

HOUSE BILL 57

Introduced by Marks, et al.

1/02	Introduced
1/03	Referred to Judiciary
1/13	Hearing
2/18	Committee Report--Bill Passed as Amended
2/21	2nd Reading Passed
2/22	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Judiciary
3/13	Hearing
3/15	Committee Report--Bill Concurred as Amended
3/16	Referred to Judiciary
3/20	Committee Report--Bill Concurred as Amended
3/21	2nd Reading Concurred
3/23	3rd Reading Concurred

Returned to House with Amendments

3/30	2nd Reading Amendments Not Concurred
3/31	Free Conference Committee Appointed
4/11	Free Conference Committee Report No. 1
4/12	2nd Reading Free Conference Committee Report Rejected

Senate

4/04	Free Conference Committee Appointed
4/11	Free Conference Committee Report No. 1
4/12	2nd Reading Free Conference Committee Report Rejected

House

4/15	Free Conference Committee Appointed
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Senate

4/17	Free Conference Committee Appointed Died in Process
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1 HB BILL NO. 57  
2 INTRODUCED BY Marks

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM  
5 LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY  
6 SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR  
7 LIABILITY FOR DAMAGES CAUSED BY GROSS NEGLIGENCE OR BY  
8 WILLFUL OR WANTON ACTS; AND PROVIDING AN APPLICABILITY  
9 DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1. Limits on liability for care rendered in**  
13 **emergency situations in hospital or physician's office.**

14 (1) (a) Except as provided in subsection (1)(b), a health  
15 care provider who in good faith renders care or assistance  
16 in an emergency situation occurring in the provider's office  
17 or in a hospital is not liable for any civil damages for  
18 acts or omissions committed in rendering the emergency care  
19 or assistance.

20 (b) A health care provider is liable for damages  
21 caused by gross negligence or by willful or wanton acts or  
22 omissions when rendering such emergency care or assistance.

23 (2) As used in this section, the following definitions  
24 apply:

25 (a) "Emergency situation occurring in the provider's

1 office" means a situation that occurs in an office, other  
2 than a hospital, used by a health care provider for the  
3 examination or treatment of patients and that requires  
4 immediate services for alleviation of severe pain or  
5 immediate diagnosis and treatment of medical conditions  
6 that, if not immediately diagnosed and treated, would lead  
7 to serious disability or death.

8 (b) "Emergency situation occurring in a hospital"  
9 means a situation that occurs in a hospital, whether or not  
10 it occurs in an emergency room, and that requires immediate  
11 services for alleviation of severe pain or immediate  
12 diagnosis and treatment of medical conditions that, if not  
13 immediately diagnosed and treated, would lead to serious  
14 disability or death.

15 (c) "Health care provider" means:

16 (i) a physician, dentist, osteopath, chiropractor,  
17 optometrist, chiropodist, registered professional nurse,  
18 licensed practical nurse, or physician's assistant, duly  
19 licensed under the provisions of Title 37; or

20 (ii) a hospital.

21 (d) "Hospital" means a licensed hospital, infirmary,  
22 or health care facility as defined in 50-5-101.

23 (3) Nothing in this section may be construed to  
24 authorize practice by a health care provider beyond the  
25 scope and limitations of his license.

1       **Section 2. Authority of licensing agencies not**  
2       **limited.** The provisions of [section 1] do not limit the  
3       authority of a governmental licensing or regulatory agency  
4       to regulate or discipline health care providers and  
5       hospitals.

6       **Section 3. Extension of authority.** Any existing  
7       authority to make rules on the subject of the provisions of  
8       [this act] is extended to the provisions of [this act].

9       **Section 4. Codification instruction.** [Sections 1 and  
10      2] are intended to be codified as an integral part of Title  
11      27, chapter 1, part 7, and the provisions of Title 27,  
12      chapter 1, part 7, apply to [sections 1 and 2].

13      **Section 5. Saving clause.** [This act] does not affect  
14      rights and duties that matured, penalties that were  
15      incurred, or proceedings that were begun before [the  
16      effective date of this act].

