As Reported by the Senate Insurance, Commerce and Labor Committee

126th General Assembly
Regular Session
2005-2006

Sub. S. B. No. 88

Senators Coughlin, Goodman

A BILL

To amend section 2305.113 and to enact sections 2339.01 to 2339.16 of the Revised Code to establish a pilot program mandating arbitration for claims of medical negligence prior to the filing of a complaint, to suspend, for nine years, sections 2711.21 to 2711.24 of the Revised Code as the sections apply to medical negligence claims, and to terminate the provisions of this act ten years after the effective date of this act by repealing sections 2339.01, 2339.02, 2339.03, 2339.04, 2339.05, 2339.06, 2339.07, 2339.08, 2339.09, 2339.10, 2339.11, 2339.12, 2339.13, 2339.14, 2339.15, and 2339.16 of the Revised Code on that date. 1 2 3 4 5 6 7 8 9 10 11 12 13 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2305.113 be amended and sections 2339.01, 2339.02, 2339.03, 2339.04, 2339.05, 2339.06, 2339.07, 2339.08, 2339.09, 2339.10, 2339.11, 2339.12, 2339.13, 2339.14, 2339.15, and 2339.16 of the Revised Code be enacted to read as follows: 15 16 17 18 19

Sec. 2305.113. (A) Except as otherwise provided in this section and Chapter 2339. of the Revised Code, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued. 20 21 22 23

(B)(1)(a) If prior to the expiration of the one-year period specified in division (A) of this section, a claimant who allegedly possesses a medical, dental, optometric, or chiropractic claim gives to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given. 24 25 26 27 28 29 30 31

(b) When Chapter 2339. of the Revised Code is applicable, an action upon a medical claim may be commenced by a claimant up to sixty days after one of the following occurs: 32 33 34

(i) The arbitration panel serves all parties to the claim with the panel's evaluation pursuant to section 2339.12 of the Revised Code; 35 36 37

(ii) Another alternative dispute resolution mechanism concludes if all parties to the claim agree to use that other mechanism; 38 39 40

(iii) The court enters judgment on a motion to vacate, modify, or correct the panel's evaluation under sections 2711.10 to 2711.16 of the Revised Code if such a motion is filed. 41 42 43

(2) An insurance company shall not consider the existence or nonexistence of a written notice described in division (B)(1) of this section in setting the liability insurance premium rates that the company may charge the company's insured person who is notified by that written notice. 44 45 46 47 48

(C) Except as to persons within the age of minority or of 49

unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in division (D) of this section, both of the following apply: 50 51 52

(1) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim. 53 54 55 56

(2) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred. 57 58 59 60 61

(D)(1) If a person making a medical claim, dental claim, optometric claim, or chiropractic claim, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period specified in division (C)(1) of this section, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission. 62 63 64 65 66 67 68 69 70 71 72

(2) If the alleged basis of a medical claim, dental claim, optometric claim, or chiropractic claim is the occurrence of an act or omission that involves a foreign object that is left in the body of the person making the claim, the person may commence an action upon the claim not later than one year after the person discovered the foreign object or not later than one year after the person, with reasonable care and diligence, should have discovered the foreign object. 73 74 75 76 77 78 79 80

(3) A person who commences an action upon a medical claim, dental claim, optometric claim, or chiropractic claim under the circumstances described in division (D)(1) or (2) of this section has the affirmative burden of proving, by clear and convincing evidence, that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within the three-year period described in division (D)(1) of this section or within the one-year period described in division (D)(2) of this section, whichever is applicable. 81 82 83 84 85 86 87 88 89 90

(E) As used in this section: 91

(1) "Hospital" includes any person, corporation, association, board, or authority that is responsible for the operation of any hospital licensed or registered in the state, including, but not limited to, those that are owned or operated by the state, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. "Hospital" also includes any person, corporation, association, board, entity, or authority that is responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care, and treatment to individuals. "Hospital" does not include any hospital operated by the government of the United States or any of its branches. 92 93 94 95 96 97 98 99 100 101 102 103 104

(2) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board or a person who otherwise is authorized to practice medicine and surgery or osteopathic medicine and surgery in this state. 105 106 107 108 109

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or 110 111

residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following: 112 113 114 115 116 117 118 119 120

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person; 121 122

(b) Claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies: 123 124 125

(i) The claim results from acts or omissions in providing medical care. 126 127

(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment. 128 129 130

(c) Claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under section 3721.17 of the Revised Code. 131 132 133

(4) "Podiatrist" means any person who is licensed to practice podiatric medicine and surgery by the state medical board. 134 135

(5) "Dentist" means any person who is licensed to practice dentistry by the state dental board. 136 137

(6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" 138 139 140 141

includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person. 142 143

(7) "Derivative claims for relief" include, but are not limited to, claims of a parent, guardian, custodian, or spouse of an individual who was the subject of any medical diagnosis, care, or treatment, dental diagnosis, care, or treatment, dental operation, optometric diagnosis, care, or treatment, or chiropractic diagnosis, care, or treatment, that arise from that diagnosis, care, treatment, or operation, and that seek the recovery of damages for any of the following: 144 145 146 147 148 149 150 151

(a) Loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, or any other intangible loss that was sustained by the parent, guardian, custodian, or spouse; 152 153 154 155

(b) Expenditures of the parent, guardian, custodian, or spouse for medical, dental, optometric, or chiropractic care or treatment, for rehabilitation services, or for other care, treatment, services, products, or accommodations provided to the individual who was the subject of the medical diagnosis, care, or treatment, the dental diagnosis, care, or treatment, the dental operation, the optometric diagnosis, care, or treatment, or the chiropractic diagnosis, care, or treatment. 156 157 158 159 160 161 162 163

(8) "Registered nurse" means any person who is licensed to practice nursing as a registered nurse by the board of nursing. 164 165

(9) "Chiropractic claim" means any claim that is asserted in any civil action against a chiropractor, or against any employee or agent of a chiropractor, and that arises out of the chiropractic diagnosis, care, or treatment of any person. "Chiropractic claim" includes derivative claims for relief that arise from the chiropractic diagnosis, care, or treatment of a person. 166 167 168 169 170 171 172

(10) "Chiropractor" means any person who is licensed to practice chiropractic by the state chiropractic board. 173 174

(11) "Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person. 175 176 177 178 179 180

(12) "Optometrist" means any person licensed to practice optometry by the state board of optometry. 181 182

(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code. 183 184

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code. 185 186

(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code. 187 188

(16) "Advanced practice nurse" means any certified nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse-midwife who holds a certificate of authority issued by the board of nursing under Chapter 4723. of the Revised Code. 189 190 191 192 193

(17) "Licensed practical nurse" means any person who is licensed to practice nursing as a licensed practical nurse by the board of nursing pursuant to Chapter 4723. of the Revised Code. 194 195 196

(18) "Physician assistant" means any person who holds a valid certificate to practice issued pursuant to Chapter 4730. of the Revised Code. 197 198 199

(19) "Emergency medical technician-basic," "emergency medical technician-intermediate," and "emergency medical technician-paramedic" means any person who is certified under 200 201 202

Chapter 4765. of the Revised Code as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, whichever is applicable. 203 204 205

Sec. 2339.01. As used in sections 2339.01 to 2339.16 of the Revised Code: 206 207

(A) "Health care facility" means a clinic, ambulatory surgical facility, trauma facility, emergency department, office of a health care professional or associated group of health care professionals, training institution for health care professionals, or any other place where medical or other health-related diagnosis, care, or treatment is provided to persons. 208 209 210 211 212 213

(B) "Health care professional" means a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery, or podiatric medicine and surgery. 214 215 216 217

(C) "Hospital" means any person, corporation, association, board, or authority that is responsible for the operation of any hospital licensed or registered in the state, including, but not limited to, those that are owned or operated by the state, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. "Hospital" also includes any person, corporation, association, board, or authority that is responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering medical or other health-related advice, diagnosis, care, and treatment to individuals. "Hospital" does not include any hospital operated by the government of the United States or any of its branches. 218 219 220 221 222 223 224 225 226 227 228 229 230 231

(D) "Medical negligence" means a negligent act or an omission 232

to act by a health care professional, hospital, or health care facility in the rendering of health care services that are within the scope of the services for which the health care professional, hospital, or health care facility is licensed or accredited which act or omission is the proximate cause of personal injury or wrongful death. 233 234 235 236 237 238

Sec. 2339.02. (A) The superintendent of insurance, in collaboration with the supreme court of Ohio, shall establish a pilot program to determine the benefits of using arbitration in disputes as to the medical negligence of a health care professional, hospital, or health care facility. 239 240 241 242 243

