

EMERGENCY ROOM TORT REFORM

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Sheldon L. Killpack

Cosponsor: Sheryl L. Allen

LONG TITLE

General Description:

This bill establishes a clear and convincing standard of proof for emergency care rendered in an emergency room.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes a standard of proof of clear and convincing evidence for malpractice actions based on emergency care received in an emergency room; ~~H→~~ **[and]** ~~←H~~
- ▶ applies the standard of clear and convincing evidence after May 15, 2007 ~~H→~~ **[-] ; and**
- ▶ **sunsets the standard of proof on July 1, 2011.** ~~←H~~

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~H→~~ **AMENDS:**

63-55-213, as last amended by Chapter 82, Laws of Utah 2006 ~~←H~~

ENACTS:

58-13-2.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-13-2.5** is enacted to read:



28 **58-13-2.5. Standard of proof for emergency care when immunity does not apply.**

29 (1) For purposes of this section:

30 (a) "Comes to the emergency department" is defined by 42 C.F.R. 489.24, Emergency
31 Medical Treatment and Labor Act.

32 (b) "Emergency care" means:

33 (i) the treatment of an emergency medical condition from the time a person comes to
34 the emergency department, including any subsequent transfer to another hospital, until the
35 emergency medical condition has been stabilized and the patient is either:

36 (A) discharged from the emergency department; or

37 (B) admitted to another department of the hospital; and

38 (ii) medical services that are provided to pregnant women as required by 42 C.F.R.
39 489.24, Emergency Medical Treatment and Labor Act.

40 (c) "Emergency medical condition" is defined in Section 31A-22-627.

41 (d) "Fault" is defined in Section 78-27-37.

42 (e) "Health care provider" ~~§~~→ [is defined in Section 78-14-3] means a physician licensed
42a under either Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah
42b Osteopathic Medical Practices Act. ←~~§~~ .

43 (2) A health care provider who, in good faith, provides or is consulted to provide
44 emergency care, may be liable for civil damages only if:

45 (a) fault is established by clear and convincing evidence; and

46 (b) the health care provider is not immune from liability for civil damages under Title
47 58, Chapter 13, Health Care Providers Immunity from Liability Act.

48 (3) This section:

49 (a) does not apply to emergency care provided by a health care provider if:

50 (i) the health care provider has a previously established provider/patient relationship
51 with the patient outside of the emergency room;

52 (ii) the patient has been seen in the last three months by the health care provider for the
53 same condition for which emergency care is sought; and

54 (iii) the health care provider can access and consult the patient's relevant medical care
55 records while the health care provider is making decisions about and providing the emergency
56 care; and

57 (b) applies to emergency care given after May 15, 2007.

57a **Ĥ→ Section 2. Section 63-55-213 is amended to read:**

57b **63-55-213. Repeal dates, Title 13.**

57c **(1) Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2007.**

57d **(2) Section 58-13-2.5 is repealed July 1, 2011. ←Ĥ**

Legislative Review Note
as of 1-22-07 12:47 PM

Office of Legislative Research and General Counsel

H.B. 338 - Emergency Room Tort Reform

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/29/2007, 8:20:58 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst