1988

Session Law 88-173

Florida Senate & House of Representatives

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<td>*Subcommittee adopted on a vote of 7-0.</td>
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FLORIDA LEGISLATURE

FINAL
LEGISLATIVE BILL
INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
<table>
<thead>
<tr>
<th>PRIME BILL NUMBER</th>
<th>TYPE OF BILL</th>
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<tr>
<td>88/S0460 *</td>
<td>general</td>
<td>Dudley</td>
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**PRIME BILL TITLE (short title)**

Medical Malpractice Actions

**SIMILAR/IDENTICAL BILL SUBSTITUTED BY PRIME BILL:** n/a

**DOCUMENTATION REPRODUCED**

<table>
<thead>
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**NOTE:** Consult the Final Legislative Bill Information (from Joint Legislative Management Committee, Division of Legislative Information, 1988) for more detailed bill history data. If prime bill number above is followed by an asterisk (*), it was amended on the floor, and the staff analysis for that bill may not be in accordance with the enacted law. The analyses reproduced here were supplied by the appropriate committee, who is solely responsible for their accuracy and completeness.

**ADDITIONAL INFORMATION:**

(FRM 25-12/88)
By Senator Dudley

A bill to be entitled
An act relating to medical malpractice actions
against the state; amending s. 768.28, F.S.;
prescribing the statute of limitations for such
actions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (6), and
subsection (12) of section 768.28, Florida Statutes, are
amended to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; limitation on attorney fees; statute of
limitations; exclusions.—

(a) An action may not be instituted on a claim
against the state or one of its agencies or subdivisions
unless the claimant presents the claim in writing to the
appropriate agency, and also, except as to any claim against a
municipality, presents such claim in writing to the Department
of Insurance, within 3 years after such claim accrues and the
Department of Insurance or the appropriate agency denies the
claim in writing; except that, if such claim is for damages
arising from medical malpractice, it must be presented within
2 years after it accrues and, if such claim is for
contribution pursuant to s. 768.31, it must be so
presented within 6 months after the judgment against the
tortfeasor seeking contribution has become final by lapse of
time for appeal or after appellate review or, if there is no
such judgment, within 6 months after the tortfeasor seeking
contribution has either discharged the common liability by
payment or agreed, while the action is pending against him, to

CODING: Words stricken are deletions; words underlined are additions.
discharge the common liability. The failure of the Department
of Insurance or the appropriate agency to make final
disposition of a claim within 6 months after it is filed shall
be deemed a final denial of the claim for purposes of this
section. The provisions of this subsection do not apply to
such claims as may be asserted by counterclaim pursuant to s.
768.14.

(12) Every claim against the state or one of its
agencies or subdivisions for damages for a negligent or
wrongful act or omission pursuant to this section shall be
forever barred unless the civil action is commenced by filing
a complaint in the court of appropriate jurisdiction within 4
years after such claim accrues; except that an with-respect-to
any action for contribution the-setten must be commenced
within the limitations provided in s. 768.31(4) and an action
for damages arising from medical malpractice must be commenced
within the limitations for such an action in s. 95.11(4).

Section 2. This act shall take effect October 1, 1988.

Senat SUMMARY

Limiting the time in which medical malpractice actions
against the state may be commenced.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled

An act relating to medical malpractice actions
against the state; amending s. 768.28, F.S.;
providing that failure of agency to act within
specified time is deemed final denial of a
claim; prescribing the statute of limitations
for such actions; amending s. 768.57, F.S.;
limiting the period for agency review of a
claim of medical malpractice against the state
or its agencies; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (6), and
subsection (12) of section 768.28, Florida Statutes, are
amended to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; limitation on attorney fees; statute of
limitations; exclusions.—

(6)(a) An action may not be instituted on a claim
against the state or one of its agencies or subdivisions
unless the claimant presents the claim in writing to the
appropriate agency, and also, except as to any claim against a
municipality, presents such claim in writing to the Department
of Insurance, within 3 years after such claim accrues and the
Department of Insurance or the appropriate agency denies the
claim in writing; except that, if such claim is for
contribution pursuant to s. 768.31, it must shall be so
presented within 6 months after the judgment against the
tortfeasor seeking contribution has become final by lapse of
time for appeal or after appellate review or, if there is no

CODING: Words struck are deletions; words underlined are additions.
such judgment, within 6 months after the tortfeasor seeking
contribution has either discharged the common liability by
payment or agreed, while the action is pending against him, to
discharge the common liability. The failure of the Department
of Insurance or the appropriate agency to make final
disposition of a claim within 6 months after it is filed shall
be deemed a final denial of the claim for purposes of this
section. For purposes of this subsection, in medical
malpractice actions, the failure of the Department of
Insurance or the appropriate agency to make final disposition
of a claim within 90 days after it is filed shall be deemed a
final denial of the claim. The provisions of this subsection
do not apply to such claims as may be asserted by counterclaim
pursuant to s. 768.14.
(12) Every claim against the state or one of its
agencies or subdivisions for damages for a negligent or
wrongful act or omission pursuant to this section shall be
forever barred unless the civil action is commenced by filing
a complaint in the court of appropriate jurisdiction within 4
years after such claim accrues; except that an with-respect-to
any action for contribution, the action must be commenced
within the limitations provided in s. 768.31(4) and an action
for damages arising from medical malpractice must be commenced
within the limitations for such action in s. 95.11(4).
Section 2. Paragraph (a) of subsection (3) of section
768.57, Florida Statutes, is amended to read:
768.57 Notice before filing action for medical
malpractice; presuit screening period; offers for admission of
liability and for arbitration; review --
(3)(a) No suit may be filed for a period of 90 days
after notice is mailed to any the prospective defendant
except that this period shall be 90 days if controlled by statute. Reference to the 90-day period includes such extended period. During the 90-day period, the prospective defendant's insurer or self-insurer shall conduct a review to determine the liability of the defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation of claims during the 90-day period. This procedure shall include one or more of the following:

1. Internal review by a duly qualified claims adjuster;

2. Creation of a panel comprised of an attorney knowledgeable in the prosecution or defense of medical malpractice actions, a health care provider trained in the same or similar medical specialty as the prospective defendant, and a duly qualified claims adjuster;

3. A contractual agreement with a state or local professional society of health care providers, which maintains a medical review committee;

4. Any other similar procedure which fairly and promptly evaluates the pending claim.

Each insurer or self-insurer shall investigate the claim in good faith, and both the claimant and prospective defendant shall cooperate with the insurer in good faith. If the insurer requires, a claimant shall appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination, if required. Unreasonable failure of any party to comply with this section justifies dismissal of claims or defenses. There shall be no civil

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liability for participation in a pretrial screening procedure if done without intentional fraud.

