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Judiciary

SENATE FILE 306
BY RUNNING and RENSINK

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

A BILL FOR

1 An Act relating to health care providers, hospitals, and patients
2 by providing for structured settlements, establishing a
3 mediation system to assist in the resolution of disputes,
4 establishing a limitation on liability, requiring
5 certification of meritorious action, providing for
6 certification of noninvolvement, establishing certain
7 reporting requirements regarding claims, and establishing a
8 time limitation within which certain minors must bring an
9 action for medical malpractice.

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

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SF 306

1 Section 1. NEW SECTION. 147B.1 FINDINGS -- PURPOSE.

2 The general assembly finds that access to high quality
3 medical and hospital services at reasonable costs is in the
4 public interest and is necessary to ensure the health, safety,
5 and welfare of Iowa citizens.

6 The general assembly finds that the increasing costs and
7 decreasing availability of adequate medical liability
8 insurance for health care providers and hospitals threaten the
9 public access to high quality medical and hospital services at
10 reasonable costs.

11 The general assembly finds that it has become necessary to
12 take legislative action to achieve the public interest and
13 assure the health, safety, and welfare of Iowa citizens, such
14 action to include the balancing of interests between an
15 individual's right of recovery for injuries and society's need
16 for necessary services.

17 The general assembly finds the existing uncertainty in an
18 unlimited noneconomic damages system creates incentives to
19 litigate which often leads to unnecessarily burdening the
20 court system with cases which would otherwise be resolved
21 without resorting to litigation.

22 The general assembly finds that it has become necessary to
23 place a reasonable limitation on an individual's right to
24 recover for noneconomic damages which are not subject to
25 objective calculation or quantification but are purely
26 subjective without any economic basis for determination, with
27 the result that claims are difficult to efficiently evaluate
28 and settle.

29 It is the purpose of this Act to maintain and increase the
30 public's access to high quality medical and hospital services
31 at reasonable costs, thereby protecting the health, safety,
32 and welfare of the citizens of this state. To effectuate this
33 purpose, it is the intent of the general assembly that the
34 provisions of this Act be construed liberally to achieve the
35 following:

1 1. To provide an increase in the availability and
2 affordability of medical liability insurance for health care
3 providers and hospitals.

4 2. To assure the individual's right to redress for
5 injuries within the confines of the broader purpose of
6 protecting the health, safety, and welfare of all citizens.

7 3. To make necessary adjustments to the legal system in
8 order to encourage retention of medical and hospital services
9 in all parts of this state.

10 4. To increase the resolution of medical liability actions
11 by more cost-efficient means than traditional litigation.

12 Sec. 2. NEW SECTION. 147B.2 DEFINITIONS.

13 As used in this chapter, unless the context requires
14 otherwise:

15 1. "Future injuries" means all legal harm relating to an
16 injury which the trier of fact determines will be incurred by
17 the injured party subsequent to the entry of judgment.

18 2. "Health care provider" means a person licensed or
19 certified in this state under chapter 148, 150, 150A, 152, or
20 153 to provide professional health care services to an
21 individual during that individual's medical care, treatment,
22 or confinement.

23 3. "Health services" means clinically related diagnostic,
24 curative, or rehabilitative services, and includes alcoholism,
25 drug abuse, and mental health services.

26 4. "Hospital" means a hospital licensed pursuant to
27 chapter 135B.

28 5. "Injured person" means the person during whose medical
29 treatment or care the acts or omissions of medical malpractice
30 are determined to have occurred.

31 6. "Injured party" means a party plaintiff to a medical
32 malpractice action or other person not a party to the action
33 but who may have a cause of action against a health care
34 provider or hospital as a result of an injury alleged to have
35 occurred as a result of medical malpractice, and includes the

1 injured person

2 7. "Injury" means a legal harm for which damages are
3 recoverable in an action arising under this chapter.

