

**Senate File 371 - Introduced**

SENATE FILE 371

BY ZAUN

**A BILL FOR**

1 An Act relating to liability cases involving licensed  
2 professionals.

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

1 Section 1. Section 668.11, Code 2011, is amended to read as  
2 follows:

3 ~~668.11 Disclosure of expert witnesses in liability~~ Liability  
4 cases involving licensed professionals — expert witnesses —  
5 malicious prosecution — abuse of process.

6 1. a. A party in a professional liability case brought  
7 against a licensed professional pursuant to this chapter who  
8 intends to call an expert witness of their own selection, shall  
9 certify to the court and all other parties the expert's name,  
10 qualifications, and the purpose for calling the expert within  
11 the following time period:

12 ~~a.~~ (1) The plaintiff within one hundred eighty days of the  
13 defendant's answer unless the court for good cause not ex parte  
14 extends the time of disclosure.

15 ~~b.~~ (2) The defendant within ninety days of plaintiff's  
16 certification.

17 ~~2.~~ b. If a party fails to disclose an expert pursuant to  
18 ~~subsection 1~~ paragraph "a" or does not make the expert available  
19 for discovery, the expert shall be prohibited from testifying  
20 in the action unless leave for the expert's testimony is given  
21 by the court for good cause shown.

22 ~~3. This section does not apply to court appointed experts or~~  
23 ~~to rebuttal experts called with the approval of the court.~~

24 c. A party shall disclose the following information for  
25 each expert witness whose testimony the party anticipates using  
26 at trial or for each expert witness upon whose opinion the  
27 opinions or conclusions of any expert witness whose testimony  
28 is anticipated for use at trial is based:

29 (1) A written report prepared and signed by the expert.

30 (2) A complete statement of all opinions the expert  
31 is expected to express and the basis and reasons for such  
32 opinions.

33 (3) A complete statement of the data or other information  
34 considered by the expert in forming the expert's opinions.

35 (4) Any exhibits or other tangible materials considered by

1 the expert in forming the expert's opinions.

2 (5) The expert's qualifications including a list of all  
3 publications authored by the expert in the previous ten years.

4 (6) A list of all other cases in which the expert has  
5 testified as an expert and not as a party in the previous ten  
6 years.

7 (7) All of the following:

8 (a) The relationship between the expert and the party  
9 including the party's attorney, insurer, or surety, including,  
10 at a minimum, a description of all matters for which the expert  
11 has been used as a consultant or trial expert for the party.

12 (b) The compensation paid to the expert for each matter on  
13 which the expert has been consulted and the annual compensation  
14 paid to the expert during the previous ten years by the party  
15 designating the expert.

16 d. The disclosures described in paragraph "c" shall be  
17 admissible as evidence subject only to such evidentiary  
18 objections as would otherwise apply to the information.

19 2. This section does not apply to court-appointed experts or  
20 to rebuttal experts called with the approval of the court.

21 3. a. A licensed professional subject to a claim for  
22 negligence or other unintentional misconduct shall have a cause  
23 of action for malicious prosecution in a subsequent claim  
24 against the person who brought such claim and their attorney,  
25 or both, if all of the following occur:

26 (1) The original claim was dismissed as to the licensed  
27 professional or the trier of fact found that the conduct of  
28 the licensed professional was not the proximate cause of the  
29 claimant's or plaintiff's damages.

30 (2) The trier of fact found that the person who brought the  
31 claim against the licensed professional lacked probable cause  
32 to do so at the time the original action against the licensed  
33 professional was commenced.

34 b. The licensed professional's damages may include but  
35 are not limited to attorney fees, expert witness fees, travel

1 expenses, and the value of the time spent preparing for or  
2 participating in the defense of the original claim against the  
3 licensed professional.

4 4. Any party who has successfully brought a claim for  
5 professional liability against a licensed professional shall  
6 have a cause of action for abuse of process when all of the  
7 following conditions exist:

8 a. The professional liability action proceeded to trial and  
9 was not resolved by settlement prior to an initial decision by  
10 the trier of fact in favor of the person bringing the action  
11 against the licensed professional.

12 b. The trier of fact awarded damages and those damages  
13 exceed the final settlement demand of the person so demanding  
14 by more than one hundred percent.

15 EXPLANATION

16 This bill relates to liability cases involving licensed  
17 professionals.

18 EXPERT WITNESSES. The bill amends current law relating  
19 to the disclosure of an expert witness in a liability case  
20 involving a licensed professional to require a party who  
21 expects to call an expert witness at trial or upon which the  
22 opinions or conclusions of the expert witness are based to  
23 include certain specific information including the expert's  
24 qualifications, a written report, data, and other expertise the  
25 expert intends to rely on, as well as information relating to  
26 any relationship between the expert and the party including, at  
27 a minimum, a description of all matters for which the expert  
28 has been used as a consultant or trial expert for the party,  
29 and the compensation paid to the expert for each matter on  
30 which the expert has been consulted and the annual compensation  
31 paid to the expert during the previous 10 years by the party  
32 designating the expert. The bill provides that the disclosures  
33 required in the bill shall be admissible as evidence subject  
34 only to such evidentiary objections as would otherwise apply to  
35 the information. The bill does not apply to court-appointed

1 experts or to rebuttal experts called with the approval of the  
2 court.

3 MALICIOUS PROSECUTION. The bill provides that a licensed  
4 professional subject to a claim for negligence or other  
5 unintentional misconduct has a cause of action for malicious  
6 prosecution in a subsequent claim against the person who  
7 brought such claim and their attorney, or both, if the  
8 original claim was dismissed as to the licensed professional  
9 or the trier of fact found that the conduct of the licensed  
10 professional was not the proximate cause of the claimant's  
11 or plaintiff's damages and the trier of fact found that the  
12 original plaintiff who brought the claim against the licensed  
13 professional lacked probable cause to do so at the time  
14 the original action against the licensed professional was  
15 commenced. The licensed professional's damages may include but  
16 are not limited to attorney fees, expert witness fees, travel  
17 expenses, and the value of the time spent preparing for or  
18 participating in the defense of the original claim against the  
19 licensed professional.

20 ABUSE OF PROCESS. The bill provides that any party who has  
21 successfully brought a claim for professional liability against  
22 a licensed professional shall have a cause of action for abuse  
23 of process when the professional liability action proceeded to  
24 trial and was not resolved by settlement prior to an initial  
25 decision by the trier of fact in favor of the person bringing  
26 the action against the licensed professional and the trier  
27 of fact awarded damages and those damages exceed the final  
28 settlement demand of the person so demanding by more than 100  
29 percent.