Section 3. This act shall take effect October 1, 1988.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 460

The committee substitute provides that for purposes of s. 768.28(6), F.S., in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim.

The committee substitute limits the period for review of a claim of medical malpractice under s. 768.57, F.S., to 90 days after the mailing of notice of the claim.

CODING: Words struck are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Section 95.11(4)(b), F.S., provides that an action for medical malpractice must be commenced within 2 years of 1) the time the incident giving rise to the action occurred, or 2) the time the incident is discovered or should have been discovered with the exercise of due diligence. However, the action must be commenced within 4 years of the date of the incident out of which the action accrued. An "action for medical malpractice" is defined as a claim for damages in tort or contract because of the death, injury, or monetary loss arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care.

Section 768.28, F.S., provides a limited waiver of sovereign immunity in tort actions against the state and its agencies and subdivisions. "State agencies or subdivision" include the executive departments, the Legislature, the judicial branch, and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities. Pursuant to subsection (6)(a), to institute a claim against the state or one of its agencies or subdivisions, the claimant must first present the claim in writing, to the appropriate agency and, unless the claim is against a municipality, to the Department of Insurance within 3 years after the claim accrues. Pursuant to subsection (12), a claim is barred unless a civil action is commenced by filing a complaint in court within 4 years after the claim accrues.

B. Effect of Proposed Changes:

The bill would amend s. 768.28(6)(a), F.S., to require that a claim against the state or its agencies or subdivisions that arises from medical malpractice be presented within 2 years after it accrues.

The bill would amend s. 768.28(12), F.S., to provide that an action arising from medical malpractice must be commenced within the limitations provided in s. 95.11(4), F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Undetermined.

B. Government:

Undetermined.
III. COMMENTS:

None.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Section 95.11(4)(b), F.S., provides that an action for medical malpractice must be commenced within 2 years of 1) the time the incident giving rise to the action occurred, or 2) the time the incident is discovered or should have been discovered with the exercise of due diligence. However, the action must be commenced within 4 years of the date of the incident out of which the action accrued. An "action for medical malpractice" is defined as a claim for damages in tort or contract because of the death, injury, or monetary loss arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care.

Section 768.28, F.S., provides a limited waiver of sovereign immunity in tort actions against the state and its agencies and subdivisions. "State agencies or subdivision" include the executive departments, the Legislature, the judicial branch, and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities. Pursuant to subsection (6)(a), to institute a claim against the state or one of its agencies or subdivisions, the claimant must first present the claim, in writing, to the appropriate agency and, unless the claim is against a municipality, to the Department of Insurance within 3 years after the claim accrues. Pursuant to subsection (12), a claim is barred unless a civil action is commenced by filing a complaint in court within 4 years after the claim accrues.

B. Effect of Proposed Changes:

The committee substitute would amend s.768.28(6)(a), F.S., to provide that, for purposes of that subsection, in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim.

The bill would amend s. 768.28(12), F.S., to provide that an action arising from medical malpractice must be commenced within the limitations provided in s. 95.11(4), F.S.

The bill would limit the period for review of a claim of medical malpractice under s.768.57, F.S., to 90 days after the mailing of notice of the claim.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:
Undetermined.

B. Government:
   Undetermined.

III. COMMENTS:
   None.

IV. AMENDMENTS:
   None.
The committee substitute provides that for purposes of s. 768.28(6), F.S., in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim.

The committee substitute limits the period for review of a claim of medical malpractice under s. 768.57, F.S., to 90 days after the mailing of notice of the claim.
SUBJECT: SB 460 amends the portions of F.S. 768.28 dealing with the statute of limitations, deadlines for submitting a claim against the state or one of its agencies, and the deadlines for commencing a civil action against the state. The amendment makes the provisions of 768.28, F.S., consistent with those in F.S. 95.11(4)(b) which specifies deadlines for commencing an action for medical malpractice.

STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

1. SUMMARY

A. Present Situation:

Florida Statutes, Section 95.11(4)(b) requires that an action for medical malpractice must be commenced within two years from the time the incident giving rise to the action occurred, or within two years of the time the incident is discovered, or should have been discovered with the exercise of due diligence.

Section 768.28(6)(a), F.S., requires that, in an action against the state or one of its agencies, a claimant must submit a written claim against the state or its agency within three years after such claim accrues and the appropriate state agency has denied the claim in writing. Section (12) of 768.28, F.S., further requires that civil action against the state or its agency must be commenced in an appropriate court within four years.
B. Effect of Proposed Changes:

Proposed SB 460 amends Section 768.28(6)(a) to specify that, in the case of a claim against the state or its agency for damages arising out of medical malpractice, the claim must be presented within two (not three) years after it accrues. SB 460 also amends 768.28(12), F.S., to specify that, in the case of a malpractice claim against the state or its agency, civil action must be commenced within the two-year limitation specified in Section 95.11(4)(b), F.S., rather than the current four-year limitation.

2. FINANCIAL IMPACT

The proposed bill has no fiscal impact on the department.

3. COMMENTS

None.

4. DISTRICT CONTACTS

None.

5. LEGAL REVIEW

Coordinated with the HRS legal department.

6. AMENDMENTS

None.
Journal
of the
SENATE
State of Florida

TWENTIETH REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
APRIL 5 THROUGH JUNE 7, 1988
June 1, 1988  JOURNAL OF THE SENATE  671

