that
18 the reviewing health professional has, after reviewing the
19 medical record and other relevant materials involved in the
20 particular action, concluded that a reasonable health
21 professional would have informed the patient of the
22 consequences of the procedure.

23 (e) Allegations and denials in the affidavit, made without
24 reasonable cause and found to be untrue, shall subject the
25 party pleading them or his attorney, or both, to the payment of
26 reasonable expenses, actually incurred by the other party by

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

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

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

18 (h) (Blank).

19 (i) (Blank).

20 (Source: P.A. 97-1145, eff. 1-18-13; 98-214, eff. 8-9-13.)

21 (735 ILCS 5/2-1105) (from Ch. 110, par. 2-1105)

22 Sec. 2-1105. Jury demand.

23 (a) A plaintiff desirous of a trial by jury must file a
24 demand therefor with the clerk at the time the action is
25 commenced. A defendant desirous of a trial by jury must file a

1 demand therefor not later than the filing of his or her answer.
2 Otherwise, the party waives a jury. If an action is filed
3 seeking equitable relief and the court thereafter determines
4 that one or more of the parties is or are entitled to a trial by
5 jury, the plaintiff, within 3 days from the entry of such order
6 by the court, or the defendant, within 6 days from the entry of
7 such order by the court, may file his or her demand for trial
8 by jury with the clerk of the court. If the plaintiff files a
9 jury demand and thereafter waives a jury, any defendant and, in
10 the case of multiple defendants, if the defendant who filed a
11 jury demand thereafter waives a jury, any other defendant shall
12 be granted a jury trial upon demand therefor made promptly
13 after being advised of the waiver and upon payment of the
14 proper fees, if any, to the clerk.

15 (b) All jury cases where the claim for damages is \$50,000
16 or less shall be tried by a jury of 6, unless either party
17 demands a jury of 12. If a fee in connection with a jury demand
18 is required by statute or rule of court, the fee for a jury of 6
19 shall be 1/2 the fee for a jury of 12. A party demanding a jury
20 of 12 after another party has paid the applicable fee for a
21 jury of 6 shall pay the remaining 1/2 of the fee applicable to
22 a jury of 12. ~~If alternate jurors are requested, an additional~~
23 ~~fee established by the county shall be charged for each~~
24 ~~alternate juror requested. For all cases filed prior to the~~
25 ~~effective date of this amendatory Act of the 98th General~~
26 ~~Assembly, if a party has paid for a jury of 12, that party may~~

1 ~~demand a jury of 12 upon proof of payment.~~

2 (Source: P.A. 98-1132, eff. 6-1-15.)

3 (735 ILCS 5/2-1205) (from Ch. 110, par. 2-1205)

4 Sec. 2-1205. Reduction in amount of recovery.

5 (a) An amount equal to the sum of (i) 50% of the benefits
6 provided for lost wages or private or governmental disability
7 income programs, which have been paid, or which have become
8 payable to the injured person by any other person, corporation,
9 insurance company or fund in relation to a particular injury,
10 and (ii) 100% of the benefits provided for medical charges,
11 hospital charges, or nursing or caretaking charges, which have
12 been paid, or which have become payable to the injured person
13 by any other person, corporation, insurance company or fund in
14 relation to a particular injury, shall be deducted from any
15 judgment in an action to recover for that injury based on an
16 allegation of negligence or other wrongful act, not including
17 intentional torts, on the part of a licensed hospital or
18 physician; provided, however, that:

19 (1) Application is made within 30 days to reduce the
20 judgment;

21 (2) Such reduction shall not apply to the extent that
22 there is a right of recoupment through subrogation, trust
23 agreement, lien, or otherwise;

24 (3) The reduction shall not reduce the judgment by more
25 than 50% of the total amount of the judgment entered on the

1 verdict;

2 (4) The damages awarded shall be increased by the
3 amount of any insurance premiums or the direct costs paid
4 by the plaintiff for such benefits in the 2 years prior to
5 plaintiff's injury or death or to be paid by the plaintiff
6 in the future for such benefits; and

7 (5) There shall be no reduction for charges paid for
8 medical expenses which were directly attributable to the
9 adjudged negligent acts or omissions of the defendants
10 found liable.

