

HOUSE BILL 2543

By Casada

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 26, relative to medical malpractice involving any care rendered in an emergency room.

WHEREAS, Physicians serving in hospital emergency rooms provide medical care services of great value to persons in need of care; and

WHEREAS, In cases involving an unfunded federal mandate under the "Emergency Medical Treatment and Active Labor Act" for free care rendered in a hospital emergency room, physicians and hospitals labor under the threat of malpractice liability for mere negligence; and

WHEREAS, Changing the standard of liability in medical malpractice cases for certain care rendered in a hospital emergency room would assist in alleviating a burden on certain health care providers; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-26-115(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a)

(1) In a malpractice action, the claimant shall have the burden of proving by evidence as provided by subsection (b):

(A) The recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which the defendant practices or in a similar community at the time the alleged injury or wrongful action occurred;

(B) That the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard; and

(C) As a proximate result of the defendant's negligent act or omission, the plaintiff suffered injuries which would not otherwise have occurred.

(2) In malpractice actions involving care rendered in an emergency room of a hospital where the defendant is a physician, including but not limited to an on call specialist, or a hospital, the negligent act or omission required by subdivision (1) must constitute gross negligence.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.