 requiring certain insurers to report closed claims to the Department of Insurance and the Department of Professional Regulation, providing for confidentiality of such reports, providing authority for the Department of Insurance to provide information relating to specified health care providers to the Department of Professional Regulation; amending §641.55, F.S.; revising requirements pertaining to internal risk management programs maintained by health maintenance organizations; revising prescribed contents of annual reports by such organizations respecting medical incidents; providing for quarterly incident reports to the Department of Professional Regulation, providing for confidentiality of certain reports; amending §617.06, F.S., providing for risk management programs consistent with health maintenance organizations; authorizing the Department of Insurance to impose administrative fines for violation of certain reporting requirements, authorizing the Department of Insurance and the Department of Professional Regulation to have certain access to health maintenance organization records and deleting such authority with respect to the Department of Health and Rehabilitative Services; providing for confidentiality of records so obtained; providing exceptions, requiring the Department of Insurance to review the risk management program of each health maintenance organization at least annually and to make certain determinations with respect thereto; providing for immunity from certain actions with respect to risk management programs with respect to certain matters; requiring the Department of Insurance to report certain conduct by a provider, staff member, or employee of a health maintenance organization to the appropriate regulatory board for disciplinary action; transferring certain other duties under the program from the Department of Professional Regulation, providing for mailing of notice of intent to initiate litigation rather than filing; amending §51 of ch. 88-1, Laws of Florida; providing legislative findings and intent as to emergency medical care, amending §768.76, F.S.; prescribing the methods by which payments for future economic losses arising out of medical malpractice must be made; amending §50 of ch. 88-1, Laws of Florida, providing for mailing of notice of intent to initiate litigation rather than filing; amending §51 of ch. 88-1, Laws of Florida, requiring availability of medical records for presuit investigation of claims and defenses and providing penalties; amending §52 of ch. 88-1, Laws of Florida, providing for mailing of notice of intent to initiate litigation rather than filing; providing immunity with respect to presuit investigation, amending §53 of ch. 88-1, Laws of Florida, providing for mailing of notice of intent to initiate litigation and response thereto rather than filing; amending §54 of ch. 88-1, Laws of Florida; providing for voluntary binding arbitration of claims for medical negligence, providing for selection of arbitration panels; providing arbitration procedures, providing procedures for hearings; deleting provisions relating to using procedures prescribed in §4.44, F.S., and to certain authority of the chief arbitrator; reenacting and amending §55 of ch. 88-1, Laws of Florida to allocate responsibility among multiple defendants to medical negligence claims; deleting provision granting certain authority to the chief arbitrator; providing for joint and several liability of all defendants in an arbitration proceeding; amending §56 of ch. 88-1, Laws of Florida, providing disincentives to a party to accept voluntary binding arbitration, including prejudgment interest, payment of attorney's fees, and limitations on non-economic damages; reenacting and amending §57 of ch. 88-1, Laws of Florida, providing procedures when agreement cannot be reached by arbitrators; revising provision relating to nomination and appointment of new arbitrators; amending §58 of ch. 88-1, Laws of Florida, prescribing time when arbitration awards accrue interest; amending §59 of ch. 88-1, Laws of Florida; providing for appeal of arbitration awards and allocations of financial responsibility; providing for enforceability of court orders by contempt and for issuance of execution on court judgments; amending §60 of ch. 88-1, Laws of Florida; providing and providing definitions with respect to the Florida Birth-Related Neurological Injury Compensation Plan; amending §62 of ch. 88-1, Laws of Florida; correcting a title, amending §72 of ch. 88-1, Laws of Florida; specifying the time within which claims for birth-related neurological injuries must be filed; amending §73 of ch. 88-1, Laws of Florida, providing for administration of the Florida Birth-Related Neurological Injury Compensation Plan by the Florida Birth-Related Neurological Injury Compensation Association pursuant to a plan of operation approved by the Department of Insurance, providing for assessments for participation in the plan, providing for annual accounting and for actual valuation of the plan by the department; amending §74 of ch. 88-1, Laws of Florida, providing that the association is not a state agency, providing for membership and a board of directors for the association; providing powers and duties of the board, providing for inspection of books, records, and audits of the plan, providing for fidelity bonds of certain employees of the plan, requiring the association to file certain annual reports, providing for investment of plan funds; amending §76 of ch. 88-1, Laws of Florida, providing for appropriations from the Insurance Commissioner's Regulatory Trust Fund to the Florida Birth-Related Neurological Injury Compensation Association, amending §78 of ch. 88-1, F.S., redefining the term "reckless disregard" for purposes of the Good Samaritan Act, which provides immunity from liability to certain health care providers rendering emergency medical services, requiring acceptance of emergency and transfer emergency patients in order to obtain such immunity; providing for disciplinary action against an emergency care facility that does not accept and treat all emergency care patients within the operational capacity of the facility; regarding regard to their ability to pay; amending §786.81, F.S., providing for damages attributed to a medical teaching hospital in a medical malpractice case, providing for damages attributed to the Board of Regents in a medical malpractice case; reenacting §83 of ch. 88-1, Laws of Florida, requesting the Supreme Court to adopt a standard jury instruction for use in certain medical negligence cases; repealing §786.85, F.S., which requires a medical malpractice study; amending §786.40, F.S.; providing for review of complaints against physicians and osteopathic physicians by professional society medical or peer review committees; providing for advisory reports to the department, providing confidentiality; providing for review and repeal of exemption under the Open Government Sunset Review Act; providing for per diem and travel expenses; providing specified immunity; prohibiting causes of actions against health care providers for furnishing certain information, amending §768.57, F.S., providing notice to the Department of Professional Regulation prior to filing certain malpractice claims; specifying contents of notice; protecting claimants' legal rights; providing for department review and investigation, providing for informal discovery; creating §768.67, F.S.; prohibiting settlement agreements from denying parties to the right to discuss with or report to the Division of Medical Quality Assurance the events giving rise to the claim; providing that payments made under certain vocational rehabilitation programs are not collateral source payments under the meaning of ch. 88-1, Laws of Florida; providing inapplicability of act to existing causes of action, providing an effective date.

On motion by Senator Jennings, by two-thirds vote CS for CS for HB 819 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yea 32
  Barron
  Beard
  Brown
  Childers, M
  Childers, W D
  Deratany
  Dudley
  Frank
  Nays 0
  Vote after roll call

Yea 15
  Crawford, Kirkpatrick
  ...
damages as a result of care or treatment provided gratuitously in such capacity as a result of any act or failure to act in such capacity in providing or arranging further medical treatment, if such person acts as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.

(Renumber subsequent section.)

Senator Meek moved the following amendment:

Amendment 2—On page 1, line 13, insert:

Section 1 A person who, through negligence, causes permanent injury resulting in the loss of a bodily function to the natural or adoptive parent of an unmarried dependent is liable to the dependent for damages, including damages for permanent loss of services, comfort, companionship, and society. This section shall apply to acts of negligence occurring on or after the effective date of this act.

(Renumber subsequent sections.)

Further consideration of CS for SB 460 as amended was deferred.