(B) Five years after the effective date of sections 2339.01 to 2339.16 of the Revised Code, the superintendent and court each shall submit a preliminary written report on the use of arbitration panels by the pilot program and other alternative dispute resolution mechanisms agreed upon by all parties to a claim to the governor, the speaker of the house of representatives, and the president of the senate. The reports shall include the information submitted to the superintendent and court pursuant to division (G) of section 2339.14 of the Revised Code, any other findings the superintendent or court make concerning the results of arbitration under the pilot program, and any information the superintendent requires pursuant to rules the superintendent may adopt. Additionally, the court shall include in its report information detailing the number of complaints alleging medical negligence that were filed after arbitration proceedings were held under the pilot program and any increases or decreases in the number of complaints filed alleging medical negligence after the effective date of the pilot program as compared to the number of such complaints filed before the effective date of the pilot program. The superintendent and court each shall issue a 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263

final written report that shall include the same types of information as required in the preliminary reports within one year after the conclusion of the pilot program to the governor, the speaker of the house of representatives, and the president of the senate. 264 265 266 267 268

Sec. 2339.03. (A) Claims alleging medical negligence are subject to sections 2339.01 to 2339.16 of the Revised Code. A claimant shall not commence an action in Lorain, Erie, Huron, Cuyahoga, Summit, Lake, or Geauga counties alleging medical negligence against a health care professional, hospital, or health care facility unless the claimant has given the health care professional, hospital, or health care facility written notice pursuant to this section, not less than one hundred eighty days before commencing the action, of the claimant's intent to file a complaint. This required written notice shall be accompanied by an affidavit of merit as described in Civil Rule 10. The time periods for filings and responses set forth in sections 2339.03 and 2339.06 of the Revised Code do not alter or affect this minimum period. This section shall not affect the time limits placed on the commencement of actions under section 2305.113 of the Revised Code. 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284

(B) The required written notice shall be mailed by certified mail to the last known business or residential address of the health care professional, hospital, or health care facility that is the subject of the claim. Proof of the receipt of the notice constitutes prima-facie evidence of the provision of the notice and compliance with this section. If a business or residential address reasonably can not be ascertained, the notice shall be mailed via certified mail to the address where the applicable health care services were rendered. 285 286 287 288 289 290 291 292 293

(C) Notwithstanding the time limit set by division (A) of 294

this section, a claimant may give the required written notice to a health care professional, hospital, or health care facility up to ninety days before commencing an action, when all of the following conditions apply: 295 296 297 298

(1) The claimant previously gave timely written notice to other health care professionals, hospitals, or health care facilities involved in the claim; 299 300 301

(2) The one hundred eighty-day notice period expired as to the health care professionals, hospitals, and other health care facilities that received notice under division (C)(1) of this section; 302 303 304 305

(3) The claimant has filed a complaint and commenced an action alleging medical negligence against one or more of the health care professionals, hospitals, or health care facilities described in division (C)(1) of this section; 306 307 308 309

(4) Before filing the complaint, the claimant did not identify and could not reasonably have been expected to identify a health care professional, hospital, or health care facility required as a party to the claim to be given timely written notice by the claimant. 310 311 312 313 314

(D) The written notice required by this section shall contain all of the following information: 315 316

(1) The factual basis for the claim; 317

(2) The standard of practice or care alleged by the claimant to be applicable to the relevant health care services; 318 319

(3) The manner in which it is alleged that the applicable standard of practice or care was breached by the health care professional, hospital, or health care facility; 320 321 322

(4) The action that allegedly should have been taken to achieve compliance with the stated standard of practice or care; 323 324

(5) The manner in which it is alleged that the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice; 325 326 327

(6) The names of all health care professionals, hospitals, and health care facilities that the claimant is notifying under this section in relation to the claim. 328 329 330

(E) After the initial written notice is given to a health care professional, hospital, or health care facility pursuant to this section, no additional days shall be added to the one hundred eighty-day waiting period irrespective of the number of additional parties subsequently notified in regard to that claim. 331 332 333 334 335

