

**Senator John L. Valentine** proposes the following substitute bill:

**HEALTH REFORM - MEDICAL MALPRACTICE**

**AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Peter C. Knudson**

House Sponsor: David Clark

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**LONG TITLE**

**General Description:**

This bill establishes the standard of proof necessary for a medical malpractice claim against certain health care providers in an emergency room.

**Highlighted Provisions:**

This bill:

- ▶ defines terms; and
- ▶ establishes a standard of proof of clear and convincing evidence for malpractice actions based on emergency care provided by an on-call health care provider in an emergency room.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**58-13-2.5**, Utah Code Annotated 1953

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

27 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) "Emergency care" means the treatment of an emergency medical condition, as  
31 defined in Section 31A-22-627, from the time that the person presents at the emergency  
32 department of a hospital and including any subsequent transfer to another hospital, until the  
33 condition has been stabilized and the patient is either discharged from the emergency  
34 department or admitted to another department of the hospital.

35 (b) (i) "Health care provider" means a person who:

36 (A) is licensed under Chapter 67, Utah Medical Practice Act" or Chapter 68, "Utah  
37 Osteopathic Medical Practice Act"; and

38 (B) is called into the emergency department to consult on the emergency care for a  
39 patient.

40 (ii) Health care provider does not include:

41 (A) a person licensed in accordance with Subsection (1)(b)(i) who is staffing the  
42 emergency department of a hospital as an emergency department physician; or

43 (B) a health care facility that is providing emergency care for a patient.

44 (2) A health care provider who provides emergency care in good faith, but is not  
45 immune from suit because of an expectation of payment, a legal duty to respond, or other  
46 reason under Section 58-13-2, may only be liable for civil damages if fault, as defined in  
47 Section 78B-5-817, is established by clear and convincing evidence.

48 (3) (a) Nothing in this section may be construed as:

49 (i) altering the applicable standard of care for determining fault; or

50 (ii) applying the standard of proof of clear and convincing evidence to care outside of  
51 emergency care and the mandatory legal duty to treat.

52 (b) This section applies to emergency care given after June 1, 2009.

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**Fiscal Note****S.B. 79 2nd Sub. (Salmon) - Health Reform - Medical Malpractice  
Amendments**

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses may be impacted due to changes in the proposed statute.

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