SB 1016—A bill to be entitled An act relating to professions regulated by the Department of Professional Regulation; amending s. 455.26, providing for the appointment of a veterinarian to the Impaired Practitioner Committee, amending s. 474.214, F.S.; providing procedures for the treatment of impaired veterinarians, providing for the employment of consultants; providing for the confidentiality of certain information, providing for the disclosure of certain information; prohibiting certain collaboration; providing penalties; providing immunity; providing an effective date.

—was read the second time by title On motion by Senator Kirkpatrick, by two-thirds vote SB 1016 was read the third time by title, passed and certified to the House. The vote on passage was

Year—33

Beard Grant Langley Stuart
Brown Grizzle Malchon Thomas
Children, D. Hill Margolis Thurman
Children, W. D. Hollingsworth McPherson Weinstei
Crawford Jenne Myers Weinstock
Crenshaw Jennings Peterson Woodson
Derany Johnson Plummer
Frank Kirkpatrick Ros-Lehtinen
Gordon Kiser Scott

Nays—None

SB 1203—A bill to be entitled An act relating to tax administration, amending s. 213.75, F.S.; providing for specifying application of tax payments, amending s. 108 of ch. 87-6, Laws of Florida, and s. 66 of ch. 87-101, Laws of Florida; providing for application of certain sections of such laws; providing an effective date

—having passed as amended and been reconsidered on May 30, was taken up.

On motion by Senator Derany, the Senate reconsidered the vote by which SB 1203 was read the third time.

On motions by Senator Grizzle, the Senate reconsidered the vote by which Amendments 6 and 8 were adopted. By permission, Amendments 6 and 8 were withdrawn.

Senator Derany moved the following amendments which were adopted:

Amendment 13—On page 2, between lines 12 and 13, insert:

Section 4. Effective October 1, 1988, section 192.105, Florida Statutes, is amended to read:

192.105 Unlawful disclosure of federal tax information; penalty.—

(1) Notwithstanding s. 119.14, it is unlawful for any person to divulge or make known federal tax information obtained pursuant to 26 U.S.C. s. 6103, except in accordance with a proper judicial order or as otherwise provided by law for use in the administration of the tax laws of this state, and such information is exempt from the requirements of s. 119.071. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

Section 5 Effective October 1, 1988, section 193.374, Florida Statutes, is amended to read.

193.374 Confidentiality of returns.—Notwithstanding s. 119.14, all returns of property and returns required by s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, and the Auditor General, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the requirements of s. 119.071. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14

Section 6 Effective October 1, 1988, subsections (3) and (6) of section 195.027, Florida Statutes, are amended to read.

195.027 Rules and regulations —

(3) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property, which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer’s records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made. Notwithstanding s. 119.14, all records produced by the taxpayer under this subsection shall be deemed to be confidential in the hands of the property appraiser, the department, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and records are exempt from the requirements of s. 119.071. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(6) The fees and costs of the sale or purchase and terms of financing shall be presumed to be usual unless the buyer or seller, or agent thereof, files a form which discloses the unusual fees, costs, and terms of financing. Such form shall be filed with the clerk of the circuit court at the time of recording. The rules and regulations shall prescribe an information form to be used for this purpose. Either the buyer or the seller, or the agent thereof, shall complete an information form. The form shall be accurate to the best of his knowledge and belief. Notwithstanding s. 119.14, the information form shall be confidential in the hands of all persons after delivery to the clerk, except that the Department of Revenue and the Auditor General shall have access to it in the execution of their duties, and such form is exempt from the requirements of s. 119.071. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. The information form may be used in any judicial proceeding, upon a motion to produce duly made by any party to such proceedings. Failure of the clerk to obtain an information form with the recording shall not impair the validity of the recording or the conveyance. The form shall provide for a notation by the clerk indicating the book and page number of the conveyance in the official record books of the county. The clerk shall promptly deliver all information forms received by him to the property appraiser for his custody and use.

Section 7 Effective October 1, 1988, subsection (1) of section 195.084, Florida Statutes, is amended to read

195.084 Information exchange.—

(1) The department shall promulgate rules and regulations for the exchange of information among the department, the property appraiser’s office, the tax collector, and the Auditor General. All records and returns of the department useful to the property appraiser or the tax collector shall be made available upon request, but subject to the reasonable conditions imposed by the department. This section shall supersede statutes prohibiting disclosure only with respect to the property appraiser, the tax collector, and the Auditor General, but the department may establish regulations setting reasonable conditions upon the access
Amendment 1—On page 6, lines 21-31; on page 7, lines 1-31, on page 8, lines 1-31, and on page 9, lines 1-27, strike all of said lines and insert:

Section 6. Paragraphs (a) and (e) of subsection (1) and subsection (3) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)(a) The payment bond required to exempt an owner under part 1 shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract, and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the contractor shall promptly make payment for labor, services, and materials used to improve real property shall be deemed to include the condition of this subsection.

(e) In addition, a lienor shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety within 90 days of the date a payment is due to the lienor under a contract. A written notice will satisfy this condition precedent with respect to the payment described in the notice of nonpayment and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. Failure of a lienor to receive retention sums not in excess of ten percent of the value of labor, services, or materials furnished by bonded lienor shall not be considered a nonpayment requiring the service of the notice provided under this paragraph. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

To (name of contractor and address) (name of surety and address)

The undersigned notifies you that he has furnished . . . (describe labor, services, or materials) . . . for the improvement of the real property identified as . . . (property description) . . . The amount now due and unpaid is $ . . . 

(signature and address of lienor) . . .

In addition, a lienor shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety within 90 days of the failure to receive any payment which is then due and owing from the delivery date for any labor, services, or materials. Failure of a lienor to receive retention sums not in excess of ten percent of the value of labor, services, or materials furnished by said lienor shall not be considered a nonpayment requiring the service of the notice provided under this paragraph. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

To (name of contractor and address) (name of surety and address)

The undersigned notifies you that he has furnished . . . (describe labor, services, or materials) . . . for the improvement of the real property identified as . . . (property description) . . . owned by . . . (owner's name and address) . . . under order given by . . . The last of the labor, services, or materials was furnished on . . . The amount now due and unpaid is $ . . . 

(Signature and address of lienor) . . .

