

**Senate File 2099 - Introduced**

SENATE FILE 2099

BY ERNST

**A BILL FOR**

1 An Act relating to certificates of merit and noneconomic  
2 damages in medical malpractice actions.

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

1 Section 1. NEW SECTION. 147.140 Certificate of merit.

2 1. In an action for damages for personal injury against a  
3 health care provider licensed to practice or operate in this  
4 state, based on the alleged negligence of the licensee in the  
5 practice of the profession or occupation, or upon the alleged  
6 negligence of the hospital in patient care, the plaintiff  
7 shall file, simultaneous with the filing of the complaint, a  
8 certificate of merit attesting to the following:

9 a. The plaintiff or plaintiff's attorney has consulted and  
10 reviewed the facts of the case with an expert who the plaintiff  
11 or the plaintiff's attorney reasonably believes meets the  
12 following requirements:

13 (1) The expert is knowledgeable regarding the relevant  
14 issues involved in the particular action.

15 (2) The expert is qualified by knowledge, skill,  
16 experience, training, or education to testify as an expert  
17 in the field of the alleged malpractice pursuant to section  
18 147.139.

19 (3) The expert has no financial or personal interest in the  
20 outcome of the case under review.

21 b. The expert has determined in a written report that there  
22 is a reasonable and meritorious case for the filing of such  
23 action.

24 2. The written report from the expert shall be attached  
25 to the certificate of merit and shall contain all of the  
26 following:

27 a. The name and address of the expert and sufficient facts  
28 to support the conclusion that the expert is qualified by  
29 knowledge, skill, experience, training, or education to testify  
30 as an expert against the health care provider.

31 b. A statement that the expert's determination is based upon  
32 an examination of the plaintiff, or an independent and thorough  
33 review of all of the applicable medical records and, if  
34 reasonably available, a physical examination of the plaintiff.

35 c. A description of the appropriate standard of care that is

1 expected of a reasonably competent health care provider in the  
2 same class to which the health care provider belongs, acting in  
3 the same or similar circumstances.

4 *d.* In the opinion of the expert, expressed with a reasonable  
5 degree of medical certainty, that the appropriate standard of  
6 care was breached by the health care provider named in the  
7 complaint.

8 *e.* The factual basis for the expert's opinion.

9 *f.* A statement of the actions that the health care provider  
10 should have taken or failed to take to have complied with the  
11 standard of care.

12 *g.* A statement of the manner in which the breach of the  
13 standard of care was the cause of the injury alleged in the  
14 complaint.

15 3. Where a certificate of merit is required pursuant to  
16 this section, a separate certificate and expert report shall be  
17 filed as to each defendant named in the complaint and shall be  
18 filed as to each defendant named at a later time.

19 4. The contemporaneous filing requirement of subsection 1  
20 shall not apply to a case in which the period of limitation  
21 will expire or there is a good faith basis to believe it will  
22 expire on a claim stated within ten days of the date of filing  
23 and the plaintiff asserts in good faith that because of such  
24 time constraints compliance with the requirements is not  
25 possible. In such cases, the plaintiff shall have forty-five  
26 days after the filing of the complaint to supplement the  
27 pleadings with the certificate of merit and expert report.

28 5. If a certificate of merit is not filed within the  
29 period specified in this section, the complaint is subject to  
30 dismissal for failure to state a claim upon which relief can  
31 be granted.

32 6. If the plaintiff or the plaintiff's attorney files a  
33 certificate of merit that does not meet the requirements of  
34 subsection 1 or a report that does not meet the requirements of  
35 subsection 2, the defendant to whom such certificate pertains

1 may file a motion to dismiss which shall specify the grounds or  
2 basis by which the certificate or the report does not meet the  
3 requirements of this section.

4 7. For the purposes of this section, "*health care provider*"  
5 means a physician and surgeon, osteopath, osteopathic physician  
6 and surgeon, dentist, podiatric physician, optometrist,  
7 pharmacist, chiropractor, or nurse licensed to practice that  
8 profession in this state, or a hospital licensed for operation  
9 in this state.

10 Sec. 2. NEW SECTION. 147.141 **Limitation on noneconomic**  
11 **damages.**

12 1. In an action for personal injury or wrongful death  
13 against a physician and surgeon, osteopath, osteopathic  
14 physician and surgeon, dentist, podiatric physician,  
15 optometrist, pharmacist, chiropractor, or nurse licensed  
16 under this chapter, based on the alleged negligence of the  
17 practitioner in the practice of that profession or occupation,  
18 or against a hospital licensed under chapter 135B, based on the  
19 alleged negligence of the hospital in patient care, in which  
20 liability is admitted or established, an award of noneconomic  
21 damages shall not exceed five hundred thousand dollars.

