

# SENATE BILL No. 268

April 16, 1991, Introduced by Senators SCHWARZ, PRIDNIA, MC MANUS, EMMONS, CISKY, BARCIA, KOIVISTO, CONROY and VAUGHN and referred to the Committee on Health Policy.

A bill to amend section 2 of Act No. 17 of the Public Acts of 1963, entitled as amended

"An act to relieve certain persons from civil liability when rendering emergency care, when rendering care to persons involved in competitive sports under certain circumstances, or when participating in a mass immunization program approved by the department of public health,"

being section 691.1502 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 17 of the Public Acts of  
2 1963, being section 691.1502 of the Michigan Compiled Laws, is  
3 amended to read as follows:

4 Sec. 2. (1) In instances where the actual ~~hospital~~  
5 LICENSED HEALTH FACILITY duty of that person did not require a  
6 response to that emergency situation, a ~~physician, dentist,~~  
7 ~~podiatrist, intern, resident, registered nurse, licensed~~  
8 ~~practical nurse, registered physical therapist, clinical~~

1 ~~laboratory technologist, inhalation therapist, certified~~  
2 ~~registered nurse anesthetist, x-ray technician, or paramedical~~  
3 ~~person,~~ HEALTH PROFESSIONAL who in good faith responds to a  
4 life-threatening emergency or responds to a request for emergency  
5 assistance in a life-threatening emergency within a ~~hospital or~~  
6 ~~other licensed medical care~~ HEALTH facility ~~, shall~~ IS not  
7 ~~be~~ liable for ~~any~~ civil damages as a result of an act or  
8 omission in the rendering of THE emergency care, except ~~an act~~  
9 ~~or omission amounting to~~ FOR gross negligence or ~~wilful~~  
10 WILLFUL and wanton misconduct.

11 (2) A HEALTH PROFESSIONAL EMPLOYED BY, UNDER CONTRACT TO, OR  
12 OTHERWISE AUTHORIZED BY A HOSPITAL TO WORK OR PRACTICE IN THE  
13 HOSPITAL WHO IN GOOD FAITH RENDERS EMERGENCY MEDICAL CARE, EMER-  
14 GENCY MEDICAL TREATMENT, OR EMERGENCY MEDICAL DIRECTION TO A  
15 PATIENT WITHIN THE HOSPITAL AND SUBSEQUENT MEDICAL CARE, SUBSE-  
16 QUENT MEDICAL TREATMENT, OR SUBSEQUENT MEDICAL DIRECTION INCLUD-  
17 ING, BUT NOT LIMITED TO, OBSTETRICAL CARE RENDERED TO A WOMAN WHO  
18 IS IN ACTIVE LABOR, AND THE HOSPITAL IN WHICH THE EMERGENCY OR  
19 SUBSEQUENT MEDICAL CARE, EMERGENCY OR SUBSEQUENT MEDICAL TREAT-  
20 MENT, OR EMERGENCY OR SUBSEQUENT MEDICAL DIRECTION IS RENDERED  
21 ARE NOT LIABLE FOR CIVIL DAMAGES AS A RESULT OF AN ACT OR OMIS-  
22 SION IN THE RENDERING OF THE EMERGENCY OR SUBSEQUENT MEDICAL  
23 CARE, EMERGENCY OR SUBSEQUENT MEDICAL TREATMENT, OR EMERGENCY OR  
24 SUBSEQUENT MEDICAL DIRECTION, EXCEPT FOR GROSS NEGLIGENCE OR  
25 WILLFUL AND WANTON MISCONDUCT. THE LIMITATION ON LIABILITY  
26 GRANTED UNDER THIS SUBSECTION IS IN EFFECT UNTIL THE PATIENT AND  
27 HEALTH PROFESSIONAL KNOWINGLY CONSENT TO A VOLUNTARY HEALTH

1 PROFESSIONAL-PATIENT RELATIONSHIP AND THE PATIENT IS NO LONGER  
2 RECEIVING MEDICAL CARE, MEDICAL TREATMENT, OR MEDICAL DIRECTION  
3 AS AN EMERGENCY PATIENT AS DETERMINED UNDER SUBSECTION (3).