11 (b) In any proceedings to which this Section applies, the
12 actual amount paid for health care services or to be paid under
13 any health care services insurance or benefit program shall be
14 used to determine the amount of the services and not the billed
15 charges. Nothing in this Code shall be construed to prevent,
16 and the court shall allow, the introduction of evidence of the
17 amount paid by an affidavit or testimony of actual payment
18 received.

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

20 (735 ILCS 5/2-1205.1) (from Ch. 110, par. 2-1205.1)

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

23 Sec. 2-1205.1. Reduction in amount of recovery.

24 (a) In all cases on account of bodily injury or death or
25 physical damage to property, based on negligence, or product

1 liability based on strict tort liability, to which Section
2 2-1205 does not apply, the amount in excess of \$25,000 of the
3 benefits provided for medical charges, hospital charges, or
4 nursing or caretaking charges, which have been paid, or which
5 have become payable by the date of judgment to the injured
6 person by any other insurance company or fund in relation to a
7 particular injury, shall be deducted from any judgment.
8 Provided, however, that:

9 (1) Application is made within 30 days to reduce the
10 judgment;

11 (2) Such reduction shall not apply to the extent that
12 there is a right of recoupment through subrogation, trust
13 agreement, contract, lien, operation of law or otherwise;

14 (3) The reduction shall not reduce the judgment by more
15 than 50% of the total amount of the judgment entered on the
16 verdict; and

17 (4) The damages awarded shall be increased by the
18 amount of any insurance premiums or the direct costs paid
19 by the plaintiff for such benefits in the 2 years prior to
20 plaintiff's injury or death or to be paid by the plaintiff
21 in the future for such benefits.

22 (b) In any proceedings to which this Section applies, the
23 actual amount paid for health care services or to be paid under
24 any health care services insurance or benefit program shall be
25 used to determine the amount of the services and not the billed
26 charges. Nothing in this Code shall be construed to prevent,

1 and the court shall allow, the introduction of evidence of the
2 amount paid by an affidavit or testimony of actual payment
3 received.

4 (Source: P.A. 84-1431.)

5 (735 ILCS 5/2-1303) (from Ch. 110, par. 2-1303)

6 Sec. 2-1303. Interest on judgment.

7 (a) Judgments recovered in any court shall draw interest,
8 at the rate that is equal to the rate at issuance on the
9 10-year United States Treasury Note most recently issued prior
10 to ~~of 9% per annum from~~ the date of the judgment, until
11 satisfied, provided that:

12 (1) if the rate on the 10-year United States Treasury
13 Note is less than 3%, then the judgment shall draw interest
14 at the rate of 3% per annum;

15 (2) if the rate on the 10-year United States Treasury
16 Note is more than 6%, then the judgment shall draw interest
17 at the rate of 6% per annum; and

18 (3) if ~~or 6% per annum when~~ the judgment debtor is a
19 unit of local government, as defined in Section 1 of
20 Article VII of the Constitution, a school district, a
21 community college district, or any other governmental
22 entity, then the judgment shall draw interest at the rate
23 of 1% per annum.

24 Except as provided in subsection (b) of this Section, when
25 when judgment is entered upon any award, report or verdict,

1 interest shall be computed at the above rate, from the time
2 when made or rendered to the time of entering judgment upon the
3 same, and included in the judgment. Interest shall be computed
4 and charged only on the unsatisfied portion of the judgment as
5 it exists from time to time. The judgment debtor may by tender
6 of payment of judgment, costs and interest accrued to the date
7 of tender, stop the further accrual of interest on such
8 judgment notwithstanding the prosecution of an appeal, or other
9 steps to reverse, vacate or modify the judgment.

