

SENATE BILL 360

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 29,  
Chapter 26, relative to medical malpractice  
resulting from emergency care.

WHEREAS, Health Care Providers provide medical care to patients with emergent healthcare conditions in hospital emergency rooms and in either obstetrical units or surgical suites immediately following the patient's evaluation or treatment in the emergency department; and

WHEREAS, In cases involving an unfunded federal mandate under the "Emergency Medical Treatment and Active Labor Act" for care rendered in a hospital emergency room or in either an obstetrical unit or surgical suite immediately following evaluation or treatment in the emergency department, health care providers 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 or in either an obstetrical unit or a surgical suite immediately following evaluation or treatment in the emergency department 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 inserting the language "except for those arising out of the provision of emergency medical care in certain locations as stated in § 29-26-123," between the language "malpractice action," and the language "the claimant shall have".

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following as a new section:

29-26-123.

(a) In a malpractice action, no health care provider shall be held liable unless it is proven by evidence that the health care provider's actions meet the elements provided in subsection (b) when the malpractice action arises out of the provision of emergency medical care in:

(1) A hospital emergency department;

(2) An obstetrical unit immediately following the evaluation or treatment of a patient in a hospital emergency department;

(3) A surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department; or

(4) A diagnostic, interventional or procedural suite immediately following the evaluation or treatment of a patient in a hospital emergency department.

(b) Subject to subsection (c) concerning expert testimony, the claimant shall have the burden of proving the following:

(1) The recognized standard of acceptable professional practice in the profession and the specialty, 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;

(2) That the defendant was grossly negligent in accordance with the standard; and

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

(c) No person in a health care profession requiring licensure under the laws of this state shall be competent to testify in any court of law to establish the facts required to be established by subsection (a) unless the person was licensed to practice in the state or a contiguous bordering state a profession or specialty which would make the person's expert testimony relevant to the issues in the case and had practiced this profession or specialty in one (1) of these states during the year preceding the date that the alleged injury or wrongful act occurred. This rule shall apply to expert witnesses testifying for the defendant as rebuttal witnesses. The court may waive this subsection (c) when it determines that the appropriate witnesses otherwise would not be available.

(d) In a malpractice action as described in subsection (a), there shall be no presumption of gross negligence on the part of the defendant; provided, there shall be a rebuttable presumption that the defendant was grossly negligent where it is shown by the proof that the instrumentality causing injury was in the defendant's exclusive control and that the accident or injury was one that ordinarily does not occur in the absence of gross negligence.

(e) In a malpractice action proceeding under subsection (a), the jury shall be instructed:

(1) The claimant has the burden of proving, by a preponderance of the evidence, the gross negligence of the defendant. The jury shall be further instructed that injury alone does not raise a presumption of the defendant's gross negligence; and

(2)

(A) Whether the person providing care did or did not have the patient's medical history or was able or unable to obtain a full

medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(B) The presence or lack of a preexisting health care provider-patient relationship;

(C) The circumstances constituting the emergency; and

(D) The circumstances surrounding the delivery of the emergency medical care.

(f) For purposes of this section, "health care provider" means a person licensed or certified by one of the health related boards in Title 63 or a hospital licensed in Title 68.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and, to that end, the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect October 1, 2011, the public welfare requiring it, and shall apply only with respect to causes of action arising on or after the effective date of this act, and any other prior causes of action shall continue to be governed by prior law.