Amendment 2—On title, on page 1, strike all of line 22, and insert: contractor and surety in order for certain persons to recover under contract, and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the contractor shall promptly make payment for labor, services, and materials used to improve real property shall be deemed to include the condition of this subsection.

vote after roll call:

Yeas—None

The Senate resumed consideration of—

Amendment 3—On page 1, line 13, insert:

Amendment 4—In title, on page 1, line 10, after the semicolon (,) insert: amending s. 768.13, F.S., providing an exemption from civil liability for licensed medical personnel working gratuitously in nonprofit medical facilities;

Amendment 5—In title, on page 1, line 3, strike "against the state"

Amendment 6—In title, on page 1, line 1, strike all of lines 2 and 3, and insert:

An act relating to liability for damages, providing that certain dependent entitlements to recover damages for injuries to their parents under certain circumstances; amending s. 768.28, F.S.;

On motion by Senator Dudley, by two-thirds vote CS for SB 460 as amended was read the third time by title, passed, ordered engrossed and then certified to the House.

The vote on passage was:

Yeas—36

Mr. President Frank Kirkpatrick Plummer
Beard Girardeau Kuer Ros-Lehtinen
Brown Grant Langley Scott
Childers, D. Grizzle Lehtinen Stuart
Childers, W. D. Hair Malchon Thomas
Crawford Hill McPherson Thurman
Crenshaw Hollingsworth Meek Weinstein
Deratany Jenne Myers Weinstock
Dudley Jennings Peterson Woodson

Nays—None

Consideration of CS for CS for SB 560 was deferred.
PRESIDENT: Senator Dudley.

DUDLEY: Mr. President, earlier this morning we TP'd 460, my bill on the special order calendar. Senator Meek had an amendment pending. Senator Barron and Senator Langley had raised some concerns. It's my understanding that language has been worked out now. That's on the first page of the special order calendar--460--if we could take that up and take up her amendment.

PRESIDENT: Read Senate bill 460.

[Considerable chatter off-mike among a number of people.]

CLERK: By Senator Meek on page 1, line 13: "Insert Section 1. A person who through negligence causes significant....

PRESIDENT: Okay. Show the amendment withdrawn and read the next amendment.

CLERK: By Senator Meek on page 1, line 13: "Insert Section 1. A person who through negligence causes significant permanent injury to the natural or adoptive parent of an unmarried dependent resulting in a permanent total disability shall be liable to the dependent for damages, including damages for permanent loss of services, comfort, companionship and society. This section shall apply to acts of negligence occurring on or after the effective date of this act. Renumber subsequent sections."

PRESIDENT: Senator Meek.

MEEK: Mr. President, this is clarifying language to be sure and clarify what is meant by permanent, total disability. And Senator Barron and Senator Langley and everybody's happy with this amendment.

PRESIDENT: Any questions on the amendment? Any objections? Without objection show the amendment adopted. Read the next amendment.

UNIDENTIFIED SPEAKER [Clerk?]: Three title amendments.

PRESIDENT: Without objection show the title amendments adopted. Any further questions on the bill? Senator Dudley moves the rules be waived, Committee substitute for Senate bill 460 be read a third time and placed on final passage, without objection, read it.
CLERK: Committee substitute for Senate bill 460, a bill to be entitled "An act relating to medical malpractice."

SPEAKER: The clerk will unlock the machine and Senators proceed to vote. [Considerable activity off-mike.] Lock the machine and announce the vote.

CLERK: Thirty-eight yeas, no nays, Mr. President.

SPEAKER: So the bill passes, read the next bill.
A bill to be entitled
An act relating to negligence; amending s.
768.19, F.S.; providing a right of action for
wrongful death in cases of brain death;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.19, Florida Statutes, is
amended to read:

768.19 Right of action.--When the death or brain death
of a person is caused by the wrongful act, negligence,
default, or breach of contract or warranty of any person,
including those occurring on navigable waters, and the event
would have entitled the person injured to maintain an action
and recover damages if death or brain death had not ensued,
the person or watercraft that would have been liable in
damages if death or brain death had not ensued shall be liable
for damages as specified in this act notwithstanding the death
or brain death of the person injured, although death or brain
death was caused under circumstances constituting a felony.

Section 2. This act shall take effect upon becoming a
law.

********************************************

HOUSE SUMMARY

Provides a right of action for wrongful death in cases of
brain death.

CODING: Words struck out are deletions; words underlined are additions.
A bill to be entitled
An act relating to damages; providing that
certain dependents are entitled to recover
damages for injuries to their parents under
certain circumstances; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who, through negligence, causes
significant permanent injury resulting in the loss of a bodily
function to the natural or adoptive parent of an unmarried
dependent is liable to the dependent for damages, including
damages for permanent loss of services, comfort,
companionship, and society.

Section 2. This act shall take effect October 1, 1988,
and shall apply to acts of negligence occurring on or after
the effective date of this act.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 716

The committee substitute replaces the "brain death"
provisions with provisions creating a cause of action in
favor of an unmarried dependent child against a person who
negligently causes significant permanent injury to the
child's parent.

CODING: Words struck are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Sections 768.16-768.27, F.S., constitute the Florida Wrongful Death Act. The Act provides a cause of action for the survivors of a deceased person whose death was caused by a wrongful or negligent act that would have entitled the deceased to bring an action if death had not ensued.

B. Effect of Proposed Changes:

The bill would expand the Florida Wrongful Death Act to provide a cause of action in cases of brain death.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

The bill contains no definition or criteria for "brain death."

Apparently the bill would apply only in cases where 1) the person's brain has so completely ceased to function as to be "brain dead" and 2) all of the person's vital functions are being performed by machines continuously throughout the "wrongful brain death" lawsuit. In the absence of this fact situation, there would be a true death, with no vital functions at all, and the bill would be inapplicable and unnecessary.

Section 382.008, F.S., requires that a death certificate be filed for every death occurring in this state. Section 382.009., F.S., provides that, for legal and medical purposes, where respiratory and circulatory functions are maintained by artificial means so as to preclude a determination that these functions have ceased, death may be determined where there is an irreversible cessation of the functioning of the entire brain, including the brain stem. Section 382.026, F.S., provides that a violation of the chapter is a misdemeanor of the second degree. Also, the Department of Health and Rehabilitative Services can impose a fine of up to $500 for a violation of certain sections, including section 328.008, F.S.

Given the above, should the bill pass, it is likely that, in any suit brought under its provisions, the plaintiff would be required to present expert testimony to establish the existence of the condition of "brain death." It is also likely that the expert witness would have to be a medical doctor. If, for the purpose of
being an expert witness in such a suit, a doctor examined a person or the person's medical records and made a determination that the condition of "brain death" existed, it would be arguable that the doctor had made a determination of death as is contemplated by section 382.009, F.S. If he has in fact made a determination of death, he would be required to file a death certificate or be guilty of a second degree misdemeanor as well as subject to an additional $500 fine.

