



**House  
Legislative  
Analysis  
Section**

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**MEDICAL VOLUNTEERS: LIABILITY**

**Senate Bill 22 (Substitute H-2)**  
**First Analysis (4-28-87)**

**RECEIVED**

**Sponsor: Sen. Vernon J. Ehlers**      **MAY 13 1987**  
**Senate Committee: Health Policy**  
**House Committee: Judiciary**      **Mich. State Law Library**

**THE APPARENT PROBLEM:**

It has long been a tradition at sporting events, particularly high school sporting events, for doctors and nurses to volunteer their services to care for the participants. In addition, doctors have traditionally given routine physical examinations to prospective athletes, at nominal or no cost, prior to the beginning of a school year or start of a season. Some schools have been experiencing difficulty in obtaining doctors to give physical exams, or getting health care professionals to give assistance at sporting events. The reasons for the reluctance are familiar: the cost of liability insurance and the fear of being sued for malpractice. Many believe that doctors and others who volunteer medical services to sports programs should be given immunity from liability except where they have acted with gross negligence.

Moreover, members of the national ski patrol, who give first aid at the scene to ski accident victims, also are vulnerable to liability lawsuits. Even though a ski patrol member has rescued a skier and given good care, he or she could later become a defendant in a lawsuit naming all parties with the least connection to the accident and the skier's treatment. Many believe that ski patrol volunteers also should receive protection against liability for the emergency care they provide.

**THE CONTENT OF THE BILL:**

The bill would amend Public Act 17 of 1963 to grant under certain circumstances immunity from liability for civil damages to physicians who, in good faith and without compensation, performed physical examinations on people to determine their fitness to engage in competitive sports. In order to receive this protection, the physician would have to obtain a signed statement from the individual (or his or her parent, if the individual was a minor) that the signer knew that the physician was not necessarily performing a complete physical examination and that the physician was not liable for civil damages except those arising from gross negligence or action outside the scope of the physician's license.

The bill also would grant civil immunity to physicians and nurses who, in good faith and without compensation, gave emergency care to someone who required that care as a result of participating in competitive sports. This provision would apply to emergency care for minors even if parental consent had not been obtained.

In addition, the bill would grant civil immunity to a registered member of the National Ski Patrol system who, while acting in good faith as a member of the ski patrol, rendered emergency care at the scene of an emergency.

The bill would not apply to acts or omissions amounting to gross negligence or willful and wanton misconduct or acts or omissions outside the scope of the license held by the physician or nurse.

"Competitive sports" would be those sponsored by a public or private school (other than a college or university), or a charitable or volunteer organization.

MCL 691.1501 et al.

**HOUSE COMMITTEE ACTION:**

The House Judiciary Committee adopted a substitute that differed from the Senate-passed bill in requiring a signed statement, in limiting applicability for licensed health care providers to those who are physicians or nurses, in limiting protection for ski patrol members to those situations where the member was acting as a member of the ski patrol system, and in defining competitive sports.

**FISCAL IMPLICATIONS:**

The House Fiscal Agency reports that the bill would have no fiscal implications. (4-15-87)

**ARGUMENTS:**

**For:**

For many years doctors have volunteered their services to schools to assess the fitness of prospective athletes for competition, or to assist with the care of athletes during training or at competitions. Some schools are having a hard time obtaining, or maintaining, this traditional volunteer help because of concerns over insurance or malpractice lawsuits. Many doctors and other health care providers have become reluctant to continue to volunteer their help because involvement increases their exposure to situations where they may be named in a liability suit if an athlete is injured during competition, and increased exposure may cause their insurance premiums to rise. Testimony before the Senate Committee on Health Policy indicated that some health care providers also have expressed reluctance to come out of the stands to assist competitors who may be in need of medical attention, because of fears of lawsuits. The bill would alleviate concerns and encourage doctors to continue to treat participants at sporting events.

**For:**

Public Act 175 of 1986 extended immunity from liability to school districts (as well as other governmental agencies), and volunteers acting on their behalf. While the act resolved the health care provider immunity problem for employees and designated volunteers involved in public school athletics, the bill is needed to provide immunity for nonpublic schools, as well as for nonschool activities such as little league.

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**For:**

The National Ski Patrol has 1,500 volunteer members in Michigan granting emergency first aid to recreational skiers. Each member is required to earn a Red Cross advanced first aid and cardiopulmonary resuscitation (CPR) card and each year to pass an eight-hour first aid refresher course and a four-hour CPR refresher course. Members also must train and prove themselves to be expert skiers. National Ski Patrol members are said to be able to reach an accident victim in less than two minutes, a critical factor when serious injury occurs. Should liability problems continue to increase, however, ski resort management may be forced to employ emergency medical technicians to patrol the slopes. Costs to the ski industry would rise, resulting in higher users' fees. The bill would encourage the continuance of the valuable service of the National Ski Patrol and would assist it in recruiting needed volunteers.

**Against:**

If a doctor treats a person, whether voluntarily or for pay, he or she should do so properly. Who knows how many ailing athletes have been encouraged, or not discouraged, by a well-meaning local doctor/sports fan to ignore their injury, or "play over" their pain, and suffered long-term damage as a result? If doctors were granted immunity under the bill, they would have no incentive to offer the best care available, other than their own integrity, which is a powerful force but cannot always be relied upon.

It is good to encourage volunteer care by qualified professionals, but the bill would excuse those professionals from the consequences of negligent actions. Negligence is the failure to do something that a reasonably careful person would do, or the doing of something that a reasonably careful person would not do, under the circumstances that a jury finds exist in the case. Thus, common law already recognizes mitigating circumstances; what the bill would do is protect doctors who provided poor medical care.

The bill should at least be limited to emergency situations. A physician who provides non-emergency care or evaluation, even though free of charge, should be held accountable for his or her actions.

**Response:** Doctors assist at many different sports events, not just ones where there are chances for serious injury. In considering the bill the good must be weighed against the bad: if medical personnel stop volunteer assistance and refuse to attend to injured or potentially injured athletes during or before competitions, the effect of not passing the bill may be actually to worsen the care athletes receive, or make participation in sports prohibitively expensive for all but children from well-to-do families.

**Against:**

This bill is another example of the band-aid approach to addressing the liability insurance problem. Instead of simply granting immunity to those who have trouble getting insurance, the state should deal directly with the cause of that problem: high premiums and the need for greater regulation of the insurance industry.

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**POSITIONS:**

The Michigan High School Athletic Association supports the bill. (4-22-87)

The Michigan State Medical Society supports the bill. (4-22-87)

The National Ski Patrol supports the bill. (4-14-87)

The Michigan Chiropractic Council has no position on the bill. (4-22-87)

The Michigan Trial Lawyers Association opposes the concept of granting immunity from liability to a privileged class at the expense of innocent parties. (4-24-87)