



Rep. Mary E. Flowers

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LRB096 21117 EFG 38243 a

1 AMENDMENT TO HOUSE BILL 6474

2 AMENDMENT NO. _____. Amend House Bill 6474 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Findings; purpose; text and revisory changes;
5 validation; additional material.

6 (a) The Illinois Supreme Court, in *Lebron v. Gottlieb*
7 *Memorial Hospital*, found that the limitations on noneconomic
8 damages in medical malpractice actions that were created in
9 Public Act 94-677, contained in Section 2-1706.5 of the Code of
10 Civil Procedure, violate the separation of powers clause of the
11 Illinois Constitution. Because Public Act 94-677 contained an
12 inseverability provision, the Court held the Act to be void in
13 its entirety. The Court emphasized, however, that "because the
14 other provisions contained in Public Act 94-677 are deemed
15 invalid solely on inseverability grounds, the legislature
16 remains free to reenact any provisions it deems appropriate".

17 (b) It is the purpose of this Act to reenact certain

1 provisions of Public Act 94-677 that did not involve
2 limitations on noneconomic damages in medical malpractice
3 actions, and to validate certain actions taken in reliance on
4 those provisions.

5 (c) This Act reenacts (i) Section 8-1901 of the Code of
6 Civil Procedure, which relates to admissions of liability; (ii)
7 the Sorry Works! Pilot Program Act; and (iii) a related Section
8 of the State Finance Act. This Act does not reenact any other
9 provisions of Public Act 94-677.

10 This Act also makes certain changes in the reenacted
11 provisions: (i) in the Code of Civil Procedure Section, an
12 applicability provision has been changed to reflect the
13 reenactment; and (ii) the termination date of the Sorry Works!
14 Pilot Program has been extended to reflect the reenactment.

15 In this Act, the base text of the reenacted Sections is set
16 forth as it existed at the time of the Supreme Court's
17 decision, including any amendments that occurred after P.A.
18 94-677. Striking and underscoring is used only to show the
19 changes being made to that base text.

20 (d) All otherwise lawful actions taken in reasonable
21 reliance on or pursuant to the Sections reenacted by this Act,
22 as set forth in Public Act 94-677 or subsequently amended, by
23 any officer, employee, agency, or unit of State or local
24 government or by any other person or entity, are hereby
25 validated.

26 With respect to actions taken in relation to matters

1 arising under the Sections reenacted by this Act, a person is
2 rebuttably presumed to have acted in reasonable reliance on and
3 pursuant to the provisions of Public Act 94-677, as those
4 provisions had been amended at the time the action was taken.

5 With respect to their administration of matters arising
6 under the Sections reenacted by this Act, officers, employees,
7 agencies, and units of State and local government shall
8 continue to apply the provisions of Public Act 94-677, as those
9 provisions had been amended at the relevant time.

10 Section 5. The State Finance Act is amended by reenacting
11 Section 5.661 as follows:

12 (30 ILCS 105/5.661)

13 Sec. 5.661. The Sorry Works! Fund.

14 (Source: P.A. 94-677, eff. 8-25-05; 95-331, eff. 8-21-07.)

15 Section 10. The Code of Civil Procedure is amended by
16 reenacting and changing Section 8-1901 as follows:

17 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

18 Sec. 8-1901. Admission of liability - Effect.

19 (a) The providing of, or payment for, medical, surgical,
20 hospital, or rehabilitation services, facilities, or equipment
21 by or on behalf of any person, or the offer to provide, or pay
22 for, any one or more of the foregoing, shall not be construed

1 as an admission of any liability by such person or persons.
2 Testimony, writings, records, reports or information with
3 respect to the foregoing shall not be admissible in evidence as
4 an admission of any liability in any action of any kind in any
5 court or before any commission, administrative agency, or other
6 tribunal in this State, except at the instance of the person or
7 persons so making any such provision, payment or offer.

8 (b) Any expression of grief, apology, or explanation
9 provided by a health care provider, including, but not limited
10 to, a statement that the health care provider is "sorry" for
11 the outcome to a patient, the patient's family, or the
12 patient's legal representative about an inadequate or
13 unanticipated treatment or care outcome that is provided within
14 72 hours of when the provider knew or should have known of the
15 potential cause of such outcome shall not be admissible as
16 evidence in any action of any kind in any court or before any
17 tribunal, board, agency, or person. The disclosure of any such
18 information, whether proper, or improper, shall not waive or
19 have any effect upon its confidentiality or inadmissibility. As
20 used in this Section, a "health care provider" is any hospital,
21 nursing home or other facility, or employee or agent thereof, a
22 physician, or other licensed health care professional. Nothing
23 in this Section precludes the discovery or admissibility of any
24 other facts regarding the patient's treatment or outcome as
25 otherwise permitted by law.