An additional problem is that the bill appears to establish a new category of "death." Under the existing brain death statute, s. 382.009, F.S., a person who is determined to be brain dead is dead for all purposes; the person is declared legally dead and taken off the life support machines. As was discussed above, the bill appears to apply only to cases where the injured person remains connected to the life support machines. The bill, therefore, seems to envision that a "brain dead" person would not be removed from the machines but would remain in the hospital with his vital functions maintained by the machines. This appears to be contrary to existing law and to create a nebulous category of "dead" people who remain in the hospital and continue to receive medical care after a determination that they are "brain dead."

IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 716

The committee substitute replaces the "brain death" provisions with provisions creating a cause of action in favor of an unmarried dependent child against a person who negligently causes significant permanent injury to the child's parent.

Committee on Judiciary-Civil

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)
I. SUMMARY:

A. Present Situation:

Under present law, a claim for damages resulting from a negligent act may be brought by the person injured, and a separate cause of action may be brought by a spouse, generally for loss of companionship. A cause of action on behalf of the dependent of the person injured may only be brought in a wrongful death action. Sections 768.16-768.27, Florida Statutes. Accordingly, where a parent is severely injured, but remains alive, there is no action which may be brought on behalf of the child against the tortfeasor to recover for losses suffered by the child.

B. Effect of Proposed Changes:

The bill creates a cause of action on behalf of an unmarried dependent child against a person who negligently causes significant permanent injury to the child's natural or adoptive parent, when the injury results in the loss of a bodily function. The damages recoverable by the child include damages for permanent loss of services, comfort, companionship, and society.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

It is unclear what a "significant permanent injury resulting in the loss of a bodily function" is.

IV. AMENDMENTS:

None.
BILL VOTE SHEET

( VS-88: File with Secretary of Senate) BILL NO. SB 716

COMMITTEE ON: Judiciary-Civil

DATE: May 19, 1988 ACTION: Favorably with amendments
TIME: 9:15 to 12:00 N Unfavorably
PLACE: Committee Room B

OTHER COMMITTEE REFERENCES: Submitted as a Committee Bill
(in order shown) Temporarily Passed

Reconsidered
Not Considered

THE VOTE WAS:

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* Present at the table without objection

Please Complete: The Key sponsor appeared ( X )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( X )
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<td>Rep. Davis</td>
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MAY 19, 1988 / ROOM B
(DATE/LOCATION)
CHAIRMAN: ...okay, Miss Meek's been waiting. Senator Meeks' bill.

UNIDENTIFIED SPEAKER: [Comment inaudible: off-mike.]

CHAIRMAN: We'll get...Representative McKenzie, we'll get right to you. Senator Johnson is also back there. Okay.

UNIDENTIFIED SPEAKER: [Comment inaudible: off-mike.]

CHAIRMAN: Let us catch up with you, please, Senator Meek. What tab are we on?

SECRETARY: Eight.

CHAIRMAN: Tab eight, by Senator Meek, Senate bill seven-one-six.

MEEK [Speaker off-mike, most of comment inaudible except for scattered words and phrases]:
...bill...damages...there are amendments....conform this bill to the House's bill and....what the bill does...current law...there is some....damages...person injured...there was also....there's nothing in the statute that....when a parent is severely injured but remains alive and is unable mentally to provide the kind of....what this bill is trying to do is that it speaks on behalf of a child....trying to recover losses suffered by this child. Ah, ah, included in a letter that I sent to you a copy of an article from the Miami Herald....read by now....example of this happening to a young child. And that's why this bill was filed to try and close that loophole in the law and make some provision for a child who has suffered losses.

CHAIRMAN: Okay, for the record Senator Dudley offers the amendment by the committee which strikes the enacting clause and it is before you, you can tell what it does, it says: "A person who through gross negligence causes significant permanent injury resulting in the loss--through negligence, pardon me--in the loss of bodily function to natural, adoptive parent, etc. Any questions on the bill? Senator Jenne, you're looking at me and said "Isn't that always--already the law?"

JENNE: [Comment inaudible: off-mike.]
CHAIRMAN: Yeah.

JENNE: [Comment inaudible: off-mike.]

UNIDENTIFIED SPEAKER (female): [Comment inaudible: off-mike.]

CHAIRMAN: It's germane in that brain-dead does--is--a serious loss of bodily function.

UNIDENTIFIED SPEAKER (male): [Comment inaudible: off-mike.]

CHAIRMAN: Maybe--Senator Meek, can you tell us why they abandoned the brain-death and went to the loss of bodily function?

MEEK: No, I don't, Senator... [balance of remark garbled and obscured by tape hiss].

CHAIRMAN: All right, I'm going.... Ron Smith didn't ask to be heard on this bill but I'd like to hear from him as to what the function of this is.

SMITH: Was it the question about loss of bodily function as compared to brain-death, is that what it was, Senator?

CHAIRMAN: Where the original bill added were the death new language or brain-death, expanded death to include also brain-death, of a person that cause, etc., then they would be liable to the defendants. The amendment says, the amendment says, permanent injury resulting in loss of bodily function. That could be anything. I, I would think already they would be liable for, to the defendants, would they not?

SMITH: ...brain-death, I think that...what...talked about...that does completely eliminate bodily functions.

CHAIRMAN: Yeah. All right, what...the, the problem was, ah--another Dade County problem that screws up the law all over the state as usual--but, the problem was this lady is still brain-dead, is she not, and, but her dependents had no claim for some reason. All right, and what was the reason that they had no claim?

UNIDENTIFIED SPEAKER (female): [Comment inaudible: off-mike.]

CHAIRMAN: Why not? Ron Smith?

SMITH: [Comment inaudible: off-mike.]

CHAIRMAN: She wasn't married?

SMITH: Under the law of the State of Florida, children, children do not have a cause of action for the loss of consorti-
um or a for loss of any type of services as far as their parents are concerned at the present time under the laws of Florida. So in this particular case where this lady was brain-dead—as compared to being dead which they would have a cause of action for—they could not recover. And that was the unfortunate thing that the way this thing happened down there in Miami. It certainly was a tragedy.

CHAIRMAN: Okay. I think we understand it. Questions? Senator Dudley has a technical question.

