

FILED MAR 06 2006

SENATE FILE 2350
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3236)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to medical malpractice actions for personal
2 injury or death.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SC 2350

1 Section 1. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
2 APOLOGY.

3 In any civil action for personal injury or wrongful death
4 against any physician or surgeon licensed pursuant to chapter
5 148, osteopathic physician or surgeon licensed pursuant to
6 chapter 150A, or dentist licensed pursuant to chapter 153,
7 based upon the alleged negligence of the licensee in the
8 practice of that profession or occupation, any statement,
9 writing, affirmation, gesture, or conduct expressing apology,
10 responsibility, liability, sympathy, consideration,
11 condolence, or a general sense of benevolence that was made by
12 a physician or surgeon, osteopathic physician or surgeon, or
13 dentist to the patient, relative of the patient, or decision
14 maker for the patient that relates to the discomfort, pain,
15 suffering, injury, or death of the patient as a result of an
16 unanticipated outcome of medical care is inadmissible as
17 evidence of an admission of liability or as evidence of an
18 admission against interest.

19 EXPLANATION

20 This bill relates to medical malpractice actions for
21 personal injury or death.

22 The bill relates to evidence of regret or apology made by a
23 physician or surgeon, osteopathic physician or surgeon, or
24 dentist in any civil action for personal injury or death. The
25 bill provides that in such a case, any statement, writing,
26 affirmation, gesture, or conduct expressing apology,
27 responsibility, liability, sympathy, consideration,
28 condolence, or a general sense of benevolence that was made by
29 such a licensee, to the patient, relative of the patient, or
30 decision maker for the patient that relates to the discomfort,
31 pain, suffering, injury, or death of the patient as a result
32 of an unanticipated outcome of medical care is inadmissible as
33 evidence of an admission of liability or as evidence of an
34 admission against interest.

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SENATE FILE 2356

S-5176

1 Amend Senate File 2356 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 622.31 EVIDENCE OF
5 REGRET OR SORROW.

6 In any civil action for professional negligence,
7 personal injury, or wrongful death or in any
8 arbitration proceeding for professional negligence,
9 personal injury, or wrongful death against a person in
10 a profession represented by the examining boards
11 listed in section 272C.1 and any other licensed
12 profession recognized in this state, a hospital
13 licensed pursuant to chapter 135B, or a health care
14 facility licensed pursuant to chapter 135C, based upon
15 the alleged negligence in the practice of that
16 profession or occupation, any portion of a statement,
17 affirmation, gesture, or conduct expressing sorrow,
18 sympathy, commiseration, condolence, compassion, or a
19 general sense of benevolence that was made by the
20 person to the plaintiff, relative of the plaintiff, or
21 decision maker for the plaintiff that relates to the
22 discomfort, pain, suffering, injury, or death of the
23 plaintiff as a result of an alleged breach of the
24 applicable standard of care is inadmissible as
25 evidence of an admission of liability or as evidence
26 of an admission against interest."

27 2. Title page, by striking lines 1 and 2 and
28 inserting the following: "An Act relating to civil
29 actions for personal injury or death, including
30 certain evidentiary requirements."

31 3. By renumbering as necessary.

By KEITH A. KREIMAN

S-5176 FILED APRIL 10, 2006

ADOPTED

Kreiman co-chair
Brunkhorst co-chair
Warnstadt
McKibben

Preceded By
SF / HF 2356

Judiciary

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO-CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to medical malpractice including insurance-
2 related matters and civil actions for personal injury or
3 death.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
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3 In any civil action for personal injury or wrongful death
4 against any physician or surgeon licensed pursuant to chapter
5 148, osteopathic physician or surgeon licensed pursuant to
6 chapter 150A, or dentist licensed pursuant to chapter 153,
7 based upon the alleged negligence of the licensee in the
8 practice of that profession or occupation, any statement,
9 writing, affirmation, gesture, or conduct expressing apology,
10 responsibility, liability, sympathy, consideration,
11 condolence, or a general sense of benevolence that was made by
12 a physician or surgeon, osteopathic physician or surgeon, or
13 dentist to the patient, relative of the patient, or decision
14 maker for the patient that relates to the discomfort, pain,
15 suffering, injury, or death of the patient as a result of an
16 unanticipated outcome of medical care is inadmissible as
17 evidence of an admission of liability or as evidence of an
18 admission against interest.