26 (c) The changes to this Section made by Public Act 94-677

1 and reenacted by this amendatory Act of the 96th ~~94th~~ General
2 Assembly apply to causes of action accruing on or after August
3 25, 2005, as those changes may be amended from time to time ~~its~~
4 ~~effective date.~~

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

6 Section 15. The Sorry Works! Pilot Program Act is amended
7 by reenacting the heading of Article 4 and Sections 401, 405,
8 and 410 and by reenacting and changing Section 415 as follows:

9 (710 ILCS 45/Art. 4 heading)

10 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

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

12 (710 ILCS 45/401)

13 Sec. 401. Short title. This Article 4 may be cited as the
14 Sorry Works! Pilot Program Act, and references in this Article
15 to "this Act" mean this Article.

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

17 (710 ILCS 45/405)

18 Sec. 405. Sorry Works! pilot program. The Sorry Works!
19 pilot program is established. During the first year of the
20 program's operation, participation in the program shall be open
21 to one hospital. Hospitals may participate only with the
22 approval of the hospital administration and the hospital's

1 organized medical staff. During the second year of the
2 program's operation, participation in the program shall be open
3 to one additional hospital.

4 The first participating hospital selected by the committee
5 established under Section 410 shall be located in a county with
6 a population greater than 200,000 that is contiguous with the
7 Mississippi River.

8 Under the program, participating hospitals and physicians
9 shall promptly acknowledge and apologize for mistakes in
10 patient care and promptly offer fair settlements.
11 Participating hospitals shall encourage patients and families
12 to retain their own legal counsel to ensure that their rights
13 are protected and to help facilitate negotiations for fair
14 settlements. Participating hospitals shall report to the
15 committee their total costs for healing art malpractice
16 verdicts, settlements, and defense litigation for the
17 preceding 5 years to enable the committee to determine average
18 costs for that hospital during that period. The committee shall
19 develop standards and protocols to compare costs for cases
20 handled by traditional means and cases handled under the Sorry
21 Works! protocol.

22 If the committee determines that the total costs of cases
23 handled under the Sorry Works! protocol by a hospital
24 participating in the program exceed the total costs that would
25 have been incurred if the cases had been handled by traditional
26 means, the hospital may apply for a grant from the Sorry Works!

1 Fund, a special fund that is created in the State Treasury, for
2 an amount, as determined by the committee, by which the total
3 costs exceed the total costs that would have been incurred if
4 the cases had been handled by traditional means; however, the
5 total of all grants from the Fund for cases in any single
6 participating hospital in any year may not exceed the amount in
7 the Fund or \$2,000,000, whichever is less. All grants shall be
8 subject to appropriation. Moneys in the Fund shall consist of
9 funds transferred into the Fund or otherwise made available
10 from any source.

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

12 (710 ILCS 45/410)

13 Sec. 410. Establishment of committee.

14 (a) A committee is established to develop, oversee, and
15 implement the Sorry Works! pilot program. The committee shall
16 have 9 members, each of whom shall be a voting member. Six
17 members of the committee shall constitute a quorum. The
18 committee shall be comprised as follows:

19 (1) The President of the Senate, the Minority Leader of
20 the Senate, the Speaker of the House of Representatives,
21 and the Minority Leader of the House of Representatives
22 shall each appoint 2 members.

23 (2) The Secretary of Financial and Professional
24 Regulation or his or her designee.

25 (b) The committee shall establish criteria for the program,

1 including but not limited to: selection of hospitals,
2 physicians, and insurers to participate in the program; and
3 creation of a subcommittee to review cases from hospitals and
4 determine whether hospitals, physicians, and insurers are
5 entitled to compensation under the program.

6 (c) The committee shall communicate with hospitals,
7 physicians, and insurers that are interested in participating
8 in the program. The committee shall make final decisions as to
9 which applicants are accepted for the program.

10 (d) The committee shall report to the Governor and the
11 General Assembly annually.

12 (e) The committee shall publish data regarding the program.

13 (f) Committee members shall receive no compensation for the
14 performance of their duties as members, but each member shall
15 be paid necessary expenses while engaged in the performance of
16 those duties.

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

18 (710 ILCS 45/415)

19 Sec. 415. Termination of program.

20 (a) The program may be terminated at any time if the
21 committee, by a vote of two-thirds of its members, votes to
22 terminate the program.

23 (b) If the program is not terminated under subsection (a),
24 the program shall terminate after its second year of operation
25 following its reenactment by this amendatory Act of the 96th

1 General Assembly.

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

3 Section 97. Severability. The provisions of this Act are
4 severable under Section 1.31 of the Statute on Statutes.

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