17      **Section 6. Severability.** If a part of [this act] is  
18      invalid, all valid parts that are severable from the invalid  
19      part remain in effect. If a part of [this act] is invalid  
20      in one or more of its applications, the part remains in  
21      effect in all valid applications that are severable from the  
22      invalid applications.

23      **Section 7. Applicability.** [This act] applies to causes  
24      of action arising on or after October 1, 1989.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 57

INTRODUCED BY MARKS, BOHARSKI, CODY, CONNELLY,

J. BROWN, THOMAS, KASTEN, SWYSGOOD, GRADY,

MENAHAH, GILBERT, PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR LIABILITY FOR DAMAGES CAUSED BY GROSS--NEGLECT--OR--BY WILLFUL--OR--WANTON--ACTS FAILURE TO EXERCISE THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED IN A LIKE CASE UNDER A SIMILAR EMERGENCY SITUATION IN THE SAME OR A SIMILAR LOCALITY; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Limits on liability for care rendered in emergency situations in hospital or physician's office.** (1) (a) Except as provided in subsection (1)(b), a health care provider who in good faith renders care or assistance in an emergency situation occurring in the provider's office or in a hospital is not liable for any civil damages for acts or omissions committed in rendering the emergency care or assistance.

(b) A health care provider is liable for damages caused by gross-negligence-or-by-willful-or-wanton--acts-or

~~omissions--when--rendering-such-emergency-care-or-assistance~~  
~~AN ACT OR OMISSION THAT FAILS TO MEET THE DEGREE OF CARE AND~~  
~~SKILL ORDINARILY EXERCISED BY REPUTABLE MEMBERS OF THE~~  
~~HEALTH CARE PROVIDER'S PROFESSION, OCCUPATION, OR~~  
~~ASSOCIATION IN A LIKE CASE UNDER A SIMILAR EMERGENCY~~  
~~SITUATION IN THE SAME OR A SIMILAR LOCALITY.~~

(2) As used in this section, the following definitions apply:

(a) "Emergency situation occurring in the provider's office" means a situation that occurs in an office, other than a hospital, used by a health care provider for the examination or treatment of patients and that requires immediate services for alleviation of severe pain or immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, would lead to serious disability or death; AND:

(I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;  
OR

(II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

(b) "Emergency situation occurring in a hospital" means a situation that occurs in a hospital; ~~whether-or-not~~

1 ~~it--occurs-in-an-emergency-room,~~ and that requires immediate  
2 services for alleviation of severe pain or immediate  
3 diagnosis and treatment of medical conditions that, if not  
4 immediately diagnosed and treated, would lead to serious  
5 disability or death. AND:

6 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY  
7 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER  
8 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;

9 OR

10 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND  
11 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE  
12 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

13 (c) "Health care provider" means:

14 (i) a physician, dentist, osteopath, chiropractor,  
15 optometrist, chiropodist, registered professional nurse,  
16 licensed practical nurse, or physician's assistant, duly  
17 licensed under the provisions of Title 37; or

18 (ii) a hospital.

19 (d) "Hospital" means a licensed hospital, infirmary,  
20 or health care facility as defined in 50-5-101.

21 (3) Nothing in this section may be construed to  
22 authorize practice by a health care provider beyond the  
23 scope and limitations of his license.

24 NEW SECTION. Section 2. Authority of licensing  
25 agencies not limited. The provisions of [section 1] do not

1 limit the authority of a governmental licensing or  
2 regulatory agency to regulate or discipline health care  
3 providers and hospitals.

4 NEW SECTION. Section 3. Extension of authority. Any  
5 existing authority to make rules on the subject of the  
6 provisions of [this act] is extended to the provisions of  
7 [this act].

8 NEW SECTION. Section 4. Codification instruction.  
9 [Sections 1 and 2] are intended to be codified as an  
10 integral part of Title 27, chapter 1, part 7, and the  
11 provisions of Title 27, chapter 1, part 7, apply to  
12 [sections 1 and 2].