4 8. "Medical malpractice" means acts or omissions of a
5 health care provider in the practice of the provider's
6 profession or occupation, or acts or omissions of a hospital
7 in-patient treatment or care, including but not limited to
8 negligence, failure to provide care, breach of contract
9 relating to providing care, or claim based upon failure to
10 obtain informed consent for an operation or treatment.

11 9. "Noneconomic loss" means loss of consortium and all
12 nonpecuniary harm for which damages are recoverable, including
13 but not limited to damages for pain and suffering, emotional
14 distress, inconvenience, disfigurement, loss of chance, and
15 physical impairment.

16 Sec. 3. NEW SECTION. 147B.3 STRUCTURED JUDGMENTS.

17 1. In a medical malpractice action against a health care
18 provider or hospital subject to this chapter, the verdict
19 shall be itemized to distribute the monetary damages, if any,
20 between past loss and future loss. In a trial to the court,
21 the court shall itemize its findings in accordance with this
22 section.

23 2. The court, in a medical malpractice action subject to
24 this chapter in which a damage award for future injuries
25 against all defendant health care providers and hospitals
26 exceeds two hundred thousand dollars and upon application of
27 one of the parties, shall enter a judgment ordering the
28 portion of the award for future injuries to the party in
29 excess of two hundred thousand dollars, to be paid in periodic
30 payments, subject to the limitations contained in this
31 section. The court shall make a specific finding as to the
32 dollar amount of regular payments which will be required to
33 compensate the party periodically for loss of future income
34 and future noneconomic harm, based upon the life expectancy of
35 the party and the damages awarded. The periodic payments

1 shall reflect interest in accordance with annuity principles.
2 The judgment shall specify the recipient of the periodic
3 payments, the dollar amount of each payment, the interval
4 between payments, and the number of payments required to be
5 made. The judgment shall specify the amount of and the
6 purposes for which the balance of the judgment awarded for the
7 future care and treatment of the party may be used.

8 3. Attorney fees of the party receiving an award, if
9 payable out of the judgment, shall be applied pro rata against
10 amounts awarded for past injuries and for future injuries.
11 The amount determined by the court to be payable out of
12 damages for future injuries shall be deducted by the court
13 from the amount to be ordered paid as provided in this
14 subsection, and shall be deducted pro rata from those amounts
15 awarded, if any, for loss of future income, future expenses
16 for care and treatment, and future noneconomic harm. The
17 amount of attorney fees attributable to the award for future
18 injuries shall be payable upon entry of judgment.

19 4. If a judgment has been entered ordering periodic
20 payments pursuant to this section, the amount awarded, less
21 the deductions provided for in this section, shall be ordered
22 paid into trust for the benefit of the party to whom the award
23 was made. A trustee shall be named by agreement of the
24 parties to the action, or if the parties cannot agree, a
25 trustee shall be named by the court. A person shall not
26 qualify to act as trustee unless that person is authorized to
27 exercise the powers of a fiduciary under either chapter 524 or
28 the laws of the United States.

29 5. The trustee shall receive the amount ordered to be paid
30 into trust, shall file a satisfaction of judgment for that
31 portion of the judgment upon receipt, and shall administer the
32 trust, and shall assure that payments from the trust are made
33 only to or on behalf of the named recipient and only for the
34 purposes which are specified in the order of the court. Funds
35 which are specified to be used for one purpose shall not be

1 paid by the trustee for use for other purposes. The trustee
2 shall receive annually out of the corpus of the trust as
3 compensation for administering the trust one-half of one
4 percent of the average of the fair market value of the trust
5 assets contained in the trust during the year, and shall be
6 reimbursed for any costs advanced at the time those costs are
7 incurred. If extraordinary services are performed by the
8 trustee, upon application of the trustee and notice to trust
9 beneficiaries, the court may award additional compensation to
10 be paid out of the trust. All payments to the trustee shall
11 be deducted pro rata from each of the funds in trust.

