

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 373

FINAL READING

Introduced by Schimek, 27; Adams, 24; Johnson, 37; Nelson, 6;
Pedersen, 39; Wightman, 36

Read first time January 12, 2007

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to public health and welfare; to provide for
- 2 inadmissibility of apologies regarding medical care as
- 3 evidence; and to define terms.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) In any civil action brought by an alleged
2 victim of an unanticipated outcome of medical care, or in any
3 arbitration proceeding related to such civil action, any and all
4 statements, affirmations, gestures, or conduct expressing apology,
5 sympathy, commiseration, condolence, compassion, or a general sense
6 of benevolence which are made by a health care provider or an
7 employee of a health care provider to the alleged victim, a
8 relative of the alleged victim, or a representative of the alleged
9 victim and which relate to the discomfort, pain, suffering, injury,
10 or death of the alleged victim as a result of the unanticipated
11 outcome of medical care shall be inadmissible as evidence of an
12 admission of liability or as evidence of an admission against
13 interest. A statement of fault which is otherwise admissible and
14 is part of or in addition to any such communication shall be
15 admissible.

16 (2) For purposes of this section, unless the context
17 otherwise requires:

18 (a) Health care provider means any person licensed or
19 certified by the State of Nebraska to deliver health care under
20 the Uniform Licensing Law and any health care facility licensed
21 under the Health Care Facility Licensure Act. Health care provider
22 includes any professional corporation or other professional entity
23 comprised of such health care providers;

24 (b) Relative means a patient's spouse, parent,
25 grandparent, stepfather, stepmother, child, grandchild, brother,

1 sister, stepbrother, stepsister, half brother, half sister, or
2 spouse's parents. Relative includes persons related to the patient
3 through adoptive relationships. Relative also includes any person
4 who has a family-type relationship with the patient;

5 (c) Representative means a legal guardian, attorney,
6 person designated to make health care decisions on behalf of a
7 patient under a power of attorney, or any person recognized in law
8 or custom as a patient's agent; and

9 (d) Unanticipated outcome means the outcome of a medical
10 treatment or procedure that differs from the expected result.