13 NEW SECTION. Section 5. Saving clause. [This act]  
14 does not affect rights and duties that matured, penalties  
15 that were incurred, or proceedings that were begun before  
16 [the effective date of this act].

17 NEW SECTION. Section 6. Severability. If a part of  
18 [this act] is invalid, all valid parts that are severable  
19 from the invalid part remain in effect. If a part of [this  
20 act] is invalid in one or more of its applications, the part  
21 remains in effect in all valid applications that are  
22 severable from the invalid applications.

23 NEW SECTION. Section 7. Applicability. [This act]  
24 applies to causes of action arising on or after October 1,  
25 1989.

-End-

## 1 HOUSE BILL NO. 57

2 INTRODUCED BY MARKS, BOHARSKI, CODY, CONNELLY,

3 J. BROWN, THOMAS, KASTEN, SWYSGOOD, GRADY,

4 MENAHAN, GILBERT, PETERSON

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM  
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8 SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR  
9 LIABILITY FOR DAMAGES CAUSED BY GROSS--NEG~~LI~~GEN~~CE~~--OR--BY  
10 ~~WILLFUL--OR--WANTON--ACTS~~ FAILURE TO EXERCISE THE DEGREE OF  
11 CARE AND SKILL ORDINARILY EXERCISED IN A LIKE CASE UNDER A  
12 SIMILAR EMERGENCY SITUATION IN THE SAME OR A SIMILAR  
13 LOCALITY; AND PROVIDING AN APPLICABILITY DATE."  
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. **Section 1.** Limits on liability for care  
17 rendered in emergency situations in hospital or physician's  
18 office. (1) (a) Except as provided in subsection (1)(b), a  
19 health care provider who in good faith renders care or  
20 assistance in an emergency situation occurring in the  
21 provider's office or in a hospital is not liable for any  
22 civil damages for acts or omissions committed in rendering  
23 the emergency care or assistance.

24 (b) A health care provider is liable for damages  
25 caused by gross-negligence-or-by-willful-or-wanton--acts--or

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3 SKILL ORDINARILY EXERCISED BY REPUTABLE MEMBERS OF THE  
4 HEALTH CARE PROVIDER'S PROFESSION, OCCUPATION, OR  
5 ASSOCIATION IN A LIKE CASE UNDER A SIMILAR EMERGENCY  
6 SITUATION IN THE SAME OR A SIMILAR LOCALITY.

7 (2) As used in this section, the following definitions  
8 apply:

9 (a) "Emergency situation occurring in the provider's  
10 office" means a situation that occurs in an office, other  
11 than a hospital, used by a health care provider for the  
12 examination or treatment of patients and that requires  
13 immediate services for alleviation of severe pain or  
14 immediate diagnosis and treatment of medical conditions  
15 that, if not immediately diagnosed and treated, would lead  
16 to serious disability or death. AND:

17 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY  
18 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER  
19 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;  
20 OR  
21 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND  
22 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE  
23 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

24 (b) "Emergency situation occurring in a hospital"  
25 means a situation that occurs in a hospital, ~~whether-or--not~~

1 ~~it--occurs-in-an-emergency room,~~ and that requires immediate  
2 services for alleviation of severe pain or immediate  
3 diagnosis and treatment of medical conditions that, if not  
4 immediately diagnosed and treated, would lead to serious  
5 disability or death- AND:

6 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY  
7 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER  
8 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;  
9 OR

10 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND  
11 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE  
12 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

13 (c) "Health care provider" means:

14 (i) a physician, dentist, osteopath, chiropractor,  
15 optometrist, chiropodist, registered professional nurse,  
16 licensed practical nurse, or physician's assistant, duly  
17 licensed under the provisions of Title 37; or

18 (ii) a hospital.

19 (d) "Hospital" means a licensed hospital, infirmary,  
20 or health care facility as defined in 50-5-101.

