



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2012

Introduced 2/18/2009, by Rep. Michael J. Madigan - Barbara Flynn Currie - John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-622

from Ch. 110, par. 2-622

Amends the Code of Civil Procedure. Makes a technical change in a Section concerning healing art malpractice.

LRB096 05450 AJO 15516 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 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 Sec. 2-622. Healing art malpractice.

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

15 1. That the affiant has consulted and reviewed the  
16 facts of the case with a health professional who the  
17 affiant reasonably believes: (i) is knowledgeable in the  
18 relevant issues involved in the particular action; (ii)  
19 practices or has practiced within the last 5 years or  
20 teaches or has taught within the last 5 years in the same  
21 area of health care or medicine that is at issue in the  
22 particular action; and (iii) meets the expert witness  
23 standards set forth in paragraphs (a) through (d) of

1 Section 8-2501; that the reviewing health professional has  
2 determined in a written report, after a review of the  
3 medical record and other relevant material involved in the  
4 particular action that there is a reasonable and  
5 meritorious cause for the filing of such action; and that  
6 the affiant has concluded on the basis of the reviewing  
7 health professional's review and consultation that there  
8 is a reasonable and meritorious cause for filing of such  
9 action. A single written report must be filed to cover each  
10 defendant in the action. As to defendants who are  
11 individuals, the written report must be from a health  
12 professional licensed in the same profession, with the same  
13 class of license, as the defendant. For written reports  
14 filed as to all other defendants, who are not individuals,  
15 the written report must be from a physician licensed to  
16 practice medicine in all its branches who is qualified by  
17 experience with the standard of care, methods, procedures  
18 and treatments relevant to the allegations at issue in the  
19 case. In either event, the written report must identify the  
20 profession of the reviewing health professional. A copy of  
21 the written report, clearly identifying the plaintiff and  
22 the reasons for the reviewing health professional's  
23 determination that a reasonable and meritorious cause for  
24 the filing of the action exists, including the reviewing  
25 health care professional's name, address, current license  
26 number, and state of licensure, must be attached to the

1 affidavit. Information regarding the preparation of a  
2 written report by the reviewing health professional shall  
3 not be used to discriminate against that professional in  
4 the issuance of medical liability insurance or in the  
5 setting of that professional's medical liability insurance  
6 premium. No professional organization may discriminate  
7 against a reviewing health professional on the basis that  
8 the reviewing health professional has prepared a written  
9 report.

10 2. That the affiant was unable to obtain a consultation  
11 required by paragraph 1 because a statute of limitations  
12 would impair the action and the consultation required could  
13 not be obtained before the expiration of the statute of  
14 limitations. If an affidavit is executed pursuant to this  
15 paragraph, the affidavit and written report required by  
16 paragraph 1 shall be filed within 90 days after the filing  
17 of the complaint. No additional 90-day extensions pursuant  
18 to this paragraph shall be granted, except where there has  
19 been a withdrawal of the plaintiff's counsel. The defendant  
20 shall be excused from answering or otherwise pleading until  
21 30 days after being served with an affidavit and a report  
22 required by paragraph 1.

23 3. That a request has been made by the plaintiff or his  
24 attorney for examination and copying of records pursuant to  
25 Part 20 of Article VIII of this Code and the party required  
26 to comply under those Sections has failed to produce such

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

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

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

23 (d) When the attorney intends to rely on the doctrine of  
24 failure to inform of the consequences of the procedure, the  
25 attorney shall certify upon the filing of the complaint that  
26 the reviewing health professional has, after reviewing the

1 medical record and other relevant materials involved in the  
2 particular action, concluded that a reasonable health  
3 professional would have informed the patient of the  
4 consequences of the procedure.

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

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

23 (g) The failure of the plaintiff to file an affidavit and  
24 report in compliance with this Section shall be grounds for  
25 dismissal under Section 2-619.

26 (h) This Section does not apply to or affect any actions

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

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

6 (j) The changes to this Section made by this amendatory Act  
7 of the 94th General Assembly apply to causes of action accruing  
8 on or after its effective date.

9 (Source: P.A. 94-677, eff. 8-25-05.)