DUDLEY: [First part of comment inaudible: off-mike.] This says that...negligence...results in loss of bodily function to the natural or adoptive parent of an unmarried dependent.... Okay, then that person is liable to....

CHAIRMAN: That's fine. Okay, any questions on it show the amendment, ah, by Senator Dudley adopted. Without objection? Okay, show that amendment and the title amendment adopted without objection. Senator Dudley moves a committee substitute. Without objection. Show that motion adopted. Any other questions on the bill? Anyone in the audience want to speak on the bill? I have no cards on this bill.

UNIDENTIFIED SPEAKER: May I ask a question....

CHAIRMAN: Senator Frank. Certainly.

FRANK: Does...because this limits it, the cause of action only to natural or adoptive parents, ah, let's assume that someone is, ah, the sole parent of the child who ends up being in this brain-dead situation, and then it's necessary for the grandparents to then adopt the child. Does that cover this situation, because they're adopting the child after the injury occurred?

UNIDENTIFIED SPEAKER: [Comment inaudible: off-mike.]

CHAIRMAN: No, I don't think so.

UNIDENTIFIED SPEAKER: [Comment inaudible: off-mike.]

FRANK: Oh, I see, wait a minute, wait a minute, I'm reading it the wrong way. Scratch it, scratch it, I read it the wrong way.

CHAIRMAN: Okay. Any other discussion on the bill? If not, Senator Dudley moves the bill, the committee substitute. Anyone wanna vote against it? Hearing none, show it adopted by the votes of all members present. Thank you, Senator.
A bill to be entitled
An act relating to negligence, amending s.
768.19, F.S., providing a right of action for
wrongful death in cases of brain death;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1 Section 768 19, Florida Statutes, is
amended to read:

768.19 Right of action.--When the death or brain death
of a person is caused by the wrongful act, negligence,
default, or breach of contract or warranty of any person,
including those occurring on navigable waters, and the event
would have entitled the person injured to maintain an action
and recover damages if death or brain death had not ensued,
the person or watercraft that would have been liable in
damages if death or brain death had not ensued shall be liable
for damages as specified in this act notwithstanding the death
or brain death of the person injured, although death or brain
death was caused under circumstances constituting a felony.

Section 2. This act shall take effect upon becoming a
law.

*************************************************************************

HOUSE SUMMARY

Provides a right of action for wrongful death in cases of
brain death.

CODING  Words stricken are deletions; words underlined are additions
This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.
A bill to be entitled
An act relating to damages; providing that
certain dependents are entitled to recover
damages for injuries to their parents under
certain circumstances; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who through negligence causes
significant permanent injury resulting in the loss of a bodily
function to the natural or adoptive parent of an unmarried
dependent is liable to the dependent for damages, including
damages for permanent loss of services, comfort,
companionship, and society.

Section 2. This act shall take effect October 1, 1988,
and shall apply to acts of negligence occurring on or after
the effective date of this act.

CODING: Words stricken are deletions; words underlined are additions.
This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.
I. SUMMARY:

A. PRESENT SITUATION:

Under present law, a claim for damages resulting from a negligent act may be brought by the person injured, and a separate cause of action may be brought by a spouse, generally for loss of companionship. A cause of action on behalf of the dependent of the person injured may only be brought in a wrongful death action. Sections 768.16-768.27, Florida Statutes. Accordingly, where a parent is severely injured, but remains alive, there is no action which may be brought on behalf of the child against the tortfeasor to recover for losses suffered by the child.

B. EFFECT OF PROPOSED CHANGES:

This legislation would permit the dependent child of an injured person to seek recovery for permanent loss of companionship and loss of services.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill creates a cause of action on behalf of a dependent child against a tortfeasor who has permanently injured the child's parent in a manner which permanently deprives the parent of a bodily function and permanently deprives the child of the parent's services, comfort, companionship, or society.

Section 2 of the bill provides an effective date of October 1, 1988, and specifically limits the bill's application to negligent acts occurring on or after October 1, 1988.
II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   Indeterminate

4. Appropriations Consequences:
   Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   This legislation could result in an increase in the amount of damages awarded in some civil actions, which could conversely increase the cost of liability insurance; however, it is unlikely that the fiscal result will be great in comparison to the amount of damages presently paid for damages, since the right to recover is limited to only permanent and severe injuries, and the damages recoverable are limited to specified elements. Damages for pain and suffering are not provided.

2. Direct Private Sector Benefits:

   This legislation will permit the dependent child of a severely injured person to recover damages suffered by the child as a result of the injury.

1521
3. Effects on Competition, Private Enterprise, and Employment

Markets:

None

D. FISCAL COMMENTS:

This legislation could result in fewer children becoming wards of the state or indigents as a result of an injury to a parent, which could result in a savings to both state and local governments.

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

CS/HB 0816 is a major revision of HB 0816, which provided for wrongful death actions where the person was determined to be "brain dead", but was still physically alive. This alternative, which provides damages for dependent children when the parent is permanently deprived of a bodily function resulting in the permanent loss of services or companionship to the child, will not affect the recovery of the injured parent. This legislation should have a specific impact in those cases where the injured parent is a single parent, and thus there is no right of the spouse to recover for the loss of the injured person's services.

V. AMENDMENTS:

VI. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by: Thomas R. Tedcastle
Staff Director: Richard Hixson

FINANCE & TAXATION:
Prepared by: Staff Director:

APPROPRIATIONS:
Prepared by: Staff Director:
SUBCOMMITTEE REPORT

AS REPORTED TO CLERK

To Chairman, Committee on Judiciary:

Subcommittee on Court Systems, Probate & Consumer Law

Date of meeting 4/25/88

Time 3:30 p.m.

Place 214 C

Bill No. HB 816

FINAL ACTION: ___ FAVORABLE

X FAVORABLE WITH ___ AMENDMENTS

___ UNFAVORABLE

VOTE:

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Total Yea 7

Total Nays 0

WEBSTER, CHMN.