19 Sec. 2. Section 515F.4, subsection 5, Code 2005, is
20 amended to read as follows:

21 5. The rates may contain a provision for contingencies and
22 an allowance permitting a reasonable profit. In determining
23 the reasonableness of the profit, consideration shall be given
24 to investment income attributable to unearned premium and loss
25 reserves. ~~Income-from-other-sources-shall-not-be-considered.~~

26 Sec. 3. Section 515F.5, subsection 3, Code 2005, is
27 amended to read as follows:

28 3. Subject to the exception in subsection 4, a filing
29 shall be on file for a waiting period of thirty days before it
30 becomes effective, which period may be extended by the
31 commissioner for an additional period not to exceed fifteen
32 days if written notice is given within the waiting period to
33 the insurer or advisory organization which made the filing
34 that additional time is needed for the consideration of the
35 filing. Upon written application by the insurer, the

1 commissioner may authorize a filing which has been reviewed to
2 become effective before the expiration of the waiting period
3 or an extension of the waiting period. A filing is deemed to
4 meet the requirements of this chapter unless disapproved by
5 the commissioner within the waiting period or an extension of
6 the waiting period or in the case of a medical malpractice
7 insurance filing, when approved by the commissioner.

8 Sec. 4. NEW SECTION. 519B.1 DEFINITIONS.

9 1. "Claim" means a request for indemnification filed by a
10 health care provider.

11 2. "Closed claim" means a claim that has been settled or
12 otherwise disposed of, where the insurer has made all
13 indemnity and expense payments on the claim.

14 3. "Commissioner" means the commissioner of insurance or a
15 designee.

16 4. "Health care provider" means and includes a physician
17 and surgeon, osteopath, osteopathic physician and surgeon,
18 dentist, podiatric physician, optometrist, pharmacist,
19 chiropractor, or nurse licensed pursuant to chapter 147, a
20 hospital licensed pursuant to chapter 135B, and a nursing
21 facility licensed pursuant to chapter 135C.

22 5. "Medical malpractice insurance" means insurance
23 coverage against the legal liability of the insured and
24 against loss, damage, or expense incident to a claim arising
25 out of the death or injury of any person as the result of
26 negligence or malpractice in rendering professional service by
27 any health care provider.

28 Sec. 5. NEW SECTION. 519B.2 REPORT REQUIRED.

29 An insurer providing medical malpractice insurance coverage
30 to a health care provider or a health care provider who
31 maintains professional liability insurance through a self-
32 insurance plan shall file annually on or before March 15 a
33 report with the commissioner of all medical malpractice
34 insurance closed claims during the preceding calendar year.

35 Sec. 6. NEW SECTION. 519B.3 REPORT INFORMATION.

1 1. A report filed pursuant to section 519B.2 shall be in
2 writing and shall contain the following information regarding
3 each individual closed claim:

4 a. The name and address of the insured and the person
5 working for the insured who rendered the service which gave
6 rise to the claim.

7 b. Any specialty coverage of the insured.

8 c. The nature and substance of the claim.

9 d. The date and place of the incident giving rise to the
10 claim.

11 e. The name, address, and age of the claimant or
12 plaintiff.

13 f. The total indemnity paid categorized according to
14 whether the damages awarded were compensatory, or punitive.

15 g. The total allocated loss adjustment expenses paid.

16 h. The type of injury suffered by the plaintiff based upon
17 the following categories:

18 (1) Temporary emotional injury, including nervous system
19 injuries without physical injury.

20 (2) Temporary insignificant physical injury, including
21 lacerations, contusions, minor scars, and skin rashes.

22 (3) Temporary minor physical injury, including infections,
23 fractures, minor burns, missed or delayed diagnoses or
24 recoveries without complication, and hospital falls.

25 (4) Temporary major injury, including burns, retained
26 surgical material, and side effects from medication.

27 (5) Permanent minor injury, including loss of fingers and
28 loss of or damage to organs.

29 (6) Permanent significant injury, including hearing loss,
30 and loss of a limb, eye, kidney, or lung.

31 (7) Permanent major injury, including paraplegia,
32 blindness, loss of two limbs, and brain damage.

33 (8) Permanent grave injury including quadriplegia, severe
34 brain damage, and any injury requiring life care or with a
35 fatal prognosis.

1 (9) Death.

2 2. The report shall contain the following aggregate
3 information:

4 a. The number of insured health care providers and written
5 premiums, paid losses, earned premiums, and incurred losses
6 for such providers for the preceding year by medical specialty
7 classified according to the number of incidents, as follows:

8 (1) No incidents within the preceding five-year period.

9 (2) One incident within the preceding five-year period.

10 (3) Two incidents within the preceding five-year period.

11 (4) Three or more incidents within the preceding five-
12 year period.

