

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# SENATE BILL 1018

## AN ACT

AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-572; TRANSFERRING AND RENUMBERING SECTION 32-1473, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 12-573; AMENDING SECTION 12-573, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; RELATING TO HEALTH CARE ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5.1, article 1, Arizona Revised Statutes,  
3 is amended by adding section 12-572, to read:

4 12-572. Burden of proof for treatment in emergency departments  
5 or rendered by on-call providers

6 A. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE  
7 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, A HEALTH PROFESSIONAL AS  
8 DEFINED IN SECTION 32-3201 WHO PROVIDES OR WHO IS CONSULTED TO PROVIDE  
9 SERVICES TO A PATIENT OF A LICENSED HOSPITAL IN COMPLIANCE WITH THE EMERGENCY  
10 MEDICAL TREATMENT AND LABOR ACT (P.L. 99-272; 100 STAT. 164; 42 UNITED STATES  
11 CODE SECTION 1395dd) OR AS A RESULT OF A DISASTER IS NOT LIABLE FOR ANY CIVIL  
12 OR OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

13 B. UNLESS THE ELEMENTS OF PROOF CONTAINED IN SECTION 12-563 ARE  
14 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE REGARDING THE ACTS OR OMISSIONS  
15 OF A LICENSED HOSPITAL OR ITS AGENTS AND EMPLOYEES IN CASES THAT ARE COVERED  
16 BY SUBSECTION A OF THIS SECTION, THE HOSPITAL IS NOT LIABLE FOR ANY CIVIL OR  
17 OTHER DAMAGES AS A RESULT OF ANY ACT OR OMISSION.

18 Sec. 2. Section 32-1473, Arizona Revised Statutes, is transferred and  
19 renumbered for placement in title 12, chapter 5.1, article 1, Arizona Revised  
20 Statutes, as section 12-573 and, as so renumbered, is amended to read:

21 12-573. Limited liability for treatment related to delivery of  
22 infants; exception; definition

23 A. Unless the elements of proof contained in section 12-563 are  
24 established by clear and convincing evidence, a physician licensed to  
25 practice pursuant to ~~this chapter or~~ TITLE 32, chapter 13 OR 17 ~~of this title~~  
26 is not liable to the pregnant female patient, the child or children  
27 delivered, or their families for medical malpractice related to labor or  
28 delivery rendered on an emergency basis if the patient was not previously  
29 treated for the pregnancy by the physician, by a physician in a group  
30 practice with the physician or by a physician, physician assistant or  
31 CERTIFIED nurse midwife with whom the physician has an agreement to attend  
32 the labor and delivery of the patient.

33 B. Unless the elements of proof contained in section 12-563 are  
34 established BY CLEAR AND CONVINCING EVIDENCE regarding the acts or omissions  
35 of a licensed health care facility or its employees in cases THAT ARE covered  
36 by ~~the provisions of~~ subsection A of this section ~~by clear and convincing~~  
37 ~~evidence~~, the health care facility is not liable to the female patient, the  
38 child or children delivered or their families for medical malpractice related  
39 to labor or delivery.

40 C. This section does not apply to treatment THAT IS rendered in  
41 connection with labor and delivery if the patient has been seen regularly by  
42 or under the direction of a licensed health care provider or a licensed  
43 physician from whom the patient's medical information is ~~reasonably~~  
44 IMMEDIATELY available to the physicians attending the patient during labor  
45 and delivery.

46 D. For the ~~purpose~~ PURPOSES of this section, "emergency" means when  
47 labor has begun or a condition exists requiring the delivery of the child or  
48 children.