21 (3) Nothing in this section may be construed to  
22 authorize practice by a health care provider beyond the  
23 scope and limitations of his license.

24 NEW SECTION. Section 2. Authority of licensing  
25 agencies not limited. The provisions of [section 1] do not

1 limit the authority of a governmental licensing or  
2 regulatory agency to regulate or discipline health care  
3 providers and hospitals.

4 NEW SECTION. Section 3. Extension of authority. Any  
5 existing authority to make rules on the subject of the  
6 provisions of [this act] is extended to the provisions of  
7 [this act].

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9 [Sections 1 and 2] are intended to be codified as an  
10 integral part of Title 27, chapter 1, part 7, and the  
11 provisions of Title 27, chapter 1, part 7, apply to  
12 [sections 1 and 2].

13 NEW SECTION. Section 5. Saving clause. [This act]  
14 does not affect rights and duties that matured, penalties  
15 that were incurred, or proceedings that were begun before  
16 [the effective date of this act].

17 NEW SECTION. Section 6. Severability. If a part of  
18 [this act] is invalid, all valid parts that are severable  
19 from the invalid part remain in effect. If a part of [this  
20 act] is invalid in one or more of its applications, the part  
21 remains in effect in all valid applications that are  
22 severable from the invalid applications.

23 NEW SECTION. Section 7. Applicability. [This act]  
24 applies to causes of action arising on or after October 1,  
25 1989.

-End-

SENATE STANDING COMMITTEE REPORT

March 18, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in:

Sponsor: Marks (Jenkins)

1. Title, lines 10 through 13.

Following: "~~ACTS~~" on line 10

Strike: remainder of line 10 through "LOCALITY" on line 13

Insert: "GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS"

2. Page 2, lines 2 through 6.

Following: line 1

Strike: "AN" on line 2 through "LOCALITY" on line 6

Insert: "gross negligence or by willful or wanton acts or omissions when rendering such emergency care or assistance"

3. Page 2, line 11.

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

4. Page 2, line 25.

Following: "hospital"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

5. Amend Senate Judiciary Committee amendment dated 3/14/89, as follows:

Amendment No. 5

In fourth line

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

AND AS AMENDED BE CONCURRED IN

Signed 

Bruce D. Crippen, Chairman

SENATE  
HB 57

SENATE STANDING COMMITTEE REPORT

page 1 of 2  
March 14, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in:

Sponsor: Marks (Jenkins)

1. Title, line 13.

Following: "LOCALITY."

Insert: "PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY OBSTETRICAL SERVICES IN CERTAIN SITUATIONS;"

2. Page 1, line 14.

Insert: "STATEMENT OF INTENT

This legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are frequently required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians and other health care providers who, despite these hardships, respond to calls to provide emergency medical care."

3. Page 1, line 17.

Following: "emergency"

Insert: "nonobstetrical"

4. Page 1, line 18.

Following: "in"

Insert: "[section 2] and"

Following: "(1)(b)"

Insert: "of this section"

5. Page 3.

Following: line 23

Insert: "NEW SECTION. Section 2. Limits on liability for care rendered in emergency obstetrical situations in hospital or physician's office. (1) Notwithstanding the provisions of [section 1(1)(a)], a health care provider who in good faith renders emergency obstetrical services to a person is not liable for any civil damages as a result of any negligent act or omission by the health care provider in rendering the emergency obstetrical services. The immunity granted by this section does not apply to acts or omissions constituting gross negligence or to willful or wanton acts or omissions.

(2) The protection of subsection (1)(a) does not apply to the health care provider in any of the following cases:

SENATE COMMITTEE ON JUDICIARY, HB 57  
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(a) The health care provider had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on its relevance to the treatment of the obstetrical condition that required emergency services.

(b) Before rendering emergency obstetrical services, the health care provider had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer on the patient's behalf to provide obstetrical care for the patient.

(3) As used in this section, the following definitions apply:

(a) "Emergency obstetrical care" means a situation occurring either in a physician's office or a hospital that requires immediate services for the alleviation of severe pain or immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, would lead to severe disability or death of either the patient or the unborn child.

