

1 AN ACT in relation to civil procedure.

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 WITHOUT the changes made by P.A. 89-7,
8 which has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or
11 otherwise, in which the plaintiff seeks damages for injuries
12 or death by reason of medical, hospital, or other healing art
13 malpractice, the plaintiff's attorney or the plaintiff, if
14 the 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
24 particular action; and (iii) is qualified by experience
25 or demonstrated competence in the subject of the case;
26 that the reviewing health professional has determined in
27 a written report, after a review of the medical record
28 and other relevant material involved in the particular
29 action that there is a reasonable and meritorious cause
30 for the filing of such action; and that the affiant has
31 concluded on the basis of the reviewing health

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

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

32 3. That a request has been made by the plaintiff or
33 his attorney for examination and copying of records
34 pursuant to Part 20 of Article VIII of this Code and the

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

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

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

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

32 (e) Allegations and denials in the affidavit, made
33 without reasonable cause and found to be untrue, shall
34 subject the party pleading them or his attorney, or both, to

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

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

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

19 (g-5) If after reasonable notice and an opportunity to
20 respond, a party or an attorney for a party or parties is
21 determined to have willfully failed to comply with any
22 requirement of this Section, appropriate sanctions may be
23 imposed on the party or attorney for the failure to comply
24 with the requirement, in addition to any other sanctions
25 authorized under this Section. Appropriate sanctions for
26 violations of this Section may include an order that (i) a
27 party be barred from presenting a claim or defense relating
28 to any issue to which refusal or failure to comply with the
29 requirement relates, (ii) judgment be entered on that issue
30 as to the other party, (iii) a dismissal of a party's action
31 as to that issue be entered, or (iv) any portion of a party's
32 brief relating to that issue be stricken. Additionally,
33 sanctions involving an order to pay a fine, if appropriate,
34 may also be ordered against any party or attorney for a party

1 or parties.

2 If the court determines that an action to which this
3 Section applies is frivolous, or that the action was not
4 commenced in good faith, or that the action was commenced for
5 an improper purpose, such as to harass or to cause
6 unnecessary delay or needless increase in the cost of
7 litigation, or that the manner of prosecuting or defending
8 the action is for such a purpose, then the court may impose
9 an appropriate sanction on any party or the attorney or
10 attorneys of the party or parties. An action will be deemed
11 frivolous if it is not reasonably well grounded in fact and
12 not warranted by existing law or a good-faith argument for
13 the extension, modification, or reversal of existing law. An
14 action will be deemed to have been commenced for an improper
15 purpose if the primary purpose of the action is to delay,
16 harass, or cause needless expense.

17 Appropriate sanctions for violations of this Section may
18 include an order to pay to the other party or parties
19 damages, the reasonable costs of prosecuting or defending the
20 action, and any other expenses necessarily incurred by the
21 filing of the action, including reasonable attorney's fees.

22 The court may impose a sanction on a party or an attorney
23 for a party on the motion of another party or parties, or on
24 the court's own initiative if the court deems it appropriate.
25 If the court initiates the sanction, it shall require the
26 party or attorney, or both, to show cause why such a sanction
27 should not be imposed before imposing the sanction. When a
28 sanction is imposed, the court shall set forth the reasons
29 and basis for the sanction in its opinion or in a separate
30 written order.

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

34 (i) This amendatory Act of 1997 does not apply to or

1 affect any actions pending at the time of its effective date,
2 but applies to cases filed on or after its effective date.
3 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

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