

SB2235



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2235

Introduced 2/20/2009, by Sen. Christine Radogno

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 11562 WGH 22044 b

A BILL FOR

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.)