(b) "Health care provider" means:

(1) a physician, registered professional nurse, licensed practical nurse, or physician's assistant, duly licensed under the provisions of Title 37; or

(11) a hospital.

(c) "Hospital" means a licensed hospital, infirmary, or health care facility, as defined in 50-5-101."

Renumber: subsequent sections

6. Page 3, line 25.

Strike: "section"

Insert: "sections"

Following: "1"

Insert: "and 2"

7. Page 4, line 9.

Following: "1"

Strike: "and 2"

Insert: "through 3"

8. Page 4, line 12.

Following: "1"

Strike: "and 2"

Insert: "through 3"

AND AS AMENDED BE CONCURRED IN

Signed:

Bruce D. Crippen, Chairman

Statement of intent adopted.

SENATE

continued

scrihb057.314

scrinb057.314

HB 57

## HOUSE BILL NO. 57

INTRODUCED BY MARKS, BOHARSKI, CODY, CONNELLY,  
J. BROWN, THOMAS, KASTEN, SWYSGOOD, GRADY,  
MENAHAH, GILBERT, PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM  
LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY  
SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR  
LIABILITY FOR DAMAGES CAUSED BY GROSS--NEGLIGENCE--OR--BY  
WILLFUL--OR--WANTON--ACTS ~~FAILURE-TO-EXERCISE-THE-DEGREE-OF~~  
~~CARE-AND-SKILL-ORDINARILY-EXERCISED-IN-A-LIKE-CASE--UNDER--A~~  
~~SIMILAR--EMERGENCY--SITUATION--IN--THE--SAME--OR--A--SIMILAR~~  
~~LOCALITY~~ GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS;  
PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY  
OBSTETRICAL SERVICES IN CERTAIN SITUATIONS; AND PROVIDING AN  
APPLICABILITY DATE."

## STATEMENT OF INTENT

This legislature finds and declares that there is a  
crucial need for the people of this state to receive  
knowledgeable and experienced emergency medical care. The  
legislature further finds that physicians who serve on an  
"on-call" basis to hospital emergency rooms are frequently  
required to provide obstetrical care to persons with whom  
they have no preexisting physician-patient relationship. It

is the public policy of this state to provide incentive and  
protection for physicians and other health care providers  
who, despite these hardships, respond to calls to provide  
emergency medical care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Limits on liability for care  
rendered in emergency NONOBSTETRICAL situations in hospital  
or physician's office. (1) (a) Except as provided in  
[SECTION 2] AND subsection (1)(b) OF THIS SECTION, a health  
care provider who in good faith renders care or assistance  
in an emergency situation occurring in the provider's office  
or in a hospital is not liable for any civil damages for  
acts or omissions committed in rendering the emergency care  
or assistance.

(b) A health care provider is liable for damages  
caused by ~~gross-negligence-or-by-willful-or-wanton--acts--or~~  
~~omissions--when--rendering-such-emergency-care-or-assistance~~  
~~AN-ACT-OR-OMISSION-THAT-FAILS-TO-MEET-THE-DEGREE-OF-CARE-AND~~  
~~SKILL-ORDINARILY--EXERCISED--BY--REPUTABLE--MEMBERS--OF--THE~~  
~~HEALTH---CARE---PROVIDER'S---PROFESSION,---OCCUPATION,---OR~~  
~~ASSOCIATION--IN--A--LIKE--CASE--UNDER--A--SIMILAR--EMERGENCY~~  
~~SITUATION-IN-THE-SAME-OR-A-SIMILAR-LOCALITY~~ GROSS NEGLIGENCE  
OR BY WILLFUL OR WANTON ACTS OR OMISSIONS WHEN RENDERING  
SUCH EMERGENCY CARE OR ASSISTANCE.

