

Session 116 - (2005-2006)

S 0577 General Bill, By Campsen, McConnell, Gregory, Martin, Verdin, Cleary, Peeler, Richardson, Ryberg, O'Dell and Bryant

Summary: Medical Claims Arbitration

A BILL TO AMEND TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 32, SO AS TO PROVIDE THAT IN PERSONAL INJURY ACTIONS AGAINST A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION ARISING OUT OF EMERGENCY CARE OR OBSTETRICAL CARE, THE CLAIMANT MAY NOT RECOVER FOR TREATMENT OR LACK OF TREATMENT AGAINST THE PROVIDER OR THE INSTITUTION UNLESS THE CLAIMANT PROVES NEGLIGENCE BY CLEAR AND CONVINCING EVIDENCE; BY AMENDING TITLE 15 OF THE 1976 CODE, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 46, SO AS TO PERMIT A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION TO ENTER INTO WRITTEN AGREEMENTS WITH PATIENTS TO SUBMIT TO MEDIATION IF A DISPUTE ARISES AND A PATIENT BRINGS A PERSONAL INJURY ACTION FOR ALLEGED MEDICAL MALPRACTICE, UNLESS PROHIBITED BY FEDERAL LAW, TO REQUIRE A PROVIDER OR INSTITUTION WHO OPTS TO PARTICIPATE IN MEDIATION TO PUBLISH NOTICE OF ITS DECISION ON SIGNS AT THE PROVIDER'S OFFICE OR AT THE INSTITUTION, AND TO PUBLISH NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE PROVIDER OFFICE OR INSTITUTION IS LOCATED FOR A PERIOD OF FIVE CONSECUTIVE DAYS, TO PLACE NOTIFICATION OF THE PROVIDER'S OR INSTITUTION'S DECISION TO PARTICIPATE IN MEDIATION IN WRITING ON THE FIRST PAGE OF ANY CONTRACT WITH A PATIENT AND ON THE SIGNATURE PAGE IMMEDIATELY BEFORE THE PATIENT'S SIGNATURE LINE, TO PROVIDE THAT A MINOR MAY NOT DISAFFIRM A CONTRACT SIGNED BY HIS PARENTS, LEGAL GUARDIAN, OR OTHER REPRESENTATIVE, TO PROVIDE THAT MEDIATION CONTRACTS ARE NOT CONTRACTS OF ADHESION, NOR UNCONSCIONABLE OR OTHERWISE IMPROPER, TO PROVIDE THAT A HEALTHCARE PROVIDER IS UNDER NO OBLIGATION TO RENDER MEDICAL SERVICES TO ANYONE WHO REFUSES TO SIGN A MEDIATION CONTRACT, UNLESS PROHIBITED BY FEDERAL LAW, TO PROVIDE THAT IN EMERGENCIES WHERE A PATIENT IS UNABLE TO EXECUTE AN AGREEMENT, THE PATIENT'S CONSENT IS IMPLIED, EXCEPT AS PROHIBITED BY FEDERAL LAW, TO PROVIDE THAT MEDIATION CONTRACTS ARE ENFORCEABLE AGAINST ALL INSTITUTIONS, THE PATIENT, AND ALL PROVIDERS WHO ARE CONSULTED DURING THE TREATMENT OF THE PATIENT, TO REQUIRE THAT ALL CONSULTING PROVIDERS BE PROVIDED WRITTEN NOTICE OR NOTICE BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE OFFICE OR FACILITY IS LOCATED, TO PROVIDE THAT ALL MEDIATION CONDUCTED PURSUANT TO THIS CHAPTER SHALL BE IN ACCORDANCE WITH THE ALTERNATIVE DISPUTE RESOLUTION RULES, AND TO PROVIDE THAT A PROVIDER OR INSTITUTION MAY CHOOSE TO PARTICIPATE IN EITHER THE SOUTH CAROLINA MEDICAL CLAIMS MEDIATION ACT, THE SOUTH CAROLINA MEDICAL ARBITRATION ACT, OR BOTH, OR NEITHER; BY AMENDING TITLE 15 OF THE 1976 CODE, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 47, TO ENACT THE "SOUTH CAROLINA MEDICAL CLAIMS ARBITRATION ACT", SO AS TO PERMIT A HEALTH CARE PROVIDER OR HEALTH CARE INSTITUTION TO ENTER INTO WRITTEN AGREEMENTS WITH PATIENTS TO SUBMIT TO BINDING ARBITRATION IF A DISPUTE ARISES AND A PATIENT BRINGS A PERSONAL INJURY ACTION FOR ALLEGED MEDICAL MALPRACTICE, UNLESS PROHIBITED BY FEDERAL LAW, TO REQUIRE A PROVIDER OR INSTITUTION WHO OPTS TO PARTICIPATE IN BINDING ARBITRATION TO PUBLISH NOTICE OF ITS DECISION ON SIGNS AT THE PROVIDER'S OFFICE OR AT THE INSTITUTION, AND TO PUBLISH NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE PROVIDER OFFICE OR INSTITUTION IS LOCATED FOR A PERIOD OF FIVE CONSECUTIVE DAYS, TO PLACE NOTIFICATION OF THE PROVIDER'S OR INSTITUTION'S DECISION TO PARTICIPATE IN ARBITRATION IN WRITING ON THE FIRST PAGE OF ANY CONTRACT WITH A PATIENT AND ON THE SIGNATURE PAGE IMMEDIATELY BEFORE THE PATIENT'S SIGNATURE LINE, TO PROVIDE THAT A MINOR MAY NOT DISAFFIRM A CONTRACT SIGNED BY HIS PARENTS, LEGAL GUARDIAN, OR OTHER REPRESENTATIVE, TO PROVIDE THAT BINDING ARBITRATION CONTRACTS ARE NOT CONTRACTS OF ADHESION, NOR UNCONSCIONABLE OR OTHERWISE IMPROPER, TO PROVIDE THAT A HEALTHCARE PROVIDER IS UNDER NO OBLIGATION TO RENDER MEDICAL SERVICES TO ANYONE WHO REFUSES TO SIGN A BINDING ARBITRATION CONTRACT, UNLESS PROHIBITED BY FEDERAL LAW, TO PROVIDE THAT IN EMERGENCIES WHERE A PATIENT IS UNABLE TO EXECUTE AN AGREEMENT, THE PATIENT'S CONSENT IS IMPLIED, EXCEPT AS PROHIBITED BY FEDERAL LAW, TO PROVIDE THAT BINDING ARBITRATION CONTRACTS ARE ENFORCEABLE AGAINST ALL INSTITUTIONS, THE PATIENT, AND ALL PROVIDERS WHO ARE CONSULTED DURING THE TREATMENT OF THE PATIENT, TO REQUIRE THAT ALL CONSULTING PROVIDERS BE PROVIDED WRITTEN NOTICE OR NOTICE BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE

COUNTY WHERE THE OFFICE OR FACILITY IS LOCATED, TO PROVIDE THAT ALL ARBITRATION CONDUCTED PURSUANT TO THIS CHAPTER SHALL BE IN ACCORDANCE WITH THE UNIFORM ARBITRATION ACT, AND TO PROVIDE THAT A PROVIDER OR INSTITUTION MAY CHOOSE TO PARTICIPATE IN EITHER THE SOUTH CAROLINA MEDICAL CLAIMS MEDIATION ACT, THE SOUTH CAROLINA MEDICAL ARBITRATION ACT, OR BOTH, OR NEITHER; TO AMEND SECTION 15-48-10 OF THE 1976 CODE, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING THE 'SOUTH CAROLINA MEDICAL CLAIMS ARBITRATION ACT'; AND TO AMEND TITLE 19 OF THE 1976 CODE, RELATING TO EVIDENCE, BY ADDING SECTION 19-1-190, SO AS TO PROVIDE THAT IN ANY CLAIM OR CIVIL ACTION BROUGHT BY OR ON BEHALF OF A PATIENT EXPERIENCING AN UNANTICIPATED OUTCOME OF MEDICAL CARE, ANY STATEMENTS MADE BY A HEALTH CARE PROVIDER OR HIS EMPLOYEE OR AGENT, OR BY A HEALTH CARE INSTITUTION TO A PATIENT EXPRESSING BENEVOLENCE, REGRET, APOLOGY, SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, MISTAKE, ERROR OR A GENERAL SENSE OF BENEVOLENCE ARE INADMISSIBLE AS EVIDENCE AND SHALL NOT CONSTITUTE AN ADMISSION OF LIABILITY OR AN ADMISSION AGAINST INTEREST, AND TO PERMIT A DEFENDANT IN A MEDICAL MALPRACTICE ACTION TO WAIVE THE INADMISSIBILITY OF THE STATEMENTS.

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