

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 730

Short Title: Prevent Frivolous Malp. Action.

(Public)

Sponsors: Representatives Neely; Berry, Bowie, Brawley, J. Brown, Buchanan, Cansler, Cocklereece, Crawford, Daughtry, Dickson, Ellis, Gamble, Gardner, Hayes, Hill, Hurley, Ives, Kiser, McComas, McMahan, Miner, Morgan, Owens, Preston, Redwine, Robinson, Russell, Sexton, Sharpe, Shubert, Snowden, Thompson, Weatherly, C. Wilson, and Wood.

Referred to: Rules, Calendar and Operations of the House.

April 3, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PREVENT FRIVOLOUS MALPRACTICE ACTIONS BY REQUIRING
2 THAT EXPERT WITNESSES IN MEDICAL MALPRACTICE CASES HAVE
3 APPROPRIATE QUALIFICATIONS TO TESTIFY ON THE STANDARD OF
4 CARE AT ISSUE AND TO REQUIRE EXPERT WITNESS REVIEW AS A
5 CONDITION OF FILING A MALPRACTICE ACTION.
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7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 8C-1, Rule 702, of the General Statutes reads as rewritten:

9 "Rule 702. Testimony by experts.

10 (a) If scientific, technical or other specialized knowledge will assist the trier of
11 fact to understand the evidence or to determine a fact in issue, a witness qualified as an
12 expert by knowledge, skill, experience, training, or education, may testify thereto in the
13 form of an opinion.

14 (b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not
15 give expert testimony on the appropriate standard of health care, unless the person is a

1 licensed health care provider in this State or another state and meets the following
2 criteria:

3 (1) If the party against whom or on whose behalf the testimony is offered is
4 a specialist, the expert witness must specialize in the same specialty as
5 the party against whom or on whose behalf the testimony is offered.
6 However, if the party against whom the evidence or on whose behalf the
7 testimony is offered is a specialist who is board certified or otherwise
8 certified by a specialty health care group, the expert witness must be a
9 specialist who is similarly certified in that specialty; and

10 (2) During the year immediately preceding the date of the occurrence that is
11 the basis for the action, the expert witness must have devoted no less
12 than an average of 20 hours per week to the active clinical practice of
13 the same health specialty in which the party against whom or on whose
14 behalf the testimony is offered is licensed and, if that party is a
15 specialist, the active clinical practice of that specialty."

16 Sec. 2. G.S. 1A-1, Rule 9, of the General Statutes is amended by adding a new
17 subsection to read:

18 "(j) Medical negligence. – Any complaint alleging medical negligence by a health
19 care provider in failing to comply with the applicable standard of care shall be dismissed
20 unless (i) the pleading specifically asserts that the medical care has been reviewed by a
21 person who is a qualified expert witness under Rule 702(b) of the Rules of Evidence and
22 who is willing to testify that the health care procedure did not comply with the applicable
23 standard of care or (ii) the pleading alleges facts establishing negligence under the
24 existing common law doctrine of res ipsa loquitur."

25 Sec. 3. Section 2 of this act is not intended, and shall not be construed, to
26 establish, approve, or endorse any extension of the doctrine of res ipsa loquitur to medical
27 malpractice claims.

28 Sec. 4. This act becomes effective October 1, 1995, and applies to actions filed
29 on or after that date.