



**IN THE GENERAL ASSEMBLY
STATE OF _____**

An Act

**To Require an Affidavit of Merit in Actions Against Health Care Providers
for Damages for Personal Injury or Death on Account
of Rendering of or Failure to Render Health Care Services.**

1 Be it enacted by the People of the State of _____, represented in the
2 General Assembly:

3 **Section 1. Title.** This Act shall be known and may be cited as the "Frivolous
4 Lawsuit Reduction Act."

5 **Section 2. Purpose.** The Legislature hereby finds and declares that the purpose
6 of this act is to require the filing of an affidavit of merit in any action against a health
7 care provider for damages for personal injury or death on account of the rendering of or
8 failure to render health care services.

9 **Section 3. Definitions.** As used in this section, the term "legally qualified health
10 care provider" shall mean a health care provider who is:

- 11 a) licensed in this state, or some other state, as a doctor of medicine or osteopathy;
12 b) trained and experienced in the same discipline or school of practice as the
13 defendant or specialty expertise in the disease process or procedure performed in the
14 case;

1 c) certified by a board recognized by the American Board of Medical Specialties
2 or the American Osteopathic Association, or by a board with equivalent standards; and

3 d) within five years of the date of the alleged occurrence or omission giving rise
4 to the claim, was in active medical practice in the same discipline or school of practice as
5 the defendant, or devoted a substantial portion of his time teaching at an accredited
6 medical school, or in university-based research in relation to the medical care and type of
7 treatment at issue;

8 **Section 4. Requirements.** a) In any action against a health care provider for
9 damages for personal injury or death on account of the rendering of or failure to render
10 health care services, the plaintiff or the plaintiff's attorney shall file an affidavit with the
11 court stating that he or she has obtained the written opinion of a legally qualified health
12 care provider which states that the defendant health care provider failed to use such care
13 as a reasonably prudent and careful health care provider would have under similar
14 circumstances and that such failure to use such reasonable care directly caused or directly
15 contributed to the cause of the damages claimed in the petition.

16 b) A legally qualified health care provider who provides a written opinion to the
17 plaintiff's lawyer for the purposes of this section and is licensed in another state shall be
18 deemed to have a temporary license to practice medicine in this state for the purpose of
19 providing such an opinion and shall be subject to the authority of the Board of Medicine
20 and the provisions of (insert name of the state medical discipline statute).

21 c) The affidavit shall state the name, address, and qualifications of such health
22 care providers to offer such opinion.

1 d) A separate affidavit shall be filed for each defendant named in the petition.

2 e) Such affidavit shall be filed no later than ninety days after the filing of the
3 petition unless the court, for good cause shown, orders that such time be extended for a
4 period of time not to exceed an additional ninety days.

5 f) If the plaintiff or his attorney fails to file such affidavit the court shall, upon
6 motion of any party, dismiss the action against such moving party without prejudice.

7 g) Within one hundred eighty days after the filing of the petition, any defendant
8 may file a motion to have the court examine in camera the aforesaid opinion and if the
9 court determines that the opinion fails to meet the requirements of this section, then the
10 court shall conduct a hearing within thirty days to determine whether there is probable
11 cause to believe that one or more qualified and competent health care providers will
12 testify that the plaintiff was injured due to medical negligence by a defendant. If the
13 court finds that there is no such probable cause, the court shall dismiss the petition and
14 hold the plaintiff responsible for the payment of the defendant's reasonable attorney fees
15 and costs subject to the following subsections:

16 1) if the plaintiff has no available assets, the plaintiff's attorney shall be
17 held responsible for the defendant's reasonable attorney fees and costs;

18 and

19 2) a plaintiff shall not be held responsible for legal fees and costs that
20 exceed the plaintiff's own legal fees and costs. If the plaintiff has a
21 contingency fee arrangement with the plaintiff's attorney, then the court

1 shall determine a reasonable amount of legal fees and costs accrued by the
2 plaintiff for this section.

3 (h) If the petition is dismissed by the court, the filing of a claim based on the
4 petition shall not be used against the health care provider in professional liability
5 insurance rate setting, personal credit history, or professional licensing and credentialing.

6 **Section 5. Severability.** If any provision of this Act or the application thereof to
7 any person, thing or circumstances is held invalid, such invalidity, shall not affect the
8 provisions or application of this Act that can be given effect without the invalid provision
9 or application, and to this end the provisions of this Act are declared to be severable.

10 **Section 6. Effective Date.** This Act shall become effective upon the date of
11 enactment.

Adopted 11-2007