10 (b) In cases in which a federal Medicare right of recovery
11 may exist against the judgment, interest under this Section
12 shall be computed from the day after the federal Medicare
13 program provides confirmation of any lien against the judgment,
14 and no interest shall be paid on the Medicare right of recovery
15 amount.

16 (c) The changes to this Section made by this amendatory Act
17 of the 99th General Assembly apply to judgments entered after
18 its effective date.

19 (Source: P.A. 85-907.)

20 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

21 Sec. 8-1901. Admission of liability - Effect.

22 (a) The providing of, or payment for, medical, surgical,
23 hospital, or rehabilitation services, facilities, or equipment
24 by or on behalf of any person, or the offer to provide, or pay
25 for, any one or more of the foregoing, shall not be construed

1 as an admission of any liability by such person or persons.
2 Testimony, writings, records, reports or information with
3 respect to the foregoing shall not be admissible in evidence as
4 an admission of any liability in any action of any kind in any
5 court or before any commission, administrative agency, or other
6 tribunal in this State, except at the instance of the person or
7 persons so making any such provision, payment or offer.

8 (b) Any expression of grief, apology, or explanation
9 provided by a health care provider, including, but not limited
10 to, a statement that the health care provider is "sorry" for
11 the outcome to a patient, the patient's family, or the
12 patient's legal representative about an inadequate or
13 unanticipated treatment or care outcome shall not be admissible
14 as evidence in any action of any kind in any court or before
15 any tribunal, board, agency, or person. The disclosure of any
16 such information, whether proper or improper, shall not waive
17 or have any effect upon its confidentiality or inadmissibility.
18 As used in this Section, a "health care provider" means any
19 hospital, nursing home or other facility, or employee or agent
20 thereof, physician, or other licensed health care
21 professional. Nothing in this Section precludes the discovery
22 or admissibility of any other facts regarding the patient's
23 treatment or outcome as otherwise permitted by law.

24 (c) The changes to this Section made by this amendatory Act
25 of the 99th General Assembly apply to causes of action accruing
26 on or after its effective date.

1 (Source: P.A. 97-1145, eff. 1-18-13.)

2 (735 ILCS 5/Art. VII Pt. 29 heading new)

3 PART 29. FEDERAL PAYOR GUIDELINES

4 (735 ILCS 5/8-2901 new)

5 Sec. 8-2901. Federal payor guidelines.

6 (a) As used in this Section:

7 (1) "Criteria" means criteria relating to
8 administrative procedures and does not include criteria
9 relating to medical treatment, quality of care, or best
10 practices.

11 (2) "Guideline" means a guideline relating to
12 administrative procedures and does not include guidelines
13 relating to medical treatment, quality of care, or best
14 practices.

15 (3) "Payor" means any insurer, health maintenance
16 organization, self-insurance plan, or other person or
17 entity which provides, offers to provide, or administers
18 hospital, outpatient, medical, or other health care
19 benefits to persons treated by a health care provider in
20 this State pursuant to any policy, plan, or contract of
21 accident and health insurance.

22 (4) "Standard" means a standard relating to
23 administrative procedures and does not include standards
24 relating to medical treatment, quality of care, or best

1 practices.

2 (b) The development, recognition, or implementation of any
3 guideline by any public or private payor or the establishment
4 of any payment standard or reimbursement criteria under any
5 federal laws or regulations related to health care shall not be
6 construed, without competent expert testimony establishing the
7 appropriate standard of care, to establish a legal basis for
8 negligence or the standard of care or duty of care owed by a
9 health care provider to a patient in any civil action for
10 medical malpractice or medical product liability. Compliance
11 with such a guideline, standard, or criteria shall not be used
12 to establish a health care provider's compliance with the
13 standard of care or duty of care owed by a health care provider
14 to a patient in any civil action for medical malpractice or
15 medical product liability without competent expert testimony
16 establishing the appropriate standard of care.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.