

Senate File 58 - Introduced

SENATE FILE 58

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 2013, 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.