12 6. If the beneficiary dies, amounts remaining in trust
13 revert to the judgment debtor or to the person who actually
14 paid those funds into the trust on behalf of the judgment
15 debtor, except that the remaining assets specified to be paid
16 for loss of future income are payable to those persons to whom
17 the injured person owed a duty of support. If the beneficiary
18 dies prior to depletion of those amounts held in the trust for
19 other than loss of future income, the judgment is satisfied
20 upon the payment out of trust of all obligations incurred up
21 to the time of death and of the expenses of final illness and
22 reasonable burial expenses.

23 7. Except with respect to amounts representing loss of
24 future income, a judgment for future injuries is a contingent
25 award, and the right to payment vests only at such times and
26 in such amounts as accrue pursuant to the order specifying the
27 amount of periodic payments and the interval of those
28 payments.

29 8. The district court shall retain jurisdiction of a trust
30 created pursuant to this section, and upon the death of the
31 recipient of the periodic payments, the dependents of the
32 decedent in the case of an award for loss of future income, or
33 the trustee in the case of all other amounts held in the
34 trust, or any other interested party to the action or a
35 representative of an interested party, may petition the court.

1 for a modification of the judgment and of the trust and for a
2 redesignation of the recipient of trust funds, in accordance
3 with the rights of persons as established by this section.
4 Unless otherwise ordered, the redesignated recipients of an
5 award for loss of future income shall be paid in those amounts
6 and at those intervals specified in the original judgment.
7 Payments shall continue until the remaining amounts designated
8 for that purpose have been depleted, or until the death of
9 those dependents, whichever occurs first. If the last
10 surviving dependent dies prior to depletion of the amount
11 specified for loss of future income, the judgment is deemed
12 satisfied upon payment of amounts accrued up to the time of
13 death, and any amounts remaining revert as provided in
14 subsection 6.

15 9. If a person paying funds into the trust on behalf of a
16 judgment debtor is a person who contracted to insure the
17 judgment debtor against liability arising from medical
18 malpractice actions, any amount which reverts to the person
19 pursuant to this section and which is repaid to the person by
20 the trustee shall be applied by the person as an offset
21 against claims loss experience. The commissioner of insurance
22 shall adopt rules to assure compliance with this subsection.

23 Sec. 4. NEW SECTION. 147B.4 MEDIATION SYSTEM.

24 The supreme court shall establish a mediation system to
25 assist in the resolution of litigation disputes, regarding
26 medical malpractice between an injured party and a health care
27 provider or hospital.

28 Sec. 5. NEW SECTION. 147B.5 INITIATION OF MEDIATION.

29 Not later than upon completion of discovery relating to the
30 opinions and conclusions of the expert witnesses regarding
31 liability and discovery of the plaintiff regarding damages,
32 the parties shall request appointment of a mediator by the
33 clerk of the supreme court who shall, unless provided with
34 appropriate statements of waiver, immediately initiate the
35 mediation process. During the mediation period there shall be

1 no other action taken with respect to the litigation. The
2 mediation may be waived by agreement of all parties to the
3 litigation by the filing of statements of waiver of mediation
4 with the clerk of the district court.

5 Sec. 6. NEW SECTION. 147B.6 MEDIATORS.

6 1. The supreme court shall appoint a mediator and send
7 notice to the parties by mail. The notice shall inform the
8 parties of the name of the mediator and the date, time, and
9 place of the first mediation session. The mediator may change
10 the date, time, or place of the mediation session as necessary
11 to accommodate the parties, but the session shall be held
12 before the expiration of the mediation period.

13 2. The supreme court shall appoint and maintain a panel of
14 mediators available to serve within each judicial district.
15 District court judges shall be available for appointment as
16 mediators.

17 3. If a person appointed to a panel resigns from or is
18 unable to serve on the mediation panel, the supreme court
19 shall appoint a replacement.

20 4. A person shall not serve as a mediator if the person
21 has a professional or personal interest in the dispute.

22 5. The mediator is entitled to one hundred fifty dollars
23 per diem plus actual and necessary expenses for each day of
24 mediation conducted. The amounts provided for under this
25 subsection shall be taxed and paid as court costs.