Sec. 2339.04. (A) The arbitration panel shall consist of three members, one member selected by the claimants, one member selected by the respondents, and a third member agreed to by the parties who shall serve as the chairperson of the panel. Within thirty days after a health care professional, hospital, or health facility receives notice pursuant to division (A) of section 2339.03 of the Revised Code, the claimant and the professional, hospital, or facility shall choose the chairperson of the arbitration panel. Within thirty days after the parties choose the chairperson, the parties shall complete their panel selections. The chairperson shall have practiced law for at least eight years and be from the American health lawyers alternative dispute resolution service, American arbitration association, or other similar dispute resolution service. The panel member selected by each party shall be a medical expert in the same area of specialty that is the subject of the claim. 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351

(B) If the parties to a claim cannot agree on a chairperson pursuant to division (A) of this section or, if multiple claimants or multiple respondents are involved in a claim and those claimants or respondents cannot agree on a panel member within the 352 353 354 355

required thirty-day time period described in that division, the national health lawyers alternative dispute resolution service, American arbitration association, or other similar dispute resolution service shall select the chairperson or panel member on behalf of the parties or multiple claimants or respondents. If a dispute resolution service chooses the chairperson of the panel on behalf of the parties pursuant to division (A) of this section, a party to the claim may reject that chairperson if the party notifies the dispute resolution service and other parties to the claim of the rejection within five days after the dispute resolution service selects the chairperson. Each party has the right to reject one chairperson selection a dispute resolution service makes on the parties' behalf. If a party rejects a chairperson pursuant to this division, the dispute resolution service that selected the chairperson shall select another chairperson within five days of being notified that a party has rejected the chairperson. 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372

(C) The grounds for disqualification of an arbitrator shall be the same as that provided by the Revised Code and court rules for the disqualification of a judge. 373 374 375

(D) The parties shall share the cost of the arbitration, however, the claimants and respondents are responsible for the cost of the member representing their interests. 376 377 378

Sec. 2339.05. The chairperson of the panel shall do all of the following: 379 380

(A) Within thirty days of the parties selecting the panel members, set a time for the arbitration hearing, which shall be no later than ninety days after the chairperson sets the case management schedule as described in division (C) of this section; 381 382 383 384

(B) Set a place for the arbitration hearing; 385

(C) Set a case management schedule allowing time periods for written discovery, depositions, and the exchange of expert reports; 386 387 388

(D) Send notice to the arbitrators and parties to the action as soon as practicable after the chairperson decides the date, time, and schedule pursuant to this section. The notice shall inform the parties that the arbitration panel has been selected and of the date, time, and schedule decided pursuant to this section. 389 390 391 392 393 394

Sec. 2339.06. (A) Within fifteen days after receiving notice from the chairperson of the panel pursuant to division (D) of section 2339.05 of the Revised Code, the health care professional, hospital, or health care facility notified, or their attorney, if denying the claim, shall furnish a written response to the claimant or the claimant's attorney and the arbitration panel that contains all of the following information and statements: 395 396 397 398 399 400 401

(1) The factual basis for any defense to the claim; 402

(2) The standard of practice or care that the health care professional, hospital, or health care facility alleges to be applicable to the health care services rendered; 403 404 405

(3) A statement by the health care professional, hospital, or health care facility that the applicable standard of practice or care was complied with and the manner in which compliance was achieved; 406 407 408 409

(4) The reason that the health care professional, hospital, or health care facility contends that the claimant's alleged injury is unrelated to the health care services rendered. 410 411 412

(B) Except as described in division (D) of this section, if the claimant or the claimant's attorney does not receive the written response required under division (A) of this section 413 414 415

within the time prescribed, the claimant may thereafter commence an action alleging medical negligence against the health care professional, hospital, or health care facility. 416 417 418

(C) Within ten days after receiving the required written response pursuant to division (A) of this section or the written notice described in section 2323.45 of the Revised Code, the claimant shall allow the health care professional, hospital, or health care facility notified, or their attorney, access to all of the medical records related to the claim that are in the claimant's control, and shall furnish releases for any medical records related to the claim that are not in the claimant's control but of which the claimant has knowledge. Within ten days after receiving from the claimant access to medical records and releases pursuant to this division, the health care professional, hospital, or health care facility shall allow the claimant or the claimant's attorney access to all medical records related to the claim that are in the control of the health care professional, hospital, or health care facility. This division does not restrict a health care professional, hospital, or health care facility that receives notice pursuant to this section from communicating with other health care professionals, hospitals, or health care facilities and acquiring medical records as otherwise permitted by the Revised Code. 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438

(D) If a claim is made alleging medical negligence, the health care professional, hospital, or health care facility named, instead of responding pursuant to division (A) of this section, may file, within fifteen days after receiving notice from the chairperson of the panel pursuant to division (D) of section 2339.05 of the Revised Code, a motion with the arbitration panel for dismissal of the claim, accompanied by an affidavit of noninvolvement. The procedures, rights and responsibilities of the parties, and responsibilities of the court concerning a motion for 439 440 441 442 443 444 445 446 447

dismissal and affidavit of noninvolvement as set forth in section 2323.45 of the Revised Code shall be imposed on the parties to a medical negligence claim and the arbitration panel described under this division. 448 449 450 451

(E) The parties to a medical negligence claim, and their attorneys, may communicate with persons in order to obtain information relevant to the subject matter of the medical negligence claim. The parties to a medical negligence claim, and their attorneys, shall obtain discovery, including the conduct of any necessary interrogatories, request for production of documents, and depositions relating to the subject matter of the claim. Any person disclosing information pursuant to this division is not in violation of any duty or obligation owed to the parties under other provisions of the Revised Code. 452 453 454 455 456 457 458 459 460 461

Sec. 2339.07. No person shall be deemed competent to give expert testimony in a claim alleging medical negligence unless the person meets the requirements for an expert witness under section 2743.43 of the Revised Code. 462 463 464 465

Sec. 2339.08. No civil action against a health care professional, hospital, or health care facility based upon acts or omissions subject to sections 2339.01 to 2339.16 of the Revised Code, or against persons providing related health care or treatment, whether or not they are party to a medical negligence claim based on those acts or omissions, shall be taken except pursuant to sections 2339.01 to 2339.16 of the Revised Code. Prior to the filing of a complaint, a claim alleging medical negligence shall be arbitrated in accordance with sections 2339.01 to 2339.16 of the Revised Code or in accordance with another alternative dispute resolution mechanism agreed upon by all parties to the claim. 466 467 468 469 470 471 472 473 474 475 476 477

Sec. 2339.09. (A) If at any time a claimant alleging medical negligence enters into a settlement agreement with a respondent concerning the claim, whether or not the settlement agreement was entered into under court supervision, the claimant and respondent or the claimant's and respondent's attorneys shall jointly file a complete written copy of the settlement agreement with the superintendent of insurance. The filing shall be made within thirty days after the parties enter into the settlement agreement. 478 479 480 481 482 483 484 485

(B) Information filed with the superintendent under this section is confidential except for use by the department of insurance for general statistical purposes. 486 487 488

Sec. 2339.10. (A) At least five days before the date of the arbitration hearing, the parties to the claim shall submit copies of the filings made under section 2339.03 of the Revised Code to the chairperson of the arbitration panel, and five copies of a concise brief or summary setting forth each party's factual or legal position on the issues presented by the claim. Parties to the claim may submit additional documents pertaining to the issues to be arbitrated. In addition, one copy of each document and the brief or summary shall be served on each attorney of record in the action. 489 490 491 492 493 494 495 496 497 498

(B) Any party failing to submit the documents and brief or summary to the chairperson of the panel as required by this section may be fined at the discretion of the majority of the panel, to be paid at the time of the arbitration hearing and applied to the opposing party's arbitration costs described in division (D) of section 2339.04 of the Revised Code. 499 500 501 502 503 504

Sec. 2339.11. (A) A party to a medical negligence claim shall attend an arbitration hearing. 505 506

(B) The Ohio Rules of Evidence shall apply to arbitration hearings. If the supreme court of Ohio adopts rules regarding the applicability of the Rules of Civil Procedure to sections 2339.01 to 2339.16 of the Revised Code, those rules shall apply to arbitration under those sections. Factual information having a bearing on liability shall be supported by documentary evidence when possible. A stenographic record or tape recording and transcript of each arbitration hearing shall be maintained as part of the arbitration panel's official record. 507 508 509 510 511 512 513 514 515

(C) The panel's written evaluation is admissible in subsequent court proceedings, but the panel members shall not testify or provide depositions in subsequent court proceedings. 516 517 518

(D) To the extent permitted by the Rules of Evidence, an admission made by a party or a party's representative to the arbitration panel, and witness testimony and documentary evidence given at the arbitration hearing, shall be admissible in any subsequent court proceeding. 519 520 521 522 523

