

SENATE BILL REPORT

SHB 2492

As Reported by Senate Committee On:
Law & Justice, February 28, 2014

Title: An act relating to liability of health care providers responding to an emergency.

Brief Description: Concerning liability of health care providers responding to an emergency.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rodne, Jinkins, Morrell and Tharinger).

Brief History: Passed House: 2/13/14, 93-5.

Committee Activity: Law & Justice: 2/21/14, 2/28/14 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Kline, Ranking Member; Darneille, Pearson, Pedersen and Roach.

Staff: Tim Ford (786-7423)

Background: Proclamation of Emergency. The Governor is authorized to proclaim an emergency in any area in the state where a public disorder, disaster, energy emergency, or riot exists that affects life, health, property, or the public peace. The proclamation must be in writing and filed with the Office of the Secretary of State, with as much public notice as is possible. The proclamation ends when it is terminated by subsequent order of the Governor, and any proclamation must be terminated when order is restored to the area.

Health Care Providers. A health care provider is any person licensed by this state to provide health care or related services. It includes but is not limited to a physician, dentist, nurse, optometrist, chiropractor, physical therapist, psychologist, pharmacist, midwife, or employee of a health care provider. The definition also includes entities such as a hospital, clinic, health maintenance organization, or nursing home that employs a licensed health care provider.

Actions for Injury Occurring as the Result of Health Care. There are three types of claims for injuries as a result of health care:

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- negligence resulting from the failure of a health care provider to follow the accepted standard of care;
- breach of warranty, that a health care provider promised the patient that the injury suffered would not occur; or
- the injury resulted from health care to which the patient did not consent.

A hospital has an independent duty to exercise care in credentialing and granting practice privileges to providers.

Statutory Immunity for the Provision of Assistance, Medical Care, Health Care, and Providers. Immunity from damages for injuries as a result of medical care exist in statute, including the following:

- uncompensated emergency care at the scene of an emergency;
- uncompensated health care services provided at a community health care setting;
- good faith assistance provided at the scene of a boat collision;
- use of a defibrillator at the scene of an emergency;
- good faith performance of duties by a poison center medical director or information specialist; and
- acts or omissions of paramedics and emergency medical technicians rendering emergency medical services under appropriate supervision.

Generally, the immunity afforded by these statutes does not extend to acts or omissions constituting gross negligence or willful or wanton misconduct.

Summary of Bill: A provider credentialing or granting practice privileges to other providers to deliver health care in response to an emergency is immune from civil liability arising out of the credentialing or granting of practice privileges if:

- the provider so credentialed or granted privileges was responding to an emergency proclaimed by the Governor; and
- the procedures used to credential or grant privileges were substantially consistent with the standards for granting emergency practice privileges adopted by the Joint Commission on the Accreditation of Health Care Organizations.

Acts or omissions constituting gross negligence or willful or wanton misconduct are not immunized.

The following definitions apply for purposes of this immunity statute:

- credentialing means the collection, verification, and assessment of whether a health care provider meets relevant licensing, education, and training requirements;
- emergency means an event or set of circumstances for which the Governor has proclaimed a state of emergency; and
- health care provider means the same as currently provided in law.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill helps hospitals expedite the credentialing process of health care providers in an emergency. In a large emergency, hospitals would need extra providers that may come from out of state. The credentialing process normally takes weeks and that amount of delay during an emergency is unacceptable. The bill would allow the process to take hours. The bill is narrowly drafted to apply to emergency proclamations by the Governor. Emergency medical technicians are already immunized under a separate law and we want the same immunity for health care providers who credential doctors and other health care providers. Post-Katrina emergency preparation has improved and many states have emergency response procedures that include expedited credentialing.

OTHER: The House amendment addressed several concerns. It is important to expedite the credentialing. The pattern jury instruction properly advises the standard of negligence, that a health care provider has a duty to exercise the degree of skill in the same or similar circumstances at the time of the care in question.

Persons Testifying: PRO: Jeff Sconyers, WA State Hospital Assn.; Katie Kolan, WA State Medical Assn.

OTHER: Larry Shannon, WA State Assn. of Justice.