26 6. A mediator is immune from civil liability for any good
27 faith act or omission within the scope of the mediator's
28 powers and duties under this chapter.

29 Sec. 7. NEW SECTION. 147B.7 MEDIATION PERIOD.

30 The period for mediation shall expire one hundred days
31 after the parties have been given notice of appointment of the
32 mediator by the clerk of the supreme court or within a longer
33 period agreed to by the parties and specified by them in
34 writing.

35 Sec. 8. NEW SECTION. 147B.8 PROCEDURE.

1 The mediation shall be conducted without record or
2 transcript and all parties shall be in attendance unless
3 excused by the mediator. No witnesses may be subpoenaed and
4 no oaths may be administered during the mediation period.
5 Information, including depositions and answers to
6 interrogatories, obtained from the discovery of the expert
7 witnesses and the plaintiff shall be made available for
8 discussion with the mediator. Each party shall present a
9 statement of its positions with respect to the case with
10 references to existing documents filed with the clerk of the
11 district court and discovery materials.

12 All patient health care records in the possession of a
13 mediator shall be kept confidential by the mediator and all
14 other persons participating in the mediation. Any finding,
15 statement, or opinion made in the course of mediation is not
16 admissible in the court action.

17 Any person participating in mediation may be represented by
18 counsel authorized to act for the person.

19 Sec. 9. NEW SECTION. 147B.9 MEDIATION SYSTEM EXPENSES
20 AND REPORT.

21 The administrative expenses of the mediation system
22 established in this chapter shall be paid out of the state's
23 general fund upon certification by the supreme court of the
24 expenses incurred.

25 The supreme court shall submit a report on the operation of
26 the mediation system and on the status of the mediation system
27 expenses on or before March 1 of each year to the majority
28 leader and minority leader of the senate, and the speaker,
29 majority leader, and minority leader of the house of
30 representatives.

31 Sec. 10. NEW SECTION. 147B.10 LIMITATION ON NONECONOMIC
32 DAMAGES.

33 In a medical malpractice action in which liability is
34 admitted or established, the present value of the damages
35 awarded for noneconomic losses incurred or to be incurred in

1 the future by the plaintiff by reason of the personal injury
2 or death, shall not exceed two hundred fifty thousand dollars,
3 adjusted annually by an inflation factor calculated as
4 provided in section 422.4, subsection 17, paragraph "b".

5 Sec. 11. NEW SECTION. 147B.11 AFFIDAVITS OF MERITORIOUS
6 CLAIMS.

7 1. In an action seeking damages for medical malpractice,
8 the plaintiff's attorney, or the plaintiff if the plaintiff is
9 proceeding pro se, shall sign an affidavit, attached to the
10 original and all copies of the complaint or petition,
11 declaring one of the following:

12 a. That the affiant has consulted and reviewed the facts
13 of the case with a person who the affiant reasonably believes
14 is qualified as an expert by knowledge, skill, experience,
15 training, or education concerning the relevant issues involved
16 in the particular action; that the expert has determined in a
17 written report, after a review of the circumstances involved
18 in the particular action, that a reasonable and meritorious
19 cause exists for the filing of the action; and that the
20 affiant has concluded on the basis of the consultation and
21 review by the expert that a reasonable and meritorious cause
22 exists for the filing of the action. A copy of the written
23 report, clearly identifying the plaintiff and the reasons for
24 the expert's determination, shall be attached to the
25 affidavit.

26 b. That the affiant was unable to obtain a consultation
27 required by paragraph "a" because a statute of limitations
28 would impair the action and the consultation required could
29 not be obtained before the expiration of the statute of
30 limitations.

31 c. That a request has been made by the affiant for
32 examination and copying of records and the party having
33 custody of the records has failed to produce the records
34 within sixty days of the receipt of the request.