1 (2) As used in this section, the following definitions  
2 apply:

3 (a) "Emergency situation occurring in the provider's  
4 office" means a situation that occurs in an office, other  
5 than a hospital, used by a health care provider, WHEN THE  
6 HEALTH CARE PROVIDER HAS NOT RECEIVED COMPENSATION IN ANY  
7 FORM AND HAS NO REASONABLE EXPECTATION OF PAYMENT FOR THE  
8 EMERGENCY SERVICES PROVIDED TO THE PATIENT, for the  
9 examination or treatment of patients and that requires  
10 immediate services for alleviation of severe pain or  
11 immediate diagnosis and treatment of medical conditions  
12 that, if not immediately diagnosed and treated, would lead  
13 to serious disability or death. AND:

14 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY  
15 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER  
16 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;  
17 OR

18 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND  
19 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE  
20 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

21 (b) "Emergency situation occurring in a hospital"  
22 means a situation that occurs in a hospital, WHEN THE HEALTH  
23 CARE PROVIDER HAS NOT RECEIVED COMPENSATION IN ANY FORM AND  
24 HAS NO REASONABLE EXPECTATION OF PAYMENT FOR THE EMERGENCY  
25 SERVICES PROVIDED TO THE PATIENT, 7-whether-or-not-it--occurs

1 ~~in--an--emergency-room,~~ and that requires immediate services  
2 for alleviation of severe pain or immediate diagnosis and  
3 treatment of medical conditions that, if not immediately  
4 diagnosed and treated, would lead to serious disability or  
5 death. AND:

6 (I) IS A CONDITION THE PROVIDER WOULD NOT ORDINARILY  
7 ATTEMPT TO TREAT BUT WOULD REFER THE PATIENT TO ANOTHER  
8 PROVIDER IF THE PATIENT DID NOT REQUIRE IMMEDIATE SERVICES;  
9 OR

10 (II) IS A CONDITION OF WHICH THE PATIENT IS AWARE AND  
11 THE PATIENT HAD THE TIME TO CONSULT A PROVIDER BEFORE  
12 IMMEDIATE SERVICES WERE REQUIRED BUT DID NOT DO SO.

13 (c) "Health care provider" means:

14 (i) a physician, dentist, osteopath, chiropractor,  
15 optometrist, chiropodist, registered professional nurse,  
16 licensed practical nurse, or physician's assistant, duly  
17 licensed under the provisions of Title 37; or

18 (ii) a hospital.

19 (d) "Hospital" means a licensed hospital, infirmary,  
20 or health care facility as defined in 50-5-101.

21 (3) Nothing in this section may be construed to  
22 authorize practice by a health care provider beyond the  
23 scope and limitations of his license.

24 NEW SECTION. SECTION 2. LIMITS ON LIABILITY FOR CARE  
25 RENDERED IN EMERGENCY OBSTETRICAL SITUATIONS IN HOSPITAL 3

1 PHYSICIAN'S OFFICE. (1) NOTWITHSTANDING THE PROVISIONS OF  
 2 [SECTION 1(1)(A)], A HEALTH CARE PROVIDER, WHEN THE HEALTH  
 3 CARE PROVIDER HAS NOT RECEIVED COMPENSATION IN ANY FORM AND  
 4 HAS NO REASONABLE EXPECTATION OF PAYMENT FOR THE EMERGENCY  
 5 SERVICES PROVIDED TO THE PATIENT, WHO IN GOOD FAITH RENDERS  
 6 EMERGENCY OBSTETRICAL SERVICES TO A PERSON IS NOT LIABLE FOR  
 7 ANY CIVIL DAMAGES AS A RESULT OF ANY NEGLIGENT ACT OR  
 8 OMISSION BY THE HEALTH CARE PROVIDER IN RENDERING THE  
 9 EMERGENCY OBSTETRICAL SERVICES. THE IMMUNITY GRANTED BY THIS  
 10 SECTION DOES NOT APPLY TO ACTS OR OMISSIONS CONSTITUTING  
 11 GROSS NEGLIGENCE OR TO WILLFUL OR WANTON ACTS OR OMISSIONS.

