

Public Act 097-1145

HB5151 Enrolled

LRB097 18657 AJO 63891 b

AN ACT concerning civil law.

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

Section 1. Purpose.

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

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

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

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

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

(e) Provisions that were purportedly added to the statutes by Public Act 89-7 and Public Act 94-677 are repealed in this Act to conform to the decisions of the Illinois Supreme Court.

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Public Act 94-677 purportedly amended the text of a Section of the statutes and that Section of the statutes was later repealed by another Public Act, the text of that Section is not shown in this Act.

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

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

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

(735 ILCS 5/2-622) (from Ch. 110, par. 2-622)
Sec. 2-622. Healing art malpractice.

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

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

1. That the affiant has consulted and reviewed the facts of the case with a health professional who the affiant reasonably believes: (i) is knowledgeable in the relevant issues involved in the particular action; (ii) practices or has practiced within the last 6 years or teaches or has taught within the last 6 years in the same area of health care or medicine that is at issue in the particular action; and (iii) is qualified by experience or demonstrated competence in the subject of the case; that the reviewing health professional has determined in a written report, after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of such action; and that the affiant has concluded on the basis of the reviewing health professional's review and consultation that there is a reasonable and meritorious cause for filing of such action. If the affidavit is filed as to a defendant who is a physician licensed to treat human ailments without the use of drugs or medicines and without operative surgery, a dentist, a podiatrist, a psychologist, or a naprapath, the written report must be from a health professional licensed in the same profession, with the same class of license, as the defendant. For affidavits filed as to all other defendants, the written report must be from a physician licensed to practice medicine in all its branches. In either event, the affidavit must identify the profession of the reviewing health professional. A copy of the written report, clearly identifying the plaintiff and the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists, must be attached to the affidavit, but information which would identify the reviewing health professional may be deleted from the copy so attached.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 8-1901. Admission of liability - Effect. The providing of, or payment for, medical, surgical, hospital, or rehabilitation services, facilities, or equipment by or on behalf of any person, or the offer to provide, or pay for, any one or more of the foregoing, shall not be construed as an admission of any liability by such person or persons. Testimony, writings, records, reports or information with respect to the foregoing shall not be admissible in evidence as an admission of any liability in any action of any kind in any court or before any commission, administrative agency, or other

tribunal in this State, except at the instance of the person or persons so making any such provision, payment or offer.
(Source: P.A. 82-280.)

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

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

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

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

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

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

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

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

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

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

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

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

~~25% of the next \$850,000 of the sum recovered; and~~

~~20% of any amount recovered over \$1,000,000 of the sum recovered.~~

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

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

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

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

(735 ILCS 5/2-1306 new)

Sec. 2-1306. Supersedeas bonds.

(a) In civil litigation under any legal theory involving a signatory, a successor to a signatory, or a parent or an affiliate of a signatory to the Master Settlement Agreement described in Section 6z-43 of the State Finance Act, execution of the judgment shall be stayed during the entire course of appellate review upon the posting of a supersedeas bond or

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

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

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

(735 ILCS 5/2-624 rep.)

(735 ILCS 5/2-1704.5 rep.)

(735 ILCS 5/2-1706.5 rep.)

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

Section 95. Applicability. The changes made by this amendatory Act of the 97th General Assembly apply to actions commenced or pending on or after the effective date of this amendatory Act of the 97th General Assembly.

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

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

Effective Date: 01/18/2013