22 2. For purposes of this section, "*noneconomic damages*" means  
23 nonpecuniary losses that would not have occurred but for the  
24 injury or death giving rise to the cause of action, including  
25 pain and suffering, inconvenience, physical impairment, mental  
26 anguish, loss of capacity for enjoyment of life, and any other  
27 nonpecuniary losses.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with  
30 the explanation's substance by the members of the general assembly.

31 This bill relates to certificates of merit and noneconomic  
32 damages in medical malpractice actions.

33 CERTIFICATE OF MERIT. The bill provides that in an action  
34 for damages for personal injury against a health care provider,  
35 defined as a physician and surgeon, osteopath, osteopathic

1 physician and surgeon, dentist, podiatric physician,  
2 optometrist, pharmacist, chiropractor, or nurse licensed to  
3 practice that profession in this state, or a hospital licensed  
4 for operation in this state, based on the alleged negligence of  
5 the licensee in the practice of the profession or occupation,  
6 or upon the alleged negligence of the hospital in patient care,  
7 the plaintiff shall file, simultaneous with the filing of the  
8 complaint, a certificate of merit. The certificate of merit  
9 shall state that the plaintiff or plaintiff's attorney has  
10 consulted and reviewed the facts of the case with an expert who  
11 the plaintiff or the plaintiff's attorney reasonably believes  
12 is knowledgeable regarding the relevant issues involved in the  
13 particular action, that the expert is qualified by knowledge,  
14 skill, experience, training, or education to testify as an  
15 expert, and that the expert has no financial or personal  
16 interest in the outcome of the case under review.

17 The bill further provides that the certificate of merit  
18 shall be submitted with a written report from the expert  
19 stating there is a reasonable and meritorious case for the  
20 filing of such action and shall include the name and address  
21 of the expert and sufficient facts to support the conclusion  
22 that the expert is qualified, a statement that the expert's  
23 determination is based upon an examination of the plaintiff,  
24 or an independent and thorough review of all of the applicable  
25 medical records and, if reasonably available, a physical  
26 examination of the plaintiff, a description of the appropriate  
27 standard of care that is expected of a reasonably competent  
28 health care provider in the same class to which the health care  
29 provider belongs, acting in the same or similar circumstances,  
30 a statement that in the opinion of the expert, expressed with a  
31 reasonable degree of medical certainty, that the appropriate  
32 standard of care was breached by the health care provider named  
33 in the complaint, the factual basis for the expert's opinion, a  
34 statement of the actions that the health care provider should  
35 have taken or failed to take to have complied with the standard

1 of care, and a statement of the manner in which the breach of  
2 the standard of care was the cause of the injury alleged in the  
3 complaint.

4 The bill further provides that a separate certificate and  
5 expert report shall be filed as to each defendant named in the  
6 complaint.

7 The bill provides that the requirement that a plaintiff  
8 file a certificate of merit with the filing of the complaint  
9 in the action shall not apply to a case in which the period  
10 of limitation will expire or there is a good faith basis to  
11 believe it will expire on a claim stated within 10 days of  
12 the date of filing and the plaintiff asserts in good faith  
13 that because of such time constraints compliance with the  
14 requirements is not possible. In such cases, the plaintiff  
15 shall have 45 days after the filing of the complaint to  
16 supplement the pleadings with the certificate of merit and  
17 expert report.

18 The bill provides that if a certificate of merit is not filed  
19 within the period specified in this bill, the complaint is  
20 subject to dismissal for failure to state a claim upon which  
21 relief can be granted.

22 The bill provides that if the plaintiff files a certificate  
23 of merit or an accompanying report that does not meet  
24 the requirements of the bill, the defendant to whom such  
25 certificate pertains may file a motion to dismiss which shall  
26 specify the grounds or basis by which the certificate does not  
27 meet the requirements of the bill.

28 NONECONOMIC DAMAGES. The bill provides that an award  
29 of noneconomic damages in an action for personal injury or  
30 wrongful death against a physician and surgeon, osteopathic  
31 physician and surgeon, dentist, podiatric physician,  
32 optometrist, pharmacist, chiropractor, or nurse licensed under  
33 Code chapter 147, based on the alleged negligence of the  
34 practitioner in the practice of that profession or occupation,  
35 or against a hospital licensed under Code chapter 135B, based

1 on the alleged negligence of the hospital in patient care, in  
2 which liability is admitted or established, shall not exceed  
3 \$500,000. "Noneconomic damages" is defined as nonpecuniary  
4 losses that would not have occurred but for the injury giving  
5 rise to the cause of action, including pain and suffering,  
6 inconvenience, physical impairment, mental anguish, loss of  
7 capacity for enjoyment of life, and any other nonpecuniary  
8 losses.