12 (2) THE PROTECTION OF SUBSECTION (1)(A) DOES NOT APPLY  
 13 TO THE HEALTH CARE PROVIDER IN ANY OF THE FOLLOWING CASES:

14 (A) THE HEALTH CARE PROVIDER HAD PROVIDED PRIOR  
 15 MEDICAL DIAGNOSIS OR TREATMENT TO THE SAME PATIENT FOR A  
 16 CONDITION HAVING A BEARING ON OR RELEVANCE TO THE TREATMENT  
 17 OF THE OBSTETRICAL CONDITION THAT REQUIRED EMERGENCY  
 18 SERVICES.

19 (B) BEFORE RENDERING EMERGENCY OBSTETRICAL SERVICES,  
 20 THE HEALTH CARE PROVIDER HAD A CONTRACTUAL OBLIGATION OR  
 21 AGREEMENT WITH THE PATIENT, ANOTHER HEALTH CARE PROVIDER, OR  
 22 A THIRD-PARTY PAYER ON THE PATIENT'S BEHALF TO PROVIDE  
 23 OBSTETRICAL CARE FOR THE PATIENT.

24 (3) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS  
 25 APPLY:

1 (A) "EMERGENCY OBSTETRICAL CARE" MEANS A SITUATION  
 2 OCCURRING EITHER IN A PHYSICIAN'S OFFICE OR A HOSPITAL THAT  
 3 REQUIRES IMMEDIATE SERVICES FOR THE ALLEVIATION OF SEVERE  
 4 PAIN OR IMMEDIATE DIAGNOSIS AND TREATMENT OF MEDICAL  
 5 CONDITIONS THAT, IF NOT IMMEDIATELY DIAGNOSED AND TREATED,  
 6 WOULD LEAD TO SEVERE DISABILITY OR DEATH OF EITHER THE  
 7 PATIENT OR THE UNBORN CHILD.

8 (B) "HEALTH CARE PROVIDER" MEANS:

9 (I) A PHYSICIAN, REGISTERED PROFESSIONAL NURSE,  
 10 LICENSED PRACTICAL NURSE, OR PHYSICIAN'S ASSISTANT, DULY  
 11 LICENSED UNDER THE PROVISIONS OF TITLE 37; OR

12 (II) A HOSPITAL.

13 (C) "HOSPITAL" MEANS A LICENSED HOSPITAL, INFIRMARY,  
 14 OR HEALTH CARE FACILITY, AS DEFINED IN 50-5-101.

15 NEW SECTION. Section 3. Authority of licensing  
 16 agencies not limited. The provisions of [section SECTIONS 1  
 17 AND 2] do not limit the authority of a governmental  
 18 licensing or regulatory agency to regulate or discipline  
 19 health care providers and hospitals.

20 NEW SECTION. Section 4. Extension of authority. Any  
 21 existing authority to make rules on the subject of the  
 22 provisions of [this act] is extended to the provisions of  
 23 [this act].

24 NEW SECTION. Section 5. Codification instruction.  
 25 [Sections 1 and 2 THROUGH 3] are intended to be codified as

1 an integral part of Title 27, chapter 1, part 7, and the  
2 provisions of Title 27, chapter 1, part 7, apply to  
3 [sections 1 and-2 THROUGH 3].

4 NEW SECTION. Section 6. Saving clause. [This act]  
5 does not affect rights and duties that matured, penalties  
6 that were incurred, or proceedings that were begun before  
7 [the effective date of this act].

8 NEW SECTION. Section 7. Severability. If a part of  
9 [this act] is invalid, all valid parts that are severable  
10 from the invalid part remain in effect. If a part of [this  
11 act] is invalid in one or more of its applications, the part  
12 remains in effect in all valid applications that are  
13 severable from the invalid applications.

14 NEW SECTION. Section 8. Applicability. [This act]  
15 applies to causes of action arising on or after October 1,  
16 1989.

