

Regular Session, 2012

SENATE BILL NO. 176

BY SENATOR BUFFINGTON

MALPRACTICE. Provides relative to medical malpractice and acts or omissions arising from do not resuscitate and similar orders. (gov sig)

1 AN ACT

2 To enact R.S. 40:1299.41(L), relative to medical malpractice; to provide for definitions and  
3 general applications; to provide relative to certain acts or omissions regarding  
4 declarations or orders related to life-sustaining procedures; to provide for prospective  
5 application; to provide for an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1299.41(L) is hereby enacted to read as follows:

8 §1299.41. Definitions and general applications

9 \* \* \*

10 **L. Any cause of action for the unintentional acts or omissions arising**  
11 **from resuscitating a patient who has a declaration concerning life-sustaining**  
12 **procedures executed pursuant to R.S. 40:1299.58.1 et seq., a Louisiana**  
13 **Physician Order for Scope of Treatment executed pursuant to R.S. 40:1299.64.1**  
14 **et seq., or a do not resuscitate order issued by a physician licensed in this state**  
15 **shall be governed by the provisions of this Part.**

16 Section 2. The provisions of this Act shall be given prospective application only and  
17 shall not affect any action pending or claim arising prior to the effective date of this Act.

1           Section 3. This Act shall become effective upon signature by the governor or, if not  
2 signed by the governor, upon expiration of the time for bills to become law without signature  
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on the day following such approval.

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The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

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#### DIGEST

Buffington (SB 176)

Present law provides relative to medical malpractice, including definitions and general applications. Provides that "malpractice" means any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.

Proposed law retains present law relative to medical malpractice and adds that it shall govern any cause of action for the unintentional acts or omissions arising from resuscitating a patient who has a declaration concerning life-sustaining procedures executed pursuant to R.S. 40:1299.58.1 et seq., a Louisiana Physician Order for Scope of Treatment executed pursuant to R.S. 40:1299.64.1 et seq., or a do not resuscitate order issued by a physician licensed in this state.

Proposed law provides that it shall be given prospective application only and shall not affect any action pending or claim arising prior to its effective date.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 40:1299.41(L))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Deleted language adding to definition of "malpractice" acts or omissions related to validity of orders such as do not resuscitate orders, and added new subsection relative to malpractice applicability to such acts or omissions.