13 b. If a verdict in a civil malpractice lawsuit has been
14 rendered in connection with a medical malpractice insurance
15 claim, the amount of the verdict shall be included in the
16 report filed pursuant to this section and shall provide
17 specific information as to whether the damages awarded were
18 compensatory or punitive.

19 c. Any other additional information as required by the
20 commissioner.

21 Sec. 7. NEW SECTION. 519B.4 PUBLIC RECORD -- EXCEPTION.

22 A report prepared pursuant to this chapter shall be open to
23 the public, except that any identifying information of a
24 claimant shall remain confidential.

25 Sec. 8. NEW SECTION. 519B.5 APPLICABILITY.

26 As used in this chapter, "insurer" includes an insurance
27 company authorized to transact insurance business in this
28 state, an unauthorized insurance company transacting business
29 with an insured person in this state, a risk retention group,
30 an insurance company issuing insurance to or through a
31 purchasing group, and any other person providing insurance
32 coverage in this state. With respect to an unauthorized
33 insurer transacting business with an insured person in this
34 state, a surplus lines insurance broker or licensee
35 originating or accepting insurance in this state shall file a

1 report pursuant to this chapter.

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EXPLANATION

3 This bill relates to medical malpractice, including
4 insurance-related matters and civil actions for personal
5 injury or death.

6 The bill relates to evidence of regret or apology made by a
7 physician or surgeon, osteopathic physician or surgeon, or
8 dentist in any civil action for personal injury or death. The
9 bill provides that in such a case, any statement; writing,
10 affirmation, gesture, or conduct expressing apology,
11 responsibility, liability, sympathy, consideration,
12 condolence, or a general sense of benevolence that was made by
13 such a licensee, to the patient, relative of the patient, or
14 decision maker for the patient that relates to the discomfort,
15 pain, suffering, injury, or death of the patient as a result
16 of an unanticipated outcome of medical care is inadmissible as
17 evidence of an admission of liability or as evidence of an
18 admission against interest.

19 The bill provides that in determining what a reasonable
20 profit is during the ratemaking process, the commissioner of
21 insurance is no longer restricted to considering only income
22 from sources other than investment income attributable to
23 unearned premium loss reserves.

24 The bill provides that in respect to a medical malpractice
25 insurance rate filing, the commissioner of insurance shall
26 approve the filing before the rate becomes effective. Current
27 law provides generally that a rate filing is deemed approved
28 unless disapproved by the commissioner of insurance within the
29 requisite 30-day waiting period or an extension of the waiting
30 period pursuant to Code section 515F.5.

31 The bill also relates to medical malpractice insurance
32 closed claim reporting by an insurer providing medical
33 malpractice insurance coverage in Iowa. The bill provides
34 that an insurer providing medical malpractice insurance
35 coverage to a health care provider and a health care provider

1 who maintains professional liability insurance through a self-
2 insurance plan shall file annually on or before March 15 a
3 report with the commissioner of insurance of all medical
4 malpractice insurance closed claims during the preceding
5 calendar year which shall contain certain individualized
6 information, including the name and address of the insured and
7 the person working for the insured who rendered the service
8 which gave rise to the claim, specialty coverage of the
9 insured, the nature and substance of the claim, the date and
10 place of the incident giving rise to the claim, the name,
11 address, and age of the claimant or plaintiff, the total
12 indemnity paid categorized according to whether the damages
13 awarded were compensatory or punitive, the total allocated
14 loss adjustment expenses paid, and the type of injury suffered
15 by the plaintiff based upon certain categories of injury.

16 The bill provides that the report shall contain certain
17 aggregate information, including the number of insured health
18 care providers, and written premiums, paid losses, earned
19 premiums, and incurred losses for such providers for the
20 preceding year by medical specialty classified according to
21 the number of incidents within the preceding five-year period.

22 The bill provides that if a verdict in a civil malpractice
23 lawsuit has been rendered in connection with a medical
24 malpractice insurance claim, the amount of the verdict shall
25 be included in the report filed pursuant to the bill and shall
26 provide specific information as to whether the damages awarded
27 were compensatory or punitive.

28 The bill provides that the commissioner of insurance may
29 require additional information in the report.

30 The bill provides that a report prepared pursuant to the
31 bill shall be open to the public, except that any identifying
32 information of a claimant shall remain confidential.

33 The bill provides that an "insurer" includes an insurance
34 company authorized to transact insurance business in this
35 state, an unauthorized insurance company transacting business

1 with an insured person in this state, a risk retention group,
2 an insurance company issuing insurance to or through a
3 purchasing group, and any other person providing insurance
4 coverage in this state. The bill provides that an
5 unauthorized insurer transacting business with an insured
6 person in this state shall also file a report pursuant to the
7 bill.

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