4 (3) FOR PURPOSES OF SUBSECTION (2), THE PATIENT AND THE  
5 HEALTH PROFESSIONAL WILL BE CONSIDERED TO HAVE KNOWINGLY ENTERED  
6 INTO A VOLUNTARY HEALTH PROFESSIONAL-PATIENT RELATIONSHIP AND THE  
7 PATIENT WILL BE CONSIDERED NOT TO BE RECEIVING MEDICAL CARE, MED-  
8 ICAL TREATMENT, OR MEDICAL DIRECTION AS AN EMERGENCY PATIENT WHEN  
9 BOTH THE HEALTH PROFESSIONAL AND THE PATIENT OR THE PATIENT'S  
10 REPRESENTATIVE VOLUNTARILY ENTER INTO A WRITTEN AGREEMENT AS  
11 DESCRIBED IN THIS SUBSECTION. THE HEALTH PROFESSIONAL AND THE  
12 PATIENT OR THE PATIENT'S REPRESENTATIVE SHALL STATE IN THE AGREE-  
13 MENT THAT THE HEALTH PROFESSIONAL AND THE PATIENT KNOWINGLY CON-  
14 SENT TO A VOLUNTARY HEALTH PROFESSIONAL-PATIENT RELATIONSHIP AND  
15 THAT, IN THE PROFESSIONAL OPINION OF THE HEALTH PROFESSIONAL OR  
16 THE ATTENDING PHYSICIAN AND AS UNDERSTOOD BY THE PATIENT OR THE  
17 PATIENT'S REPRESENTATIVE, THE PATIENT IS NO LONGER RECEIVING MED-  
18 ICAL CARE, MEDICAL TREATMENT, OR MEDICAL DIRECTION AS AN EMER-  
19 GENCY PATIENT.

20 (4) AS A CONDITION PRECEDENT TO THE LIMITATION ON LIABILITY  
21 GRANTED UNDER SUBSECTION (2), EACH HOSPITAL IN THIS STATE SHALL  
22 POST A NOTICE IN THE PATIENT WAITING AND ADMISSION AREAS OF THE  
23 HOSPITAL. THE NOTICE SHALL BE IN THE FORM OF A SIGN THAT IS NOT  
24 LESS THAN 24 INCHES BY 24 INCHES AND PRINTED IN NOT LESS THAN  
25 32-POINT BOLDFACED TYPE. THE NOTICE SHALL BE IN SUBSTANTIALLY  
26 THE FOLLOWING FORM:

## 1 NOTICE

2 PATIENTS ADMITTED TO THIS FACILITY UNDER EMERGENCY  
3 CONDITIONS HAVE A LIMITED RIGHT TO SUE FOR DAMAGES.

4 UNDER MICHIGAN LAW, HEALTH PROFESSIONALS WHO RENDER CARE TO  
5 EMERGENCY PATIENTS IN THIS FACILITY HAVE IMMUNITY FROM LIABILITY  
6 EXCEPT FOR GROSS NEGLIGENCE.

7 (5) AS A CONDITION PRECEDENT TO THE LIMITATION ON LIABILITY  
8 GRANTED UNDER SUBSECTION (2), A HOSPITAL THAT ADVERTISES ITS  
9 EMERGENCY SERVICES TO THE PUBLIC SHALL INCLUDE IN THE ADVERTISING  
10 THE LANGUAGE OF THE NOTICE REQUIRED UNDER SUBSECTION (4). THE  
11 NOTICE SHALL BE CONSPICUOUSLY PLACED IN THE ADVERTISING AND  
12 PRINTED IN A TYPE STYLE AND SIZE THAT IS READABLE AND CONTRASTS  
13 WITH SURROUNDING MATERIAL IN THE ADVERTISING.

14 (6) ~~(2)~~ The ~~exemption from~~ LIMITATION ON liability under  
15 subsection (1) ~~shall~~ DOES not apply to a ~~physician where a~~  
16 ~~physician-patient~~ HEALTH PROFESSIONAL IF A HEALTH  
17 PROFESSIONAL-PATIENT relationship existed ~~prior to the advent of~~  
18 ~~the emergency nor to a licensed nurse where a nurse-patient rela-~~  
19 ~~tionship existed prior to the advent of the emergency~~ BEFORE THE  
20 EMERGENCY CARE WAS RENDERED.

21 (7) ~~(3) Nothing in this section shall~~ THIS SECTION DOES  
22 NOT diminish a hospital's responsibility to reasonably and ade-  
23 quately staff hospital emergency facilities ~~when~~ IF the hospi-  
24 tal maintains or holds out to the general public that it main-  
25 tains such emergency room facilities.

26 (8) AS USED IN THIS SECTION:

1 (A) "HEALTH PROFESSIONAL" MEANS A PHYSICIAN, DENTIST,  
2 PODIATRIST, INTERN, RESIDENT, PHYSICIAN'S ASSISTANT, REGISTERED  
3 PROFESSIONAL NURSE, LICENSED PRACTICAL NURSE, PHYSICAL THERAPIST,  
4 CLINICAL LABORATORY TECHNOLOGIST, RESPIRATORY THERAPIST, CERTI-  
5 FIED REGISTERED NURSE ANESTHETIST, X-RAY TECHNICIAN, AMBULANCE  
6 ATTENDANT, EMERGENCY MEDICAL TECHNICIAN, EMERGENCY MEDICAL TECH-  
7 NICIAN SPECIALIST, OR ADVANCED EMERGENCY MEDICAL TECHNICIAN.

8 (B) "LICENSED HEALTH FACILITY" MEANS A HEALTH FACILITY OR  
9 AGENCY LICENSED UNDER ARTICLE 17 OF THE PUBLIC HEALTH CODE, ACT  
10 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.20101 TO  
11 333.22260 OF THE MICHIGAN COMPILED LAWS.