(E) Each party's testimony and each party's attorney's opening statement shall not exceed thirty minutes or another period of time that the panel determines. 524 525 526

Sec. 2339.12. (A) Except as otherwise provided in division (B) of this section, an arbitration panel shall evaluate a claim within ten days after an arbitration hearing and shall serve each party with a copy of its evaluation. The evaluation shall include the panel's specific findings on the applicable standard of practice or care for the health care services rendered; if the health care professional, hospital, or health care facility deviated from that standard of practice or care; and if that deviation was the proximate cause of the claimant's injuries. All dissenting opinions of members shall accompany the evaluation. The panel's findings shall not include damages, the value of the 527 528 529 530 531 532 533 534 535 536 537

claim, or the extent, if any, of a claimant's disability or impairment. 538 539

(B) The evaluation shall state if the arbitration panel determines that a claim or defense is frivolous. If the claim proceeds to trial as described in division (C) of section 2339.14 of the Revised Code, the party who has been determined to have a frivolous claim or defense shall post a cash or surety bond, approved by the court, in the amount of fifty thousand dollars. If judgment is entered against the party who posted the bond, the bond shall be used to pay all reasonable costs incurred by the opposing parties as allowed by the Revised Code and rules of court, including reasonable attorney fees. 540 541 542 543 544 545 546 547 548 549

Sec. 2339.13. (A) Each party to a claim shall file a written acceptance or rejection of the arbitration panel's evaluation within twenty-eight days after being served with the panel's evaluation. A party's failure to file written acceptance or rejection within twenty-eight days shall constitute the party's acceptance of the evaluation. 550 551 552 553 554 555

(B) In arbitrations involving multiple parties, the following rules shall apply: 556 557

(1) All of the parties on either side of the claim have the option of jointly accepting all of the arbitration panel's evaluation or of accepting part of the evaluation and rejecting other parts. However, as to any particular opposing party, the party either shall accept or reject that part of the evaluation in its entirety. 558 559 560 561 562 563

(2) A party that accepts all of the evaluation may indicate in the acceptance that the acceptance only is effective if all of the opposing parties accept the evaluation concerning the accepting party. If this limitation is not included in the 564 565 566 567

acceptance, the accepting party shall be considered to have agreed to an entry of judgment as to that party and those of the opposing parties who have accepted all of the evaluation, with the action to continue as described in division (C) of section 2339.14 of the Revised Code between the accepting party and those opposing parties that have rejected the part of the evaluation concerning the accepting party. If the limitation is included in the acceptance and some of the opposing parties reject the part of the evaluation concerning the accepting party, the party including the limitation is considered to have rejected all of the evaluation even as to those individual opposing parties that have accepted all of the evaluation and the cost provisions of section 2339.15 of the Revised Code shall apply. 568 569 570 571 572 573 574 575 576 577 578 579 580

(C) Any party to a claim may file a motion with the court to vacate, modify, or correct the arbitration panel's evaluation in accordance with sections 2711.10 to 2711.16 of the Revised Code. 581 582 583

Sec. 2339.14. (A) A party's acceptance or rejection of the arbitration panel's evaluation shall not be disclosed until the expiration of the twenty-eight-day period described in section 2339.13 of the Revised Code, at which time the chairperson of the panel shall mail a notice to all parties to the action indicating each party's acceptance or rejection of the panel's evaluation. The notice shall include a statement of all fees, costs, and interest to the date of the evaluation. 584 585 586 587 588 589 590 591

(B) In a case involving multiple parties, the chairperson of the panel shall mail copies of the parts of the evaluation to the parties that have accepted those parts of the evaluation that apply to them if not proscribed by division (B)(2) of section 2339.13 of the Revised Code. 592 593 594 595 596

(C) If all or part of the evaluation is rejected by opposing parties, the action shall proceed to trial to determine the 597 598

standard of practice or care applicable to the claim; if the health care professional, hospital, or health care facility deviated from that standard of practice or care; if that deviation was the proximate cause of the claimant's injuries; and damages to be awarded under the claim, subject to a party filing a complaint with the court within sixty days after being served with the panel's evaluation. 599 600 601 602 603 604 605

