

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1351

AN ACT

AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-572; TRANSFERRING AND RENUMBERING SECTION 32-1473, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-573; AMENDING SECTION 12-573, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; RELATING TO HEALTH CARE ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5.1, article 1, Arizona Revised Statutes,
3 is amended by adding section 12-572, to read:

4 12-572. Burden of proof for treatment in emergency departments
5 or rendered by on-call providers

6 A. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE
7 ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE, A HEALTH PROFESSIONAL AS
8 DEFINED IN SECTION 32-3201 WHO PROVIDES OR WHO IS CONSULTED TO PROVIDE
9 SERVICES TO A PATIENT OF A LICENSED HOSPITAL IN COMPLIANCE WITH THE EMERGENCY
10 MEDICAL TREATMENT AND LABOR ACT (P.L. 99-272; 100 STAT. 164; 42 UNITED STATES
11 CODE SECTION 1395dd) OR AS A RESULT OF A DISASTER IS NOT LIABLE FOR ANY CIVIL
12 OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

13 B. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE
14 ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE REGARDING THE ACTS OR
15 OMISSIONS OF A LICENSED HOSPITAL OR ITS AGENTS AND EMPLOYEES IN CASES THAT
16 ARE COVERED BY SUBSECTION A OF THIS SECTION, THE HOSPITAL IS NOT LIABLE FOR
17 ANY CIVIL OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

18 C. IF AN ACTION IS BROUGHT ALLEGING FAULT ON THE PART OF A HEALTH
19 PROFESSIONAL AS DEFINED IN SECTION 32-3201 WHO PROVIDES OR WHO IS CONSULTED
20 TO PROVIDE SERVICES TO A PATIENT OF A LICENSED HOSPITAL IN COMPLIANCE WITH
21 THE EMERGENCY MEDICAL TREATMENT AND LABOR ACT (P.L. 99-272; 100 STAT. 164; 42
22 UNITED STATES CODE SECTION 1395dd) OR AS A RESULT OF A DISASTER, THE TRIER OF
23 FACT SHALL CONSIDER ALL OF THE FOLLOWING:

24 1. WHETHER THE PATIENT AND THE HEALTH PROFESSIONAL HAVE A PRIOR
25 RELATIONSHIP.

26 2. THE HEALTH PROFESSIONAL'S KNOWLEDGE OF THE PATIENT'S HISTORY, IF
27 RELEVANT.

28 3. THE EXTENT OF ACCESS TO THE PATIENT'S MEDICAL HISTORY.

29 4. ANY OTHER FACTOR THAT IS RELEVANT TO THE EMERGENCY NATURE OF THE
30 TREATMENT AND THE RESOURCES AVAILABLE TO PROVIDE THAT TREATMENT.

31 Sec. 2. Section 32-1473, Arizona Revised Statutes, is transferred and
32 renumbered for placement in title 12, chapter 5.1, article 1, as section
33 12-573 and, as so renumbered, is amended to read:

34 12-573. Limited liability for treatment related to delivery of
35 infants; exception; definition

36 A. Unless the elements of proof contained in section 12-563 are
37 established by clear and convincing evidence, a physician licensed to
38 practice pursuant to ~~this chapter or~~ TITLE 32, chapter 13 OR 17 ~~of this title~~
39 is not liable to the pregnant female patient, the child or children
40 delivered, or their families for medical malpractice related to labor or
41 delivery rendered on an emergency basis if the patient was not previously
42 treated for the pregnancy by the physician, by a physician in a group
43 practice with the physician or by a physician, physician assistant or

1 CERTIFIED nurse midwife with whom the physician has an agreement to attend
2 the labor and delivery of the patient.

3 B. Unless the elements of proof contained in section 12-563 are
4 established regarding the acts or omissions of a licensed health care
5 facility or its employees in cases THAT ARE covered by ~~the provisions of~~
6 subsection A of this section by clear and convincing evidence, the health
7 care facility is not liable to the female patient, the child or children
8 delivered or their families for medical malpractice related to labor or
9 delivery.

10 C. This section does not apply to treatment THAT IS rendered in
11 connection with labor and delivery if the patient has been seen regularly by
12 or under the direction of a licensed health care provider or a licensed
13 physician from whom the patient's medical information is reasonably
14 IMMEDIATELY available to the physicians attending the patient during labor
15 and delivery.

16 D. For the ~~purpose~~ PURPOSES of this section, "emergency" means when
17 labor has begun or a condition exists requiring the delivery of the child or
18 children.