

FINAL BILL REPORT

SHB 2492

C 159 L 14
Synopsis as Enacted

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).

House Committee on Judiciary
Senate Committee on Law & Justice

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.

Actions for Injury Occurring as the Result of Health Care.

Per statute, there are three different types of claims that may be brought against health care providers:

1. Professional negligence, alleging that injury resulted from the failure of the provider to follow the accepted standard of care. Necessary elements of this cause of action include proof:
 - a. of failure to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs acting in the same or similar circumstances; and
 - b. that such failure was the proximate cause of the injury.
2. Breach of warranty, alleging that a provider promised the patient that the injury suffered would not occur.
3. Failure to provide informed consent, alleging that 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Statutory Immunity Provisions.

A variety of immunity provisions exist in statute, including immunity for:

- uncompensated emergency care at the scene of an emergency;
- uncompensated health care services provided at a community health care setting;
- gratuitous, good faith assistance provided at the scene of a boat collision;
- use of a defibrillator at the scene of an emergency;
- 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:

A health care provider credentialing or granting practice privileges to other health care 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;
- 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:

- "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.
- "Health care provider" means:
 - the same as given the term in statutes governing actions for injuries resulting from health care, and includes persons licensed by the state to provide health care such as physicians, nurses, dentists, chiropractors, nurse practitioners, and others;
 - an employee or agent of a member of such a profession acting in the course and scope of his or her employment;
 - an entity, whether or not incorporated, facility, or institution employing, credentialing, or providing practice privileges to one or more such health care professionals, including, but not limited to, a hospital, ambulatory surgical facility, clinic, health maintenance organization, or nursing home, or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment;
 - a pharmacist or pharmacy; or

- in the event any of the above is deceased, his or her estate or personal representative.

Votes on Final Passage:

House	93	5
Senate	49	0

Effective: June 12, 2014