35 2. If an affidavit is executed pursuant to subsection 1,

1 paragraph "b" or "c", the affidavit and written report
2 required by paragraph "a" shall be filed within ninety days
3 following the filing of the complaint or petition or following
4 receipt of the requested records. All defendants, except
5 those whose failure to produce records is the basis for the
6 signing of an affidavit under subsection 1, paragraph "c", are
7 excused from answering or otherwise pleading until thirty days
8 after being served with the affidavit required by paragraph
9 "a".

10 3. If an affidavit and written report are required under
11 this section, a separate copy of the affidavit and written
12 report shall be served on each defendant named in the
13 complaint or petition and each defendant named at a later
14 time.

15 4. If a plaintiff intends to rely on the doctrine of res
16 ipsa loquitur, the affidavit and written report must state
17 that, in the opinion of the person consulted, negligence has
18 occurred resulting in the injury to the plaintiff. The
19 affiant shall certify upon filing of the complaint or petition
20 that the affiant is relying on the doctrine of res ipsa
21 loquitur.

22 5. If a plaintiff intends to rely on the doctrine of
23 failure to obtain informed consent, the attorney for the
24 plaintiff shall certify upon the filing of the complaint or
25 petition that the person consulted has, after reviewing the
26 circumstances in the particular action, concluded that a
27 reasonable person would have informed the plaintiff of the
28 consequences of the act, failure to act, or information
29 concerning a particular product or service.

30 6. Allegations and denials in an affidavit signed pursuant
31 to this section, which are made without reasonable cause and
32 found to be untrue, subject the party pleading them or the
33 party's attorney, or both, to the payment of reasonable
34 expenses actually incurred by another party by reason of the
35 untrue pleading, together with reasonable attorney's fees to

1 be summarily taxed by the court upon motion made within thirty
2 days of the judgment or dismissal. The award for attorney's
3 fees and expenses shall not exceed those actually paid by or
4 on behalf of the moving party. In a proceeding under this
5 subsection, the moving party may depose and examine any and
6 all consulting persons who prepared reports used in
7 conjunction with an affidavit required by this section.

8 7. A person who in good faith prepares a report used in
9 conjunction with an affidavit required by this section is not
10 civilly liable as a result of the preparation of the report.

11 8. The failure to file an affidavit required by this
12 section or the filing of a false affidavit is grounds for
13 dismissal of the malpractice action.

14 Sec. 12. NEW SECTION. 147B.12 AFFIDAVIT OF
15 NONINVOLVEMENT.

16 1. In an action seeking damages for medical malpractice in
17 which the plaintiff seeks damages against a defendant for
18 injuries alleged to have been caused by the defendant, the
19 defendant may, in lieu of answering or otherwise pleading,
20 file an affidavit certifying that the affiant has reviewed the
21 complaint or petition and accompanying affidavits, and that
22 the affiant was not directly or indirectly involved in the
23 occurrence or occurrences alleged in the action. The
24 affidavit shall clearly set out or cite all records, evidence,
25 or other information showing the lack of direct or indirect
26 involvement. If the affidavit is filed, the court shall order
27 the dismissal of the claim against the affiant, except as
28 provided in subsection 2. The affidavit shall be filed within
29 the time required for filing an answer. An order of dismissal
30 based on the affidavit shall be entered no sooner than ten
31 days after the affidavit is filed.

32 2. A party may oppose the dismissal or move to vacate the
33 order of dismissal and reinstate the certifying party,
34 provided the party presents reasonable evidence that the
35 certifying party was directly or indirectly involved in the

1 occurrence or occurrences alleged in the action. After the
2 filing of an affidavit under this section, the party opposing
3 the dismissal may use discovery with respect to the
4 involvement or noninvolvement of the party filing the
5 affidavit, provided the discovery is completed within sixty
6 days of the filing of the affidavit.

