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BILL ANALYSIS

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Senate Bill 858 (as introduced 9-22-09)  
Sponsor: Senator Roger Kahn, M.D.  
Committee: Judiciary

Date Completed: 8-20-10

### **CONTENT**

**The bill would amend the Revised Judicature Act (RJA) to excuse a licensed health professional or licensed health facility or agency from liability for medical malpractice arising out of certain emergency medical care in a hospital or other facility, except in the case of gross negligence.**

Specifically, a licensed health care professional or licensed health facility or agency would not be liable in an action based on medical malpractice arising out of the provision of emergency medical care in an emergency department or obstetrical unit located in and operated by a hospital, or in a surgical operating room, cardiac catheterization laboratory, or radiology department immediately following the evaluation or treatment of the patient in an emergency department, unless the plaintiff proved by clear and convincing evidence that the health care professional's actions constituted gross negligence.

In an action described above, the court would have to instruct the jury to consider, in addition to all other relevant matters, all of the following:

- Whether the person providing care had the patient's full medical history, including knowledge of preexisting medical conditions, allergies, and medications.
- Whether there was a preexisting health care professional-patient relationship.
- The circumstances that constituted the emergency.
- The circumstances surrounding the delivery of emergency medical care.

"Emergency medical care" would mean bona fide emergency services provided after the onset of a medical or traumatic condition that is manifest by acute symptoms, including pain, of sufficient severity that a failure to provide immediate medical attention could reasonably be expected to result in serious jeopardy to the patient's health, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part. The term would not include medical care provided after the patient is stabilized and capable of receiving medical care as a nonemergency patient or care that is unrelated to the original medical emergency.

"Hospital" would mean that term as defined in Section 20106 of the Public Health Code, i.e., a facility offering inpatient, overnight care, and services of observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. The term does not include a mental health hospital licensed or operated by the Department of Community Health or a hospital operated by the Department of Corrections.

"Licensed health facility or agency" and "licensed health care professional" would mean those terms as defined in Section 5838a of the RJA. Under that section, licensed health facility or agency" means a health facility or agency licensed under Article 17 of the Public Health Code. "Licensed health care professional" means an individual, other than a sanitarian or veterinarian, licensed or registered under Article 15 of the Public Health Code and engaged in the practice of his or her health profession in a sole proprietorship, partnership, professional corporation, or other business entity.

Proposed MCL 600.2912i

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

There are a number of public hospitals in the State that would be affected by this legislation. To the extent that malpractice lawsuits would be reduced, public hospitals could see indeterminate savings on malpractice costs.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.