

2010 -- H 7525

LC00234

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--PROCEDURE IN PARTICULAR  
ACTIONS -- MEDICAL LIABILITY CLAIMS

Introduced By: Representative Kenneth Carter

Date Introduced: February 23, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 10 of the General Laws entitled "COURTS AND CIVIL  
2 PROCEDURE-PROCEDURE IN PARTICULAR ACTIONS" is hereby amended by adding  
3 thereto the following chapter:

4 CHAPTER 21

5 MEDICAL LIABILITY ACTIONS

6 **10-21-1. Short title.** – This chapter shall be known and may be cited as the “Rhode  
7 Island Medical Liability Procedure Act.”

8 **10-21-2. Medical liability actions.** – Every action for malpractice, breach of contract, or  
9 negligence against a provider of health care shall be heard initially by a justice of the superior  
10 court. At such hearing, the plaintiff shall present evidence, and said justice shall determine  
11 whether the evidence presented, if properly substantiated, would be sufficient to raise a legitimate  
12 question of liability appropriate for judicial inquiry, or whether the plaintiff’s case is merely an  
13 unfortunate medical result.

14 **10-21-3. Commencement of action – Service of process.** – All such actions shall be  
15 commenced by the filing of a civil action in superior court in accordance with the rules of civil  
16 procedure of said court. A copy of said complaint and summons shall thereupon be transmitted by  
17 the clerk of the court to the presiding justice of the superior court for the purpose of assigning that  
18 matter to a justice of said court pursuant to this chapter. Each such action filed pursuant to this

1 chapter shall be heard in the first instance by the justice of the superior court within ninety (90)  
2 days of the filing of the answer in said action; provided, however, that for good cause shown such  
3 time period may be extended by a justice of said court.

4 **10-21-4. Scope of hearings—Powers and duties of the justice -- Evidence.** – The  
5 justice so assigned may, upon the application of either party, or upon his or her own decision,  
6 summon or subpoena any records or individuals to substantiate or clarify any evidence which has  
7 been presented to the court, and may appoint an impartial and qualified physician, surgeon, or  
8 other related professional person or expert, to conduct any necessary professional or expert  
9 examination of the claimant, claimant’s medical records, or relevant evidentiary matter and to  
10 report or to testify as a witness thereto. Such witness shall be allowed traveling expenses and a  
11 reasonable fee to be fixed by the court which shall be assessed as costs. Any witness who appears  
12 before the court shall have absolute immunity from liability for any testimony, opinions or  
13 conclusions given or rendered in the course of such appearances. Admissible evidence shall  
14 include, but not be limited to, hospital and medical records, nurses’ notes, xrays and other  
15 records kept in the usual course of the practice of the health care provider, without the necessity  
16 for other identification or authentication, statement of fact, or opinion on a subject contained in a  
17 published treatise, periodical, book or pamphlet or statements by experts without the necessity of  
18 such experts appearing at the hearing.

19 **10-21-5. Finding by justice.** – The assigned justice shall make a finding of fact as to  
20 whether the evidence presented, if properly substantiated and viewed in the light most favorable  
21 to the plaintiff, would be sufficient to raise a legitimate question of liability appropriate for  
22 judicial inquiry, or whether the plaintiff’s case is merely an unfortunate medical result. If a  
23 finding is made for a defendant or defendants in the case the plaintiff may pursue the claim  
24 against the defendant or defendants through the usual judicial process only upon filing bond in  
25 the amount of ten thousand dollars (\$10,000) in the aggregate, secured by cash or its equivalent,  
26 with the clerk of the court in which the case is pending, payable to the particular defendant or  
27 defendants in the case, for costs assessed, including witness and experts fees and attorneys fees, if  
28 the plaintiff does not prevail in the final judgment. The justice may, within his discretion, increase  
29 the amount of the bond required to be filed. If the bond is not posted within thirty (30) days of the  
30 justice’s finding, the action shall be dismissed against the particular defendant or defendants.  
31 Upon motion filed by the plaintiff, and a determination by the court that the plaintiff is indigent,  
32 the justice may reduce the amount of the bond, but may not eliminate the requirement therefor.

33 **10-21-6. Provider of health care -- Defined.** – For the purposes of this section, a  
34 “provider of health care” means a person, corporation, facility or institution licensed by the state

1 to provide health care or professional services as a physician, physician's assistant, chiropractor,  
2 physical therapist, psychologist, social worker, or acupuncturist, or an officer, employee or agent  
3 thereof acting in the course and scope of his employment.

4 **10-21-7. Severability.** – If any clause, sentence, paragraph, section or part of this chapter  
5 shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not  
6 affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the  
7 clause, sentence, paragraph, section or part directly involved in the controversy in which such  
8 judgment shall have been rendered.

9 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO COURTS AND CIVIL PROCEDURE--PROCEDURE IN PARTICULAR  
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- 1           This act would create specific procedures applicable to medical liability claims requiring
- 2 a preliminary hearing and determination before the superior court.
- 3           This act would take effect upon passage.

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