7 Sec. 13. Section 258A.4, Code 1989, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 3. For the purpose of providing the
10 various licensing boards for health care providers with
11 information on medical malpractice claims paid by insurers or
12 self-insurers on behalf of health care providers in this
13 state, the commissioner of insurance shall by rule require a
14 medical malpractice insurer of a health care provider, and a
15 health care provider in this state who is not an insured under
16 a policy of insurance providing coverage for medical
17 malpractice, within thirty days of the date of payment of a
18 medical malpractice claim, to provide a written report to the
19 appropriate licensing board of this state. The report shall
20 contain all of the following:

- 21 a. The name and address of the health care provider.
- 22 b. A brief description of the acts or omissions which gave
23 rise or allegedly gave rise to the claim, and the date of the
24 acts or omissions.
- 25 c. The name of the claimant and the injury which resulted
26 or allegedly resulted from the acts or omissions.
- 27 d. The amount paid in settlement or discharge of the
28 claim, whether paid by compromise, by payment of judgment, by
29 payment of an arbitration award, or otherwise.
- 30 e. If a judicial opinion has been rendered with regard to
31 a claim, a copy of the opinion, attached to the report.

32 However, a report is not required for a compromise
33 settlement of a claim if the amount paid is one thousand
34 dollars or less, unless the payment was made in satisfaction
35 or compromise of a court judgment or of an arbitration award.

1 Sec. 14. Section 614.8, Code 1989, is amended to read as
2 follows:

3 614.8 MINORS AND MENTALLY ILL PERSONS.

4 The Other than in an action by a minor or mentally ill
5 person brought for medical malpractice, the times limited for
6 actions herein, except those brought for penalties and
7 forfeitures, shall-be are extended in favor of minors and
8 mentally ill persons, so that they shall have one year from
9 and after the termination of such the disability within which
10 to commence said an action. The times limited for actions
11 brought for medical malpractice are extended in favor of
12 minors less than six years of age so that they have until
13 their eighth birthday to commence an action.

14 EXPLANATION

15 This bill addresses the medical malpractice situation.

16 Section 1 of the bill contains legislative findings
17 indicating that in order to ensure that the citizens of this
18 state receive affordable health care, certain legislative
19 steps are necessary.

20 Section 2 establishes the definitions of terms used in the
21 bill.

22 Section 3 establishes a method for structuring judgments
23 which contain awards for future damages. This section
24 provides that in cases where there is an award for future
25 damages in excess of \$200,000, those future damages in excess
26 of \$200,000 shall be paid out on a periodic payment basis. A
27 trust would be required to be established and supervised by
28 the court.

29 Sections 4, 5, 6, 7, 8, and 9 establish a mediation
30 process. The supreme court is required to establish a
31 mediation system in all cases alleging medical malpractice,
32 which would, prior to trial, be required to go through a
33 mediation process unless all parties to the suit agree to
34 waive mediation. The supreme court would be placed in charge
35 of the mediation system and would be required to maintain a

1 list of mediators eligible to serve in each of the state's
2 judicial districts.

3 Section 10 establishes a limitation on noneconomic damages
4 of \$250,000.

5 Section 11 requires that in filing a medical malpractice
6 action a certificate must accompany that filing, certifying
7 that the action has been reviewed by a medical expert who is
8 of the opinion the case has merit. Exceptions are made for
9 situations when the statute of limitations is about to expire
10 or in cases where a party has custody of certain records
11 needed to prepare the claim and has refused to divulge them.

12 Section 12 establishes a procedure for the filing of an
13 affidavit of noninvolvement in those cases where a defendant
14 claims not to have been directly involved in the occurrence
15 resulting in the lawsuit.

16 Section 13 requires that settlements or payments of awards
17 in medical malpractice cases must be reported to the
18 appropriate licensing board.

19 Section 14 addresses the statute of limitations to be
20 applied to minors and mentally ill persons in actions brought
21 for medical malpractice. Under existing law a minor may
22 initiate suit at any time up until the nineteenth birthday
23 regardless of when the incident occurred. This section would
24 provide that a minor's right to bring an action would expire
25 at the minor's eighth birthday.

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