(D) At any time within one year after a party accepts an arbitration panel's evaluation, the party shall apply to the court for an order confirming the evaluation and for determining damages to be awarded under the claim. Thereupon the court shall grant such an order, determine damages, and enter judgment thereon, unless the evaluation is vacated, modified, or corrected as prescribed in sections 2711.10 to 2711.16 of the Revised Code. Written notice of the application shall be served upon the adverse parties and their attorneys five days before a hearing on the application. 606 607 608 609 610 611 612 613 614 615

(E) The chairperson of the panel shall place a copy of the evaluation and the parties' acceptances and rejections in a sealed envelope and file the envelope with the clerk of the court in which a party filed a complaint pursuant to division (C) of this section or filed an order pursuant to division (D) of this section. 616 617 618 619 620 621

(F) Unless one or more parties accepts with limitation pursuant to division (B)(2) of section 2339.13 of the Revised Code, if opposing parties accept the arbitration panel's evaluation, the evaluation is binding on all accepting parties. 622 623 624 625

(G) After the chairperson of the panel sends copies of the parties acceptance or rejection as required under this section, the chairperson shall submit a report to the superintendent of insurance and supreme court of Ohio that includes a summary of the 626 627 628 629

arbitration proceedings, the date the notice of intent to file a complaint was given pursuant to section 2339.03 of the Revised Code, and the date the panel rendered an evaluation pursuant to section 2339.12 of the Revised Code. 630 631 632 633

Sec. 2339.15. (A) If a party rejects all or any of the arbitration panel's evaluation, the claim proceeds to trial as described in division (C) of section 2339.14 of the Revised Code, and the court's verdict is not favorable to the rejecting party, the rejecting party shall pay an opposing party's actual costs in addition to any damages the court orders the rejecting party to pay. 634 635 636 637 638 639 640

(B) For purposes of this section, a verdict shall be adjusted by adding assessable costs and interest to the amount of the verdict from the date of filing of the complaint to the date of the evaluation's release. 641 642 643 644

(C) As used in this section, actual costs include, but are not limited to, those costs taxable in any civil action and reasonable attorneys fees. 645 646 647

Sec. 2339.16. If any person violates sections 2339.01 to 2339.15 of the Revised Code, the person aggrieved by the alleged violation may petition any court of common pleas having jurisdiction of the alleged violator for an order directing that the arbitration proceed in the manner provided for in sections 2339.01 to 2339.15 of the Revised Code. Five days' notice in writing of that petition shall be served upon the person allegedly in violation. Service of the notice shall be made in the manner provided for the service of a summons. If no jury trial is demanded as provided in this section, the court shall hear and determine if a violation occurred as alleged in the petition. Either party, on or before the return day of the notice of the 648 649 650 651 652 653 654 655 656 657 658 659

petition, may demand a jury trial of the alleged violation. Upon the party's demand for a jury trial, the court shall make an order referring the alleged violation to a jury called and impaneled in the manner provided in civil actions. If the jury finds that the alleged violation did not occur, the proceeding shall be dismissed. If the jury finds that the alleged violation occurred, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with sections 2339.01 to 2339.15 of the Revised Code. 660 661 662 663 664 665 666 667 668

Section 2. That existing section 2305.113 of the Revised Code is hereby repealed. 669 670

Section 3. Sections 2339.01, 2339.02, 2339.03, 2339.04, 2339.05, 2339.06, 2339.07, 2339.08, 2339.09, 2339.10, 2339.11, 2339.12, 2339.13, 2339.14, 2339.15, and 2339.16 of the Revised Code are hereby repealed, effective ten years after the effective date of this act. 671 672 673 674 675

Section 4. In connection with all actions based upon medical negligence claims that accrue during a period commencing on the effective date of this act and expiring nine years thereafter, the operation of sections 2711.21, 2711.22, 2711.23, and 2711.24 of the Revised Code is suspended. All actions based upon medical negligence claims accruing during this period shall be subject to the operation of Chapter 2339. of the Revised Code. Upon the expiration of such period of suspension, sections 2711.21, 2711.22, 2711.23, and 2711.24 of the Revised Code, in either the present form of such sections or as they are hereafter amended, again become fully operational as to all actions based upon medical negligence claims accruing after the period of suspension. 676 677 678 679 680 681 682 683 684 685 686 687

Section 5. The General Assembly hereby respectfully requests 688

that the Supreme Court adopt rules regarding the applicability of 689
the Rules of Civil Procedure to medical negligence arbitration 690
under the provisions of this act. 691