

HB4407



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4407

Introduced 1/30/2012, by Rep. Michael J. Madigan

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.

LRB097 15399 AJO 60499 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 (Text of Section WITH the changes made by P.A. 89-7, which
8 has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

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

17 1. That the affiant has consulted and reviewed the
18 facts of the case with a health professional who the
19 affiant reasonably believes: (i) is knowledgeable in the
20 relevant issues involved in the particular action; (ii)
21 practices or has practiced within the last 6 years or
22 teaches or has taught within the last 6 years in the same
23 area of health care or medicine that is at issue in the

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

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

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

1 paragraph 1.

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

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

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

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

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

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

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

16 (h) This amendatory Act of 1995 does not apply to or affect
17 any actions pending at the time of its effective date, but
18 applies to cases filed on or after its effective date.

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

22 (Source: P.A. 86-646; 89-7, eff. 3-9-95; 90-579, eff. 5-1-98.)

23 (Text of Section WITH the changes made by P.A. 94-677,
24 which has been held unconstitutional)

25 Sec. 2-622. Healing art malpractice.

1 (a) In any action, whether in tort, contract or otherwise,
2 in which the plaintiff seeks damages for injuries or death by
3 reason of medical, hospital, or other healing art malpractice,
4 the plaintiff's attorney or the plaintiff, if the plaintiff is
5 proceeding pro se, shall file an affidavit, attached to the
6 original and all copies of the complaint, declaring one of the
7 following:

8 1. That the affiant has consulted and reviewed the
9 facts of the case with a health professional who the
10 affiant reasonably believes: (i) is knowledgeable in the
11 relevant issues involved in the particular action; (ii)
12 practices or has practiced within the last 5 years or
13 teaches or has taught within the last 5 years in the same
14 area of health care or medicine that is at issue in the
15 particular action; and (iii) meets the expert witness
16 standards set forth in paragraphs (a) through (d) of
17 Section 8-2501; that the reviewing health professional has
18 determined in a written report, after a review of the
19 medical record and other relevant material involved in the
20 particular action that there is a reasonable and
21 meritorious cause for the filing of such action; and that
22 the affiant has concluded on the basis of the reviewing
23 health professional's review and consultation that there
24 is a reasonable and meritorious cause for filing of such
25 action. A single written report must be filed to cover each
26 defendant in the action. As to defendants who are

1 individuals, the written report must be from a health
2 professional licensed in the same profession, with the same
3 class of license, as the defendant. For written reports
4 filed as to all other defendants, who are not individuals,
5 the written report must be from a physician licensed to
6 practice medicine in all its branches who is qualified by
7 experience with the standard of care, methods, procedures
8 and treatments relevant to the allegations at issue in the
9 case. In either event, the written report must identify the
10 profession of the reviewing health professional. A copy of
11 the written report, clearly identifying the plaintiff and
12 the reasons for the reviewing health professional's
13 determination that a reasonable and meritorious cause for
14 the filing of the action exists, including the reviewing
15 health care professional's name, address, current license
16 number, and state of licensure, must be attached to the
17 affidavit. Information regarding the preparation of a
18 written report by the reviewing health professional shall
19 not be used to discriminate against that professional in
20 the issuance of medical liability insurance or in the
21 setting of that professional's medical liability insurance
22 premium. No professional organization may discriminate
23 against a reviewing health professional on the basis that
24 the reviewing health professional has prepared a written
25 report.

26 2. That the affiant was unable to obtain a consultation

1 required by paragraph 1 because a statute of limitations
2 would impair the action and the consultation required could
3 not be obtained before the expiration of the statute of
4 limitations. If an affidavit is executed pursuant to this
5 paragraph, the affidavit and written report required by
6 paragraph 1 shall be filed within 90 days after the filing
7 of the complaint. No additional 90-day extensions pursuant
8 to this paragraph shall be granted, except where there has
9 been a withdrawal of the plaintiff's counsel. The defendant
10 shall be excused from answering or otherwise pleading until
11 30 days after being served with an affidavit and a report
12 required by paragraph 1.

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

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

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

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

21 (e) Allegations and denials in the affidavit, made without
22 reasonable cause and found to be untrue, shall subject the
23 party pleading them or his attorney, or both, to the payment of
24 reasonable expenses, actually incurred by the other party by
25 reason of the untrue pleading, together with reasonable
26 attorneys' fees to be summarily taxed by the court upon motion

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

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

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

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

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

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

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

1 (Text of Section WITHOUT the changes made by P.A. 89-7 and
2 94-677, which have been held unconstitutional)

3 Sec. 2-622. Healing art malpractice.

4 (a) In any action, whether in tort, contract or otherwise,
5 in which the plaintiff seeks damages for injuries or death by
6 reason of medical, hospital, or other healing art malpractice,
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8 proceeding pro se, shall file an affidavit, attached to the
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12 facts of the case with a health professional who the
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14 relevant issues involved in the particular action; (ii)
15 practices or has practiced within the last 6 years or
16 teaches or has taught within the last 6 years in the same
17 area of health care or medicine that is at issue in the
18 particular action; and (iii) is qualified by experience or
19 demonstrated competence in the subject of the case; that
20 the reviewing health professional has determined in a
21 written report, after a review of the medical record and
22 other relevant material involved in the particular action
23 that there is a reasonable and meritorious cause for the
24 filing of such action; and that the affiant has concluded
25 on the basis of the reviewing health professional's review
26 and consultation that there is a reasonable and meritorious

1 cause for filing of such action. If the affidavit is filed
2 as to a defendant who is a physician licensed to treat
3 human ailments without the use of drugs or medicines and
4 without operative surgery, a dentist, a podiatrist, a
5 psychologist, or a naprapath, the written report must be
6 from a health professional licensed in the same profession,
7 with the same class of license, as the defendant. For
8 affidavits filed as to all other defendants, the written
9 report must be from a physician licensed to practice
10 medicine in all its branches. In either event, the
11 affidavit must identify the profession of the reviewing
12 health professional. A copy of the written report, clearly
13 identifying the plaintiff and the reasons for the reviewing
14 health professional's determination that a reasonable and
15 meritorious cause for the filing of the action exists, must
16 be attached to the affidavit, but information which would
17 identify the reviewing health professional may be deleted
18 from the copy so attached.

19 2. That the affiant was unable to obtain a consultation
20 required by paragraph 1 because a statute of limitations
21 would impair the action and the consultation required could
22 not be obtained before the expiration of the statute of
23 limitations. If an affidavit is executed pursuant to this
24 paragraph, the certificate and written report required by
25 paragraph 1 shall be filed within 90 days after the filing
26 of the complaint. The defendant shall be excused from

1 answering or otherwise pleading until 30 days after being
2 served with a certificate required by paragraph 1.

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

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18 pursuant to this Section a separate certificate and written
19 report shall be filed as to each defendant who has been named
20 in the complaint and shall be filed as to each defendant named
21 at a later time.

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

1 certify upon filing of the complaint that he is relying on the
2 doctrine of "res ipsa loquitur".

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

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

24 (f) A reviewing health professional who in good faith
25 prepares a report used in conjunction with an affidavit
26 required by this Section shall have civil immunity from

1 liability which otherwise might result from the preparation of
2 such report.

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

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

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

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