-End-

Free Conference Committee  
on HOUSE BILL 57  
Report No. 1, April 7, 1989

April 7, 1989  
Page 2

Mr. Speaker:

We, the Free Conference Committee on HOUSE BILL 57 met and considered: House Bill 57 (reference copy -- salmon) in its entirety.

We recommend that HOUSE BILL 57 (reference copy -- salmon) be amended as follows:

1. Title, line 8.  
Following: "OFFICES,"  
Insert: "EXCEPT CERTAIN HOSPITAL EMERGENCY ROOMS AND"
2. Title, lines 14 and 15.  
Following: line 13  
Strike: line 14 through "SITUATIONS;" on line 15
3. Page 1, line 24.  
Strike: "obstetrical"  
Insert: "emergency"
4. Page 2, line 8.  
Strike: "NONOBSTETRICAL"
5. Page 2, line 9.  
Following: "office"  
Insert: "-- exceptions"  
Following: "(1)"  
Strike: "(a)"
6. Page 2, line 10.  
Strike: "[SECTION 2] AND"  
Following: "subsection"  
Strike: "(1) (b) OF THIS SECTION"  
Insert: "(2)"
7. Page 2, line 13.  
Following: "is"  
Strike: "not"
8. Page 2, line 14.  
Strike: "rendering the"  
Insert: "providing such"
9. Page 2, line 15.  
Following: "assistance"

Insert: "only to the extent that those damages are caused by gross negligence or by willful acts or omissions"

10. Page 2.  
Following: line 15  
Insert: "(2) (a) The provisions of subsection (1) do not apply to a health care provider in a situation in which emergency care is provided in a hospital emergency room by a physician who provides emergency room services in the hospital on a full-time basis."  
Renumber: subsequent sections
11. Page 2, line 16.  
Following: "(b)"  
Strike: "A"  
Insert: "When emergency care is provided in a hospital emergency room by a physician who provides emergency room services in the hospital on a full-time basis, a"
12. Page 2, lines 23 through 25.  
Following: "LOCALITY" on line 23  
Strike: the remainder of line 23 through "ASSISTANCE" on line 25  
Insert: "an act or omission that fails to meet the degree of care and skill ordinarily exercised by reputable members of the health care provider's profession, occupation, or association in a like case under a similar emergency situation in the same or a similar locality"
13. Page 3, line 1.  
Strike: "this section"  
Insert: "subsection (1)"
14. Page 3, lines 3 and 4.  
Following: "situation" on line 3  
Strike: the remainder of line 3 through first "office" on line 4
15. Page 3, lines 4 through 9.  
Following: "situation" on line 4  
Strike: the remainder of line 4 through "and" on line 9
16. Page 3, line 15.  
Strike: "BUT"  
Insert: "and"
17. Page 3, line 18.  
Strike: "OF WHICH"  
Insert: "that"  
Following: "PATIENT"  
Strike: "IS AWARE"

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Page 3

Insert: "knew or should have known required treatment"

18. Page 3, line 21 through page 4, line 12.  
Strike: subsection (b) in its entirety  
Renumber: subsequent subsections

19. Page 4, line 24 through page 6, line 14.  
Strike: section 2 in its entirety  
Renumber: subsequent sections

20. Page 6, line 16.  
Following: "section"  
Strike: "SECTIONS"  
Insert: "section"

21. Page 6, line 17.  
Strike: "AND 2"

22. Page 6, line 25.  
Strike: "THROUGH 3"  
Insert: "and 2"

23. Page 7, line 3.  
Strike: "THROUGH 3"  
Insert: "and 2"

And that this report of the Free Conference Committee be adopted.

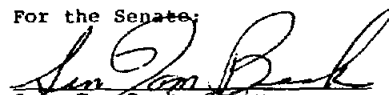
For the House:

  
Rep. Jessica Stickney,  
Chairman

  
Rep. Kelly Addy

  
Rep. Bob Marks

For the Senate:

  
Sen. Tom Beck, Chairman

  
Sen. John Harp

  
Sen. Bill Norman