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<table>
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<th>Name</th>
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(If additional persons, enter on reverse side and check here __)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee:

Date ______________________

Received by

H-74(1976)
Judiciary

Court Systems, Probate & Consumer Law

April 25  3:30 P.M.-5:30 P.M.  214 C

HB 0067 By Renke--Punitive Damages/Equity Cases (Favorable, 6/0)

HJR 0692 By Press--Legislative Sessions/Date & Length (Temporarily passed)

HB 0715 By Simon--Garnishment/Fee Increased (Favorable with 1 amendment, 7/0)

HB 0750 By Rush--Medical Malpractice Actions (Favorable with 4 amendments, 7/0)

HB 0816 By Gordon--Negligence/Brain Death (PCS, 7/0)

HB 0880 By Langton--Trials/Exclusion of Witnesses (Temporarily passed)

HB 0936 By Langton--Criminal Proceedings/Foreign Records (Favorable, 7/0)

HB 1134 By Upchurch--Property Assessment/Judicial Review (Favorable, 7/0)

HB 1194 By Cosgrove--Uniform Certified Process Server Act (Favorable with 1 amendment, 5/0)

HB 1311 By Drage--Garnishment/Continuing Writ/Costs (Favorable with 2 amendments, 7/0)

HB 1318 By Bell--Civil Justice System (Temporarily passed)
Judiciary

Court Systems, Probate & Consumer Law

April 25 3:30 P.M.-5:30 P.M. 214 C

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Distribution: Legislative Information
4/25/88 COURT SYSTEMS, PROBATE & CONSUMER LAW LAW SUB. OF HOUSE JUDICIARY—BILL HEARING

SERIES 414, Box 688
TRANSCRIPT OF HEARINGS ON
HOUSE BILL 816 (1988)

House Committee on Judiciary
Subcommittee on Court Systems, Probate & Consumer Law
April 25, 1988, 3:30-5:30 p.m.

CHAIRMAN: ...take up House bill 816 by Representative Gordon whose aide is here. Miss Jacobs.

JACOBS: Ah, yes....

CHAIRMAN: It's dealing with negligence and brain death, you're recognized.

JACOBS: Thank you. Um, thank you Mr. Chairman, members of the committee. Representative Gordon is attending another...chairing a committee meeting at this time, and I will attempt to, ah, present her bill. Um, we have a, a PC, a...proposed committee substitute for House bill 816 which I assume all of you have there, which is a major revision for House bill 816 which provided for wrongful death actions where the person was determined to be brain-dead but was still physically alive. This alternative, which provides damages for dependent children when the parent is permanently deprived of a bodily function resulting in the permanent loss of services or companionship to the child will not affect the recovery of the injured parent. And this legislation should have a specific impact in those areas where the injured parent is a single parent and thus there is no right of a spouse to recover for the loss of the injured person's services. Um, as a result of a case recently which involved a comatose, ah, woman and, ah, they were, the children were not to receive any of the, ah, ah, ah, any of the money, it all went to the attorneys and very little was left to take care of the, ah, woman who was injured. So, um....

UNIDENTIFIED SPEAKER [COMMITTEE MEMBER?]: Is that the case in Dade County?

JACOBS: Yes, uh-huh.

UNIDENTIFIED SPEAKER: The money went to, in addition to the attorneys, the bulk of it went to somebody, I forget who it was. I read the article.

JACOBS: Ah, the bulk of it went to the attorneys and there was just a little bit left for the hospital bill. None of it to the, ah, the children or the spouse. And we've filed another bill that would take care of that. They
were not married, but we filed a bill that would, in
the future, take care of the fact that if they'd been
married--or living together for twenty years--that they
would be entitled to....

UNIDENTIFIED SPEAKER: Okay.

UNIDENTIFIED SPEAKER: This is the same case that gave rise to
the other bill....

JACOBS: Yes. So, um, where a parent is severely injured but
remains alive there is no action which may be brought
on behalf of a child against, to recover for at least,
ah, losses suffered by the child, so this is to help
the children in cases like this.

CHAIRMAN [?]: Okay, thank you, Miss Jacobs. There's an amend­
ment by Representative Davis. Is this your amendment?
[Muffled remark by someone off-mike obscured by tape
hiss.] Okay. [More tape hiss.] Representative Davis
offers the following amendment on page 1, lines 10
through 13: Strike all of said lines and insert,
Section 1: If a natural or adoptive parent or an
unmarried dependent under the age of 21 sustains a
significant, permanent injury resulting in the loss of
a bodily function, the person who through negligence
was responsible for the injury is liable to the depend­
ent [tape hiss]....

UNIDENTIFIED SPEAKER: Four.

CHAIRMAN [?]: ...four. Representative Davis, will you explain?

DAVIS: I was reading the language and it just seemed very, um,
obfuscated, and so I thought that this just made it
clearer.

UNIDENTIFIED SPEAKER: I believe you said the same thing, you
just...

DAVIS: Yes.

UNIDENTIFIED SPEAKER: ...worded it in a different way, okay,
thank you.

DAVIS: Didn't change the meaning.

CHAIRMAN: Any discussion as to the Davis amendment? [Heavy tape
hiss obscuring off-mike remarks.]

UNIDENTIFIED SPEAKER: ...Go ahead and adopt that, I'll [tape
hiss obliterates remainder of remark]....

CHAIRMAN: Okay. Any objection to the Davis amendment? All
right, hearing no objection show the Davis amendment adopted, without objection. We're now on the bill as amended. Any discussion? Representative Cosgrove?

COSGROVE: Mr. Chairman, maybe staff could answer this, or I don't know, if the sponsors...but what is the reason that this bill has the age limit of 21, and 18 is the age of majority? Why, why are we extending it in this case?

UNIDENTIFIED SPEAKER: We have limited it to dependent children up to age 21. Generally certain rights are recognized for dependents, especially in wrongful death actions and things of that nature, up to a higher age as long as they remain dependent.

COSGROVE: So you're saying that....

UNIDENTIFIED SPEAKER: ...but it could be 18, it doesn't....

COSGROVE: ...well, you're saying that is consistent with other areas of the law in wrongful death? If it is, then that's fine, but if it's something that's different maybe we oughta be consistent.

UNIDENTIFIED SPEAKER: Well, actually, in, um, other areas of the law there is not even an age limit of 21, you simply look at dependent children, but we thought at some....

COSGROVE: I'd like to suggest that we oughta do that in this case too, for this reason: if you go with the age of 18, then that's the child that doesn't go on to college or something, but if you go on to college or further education, and you're still a dependent, then you could be a dependent also because of a mental illness or something like that at home. I don't think we oughta limit it to an age, we oughta just leave the dependent part there and construe it as we do in other areas of the law. [Tape hiss] when we have a child who is mentally retarded, [tape hiss] at the age of 21 is then cut off, and I don't think that would be our intent. I think our intent would be if the child was a dependent as defined under Florida law, that that's what we would want. [Tape hill.] So I would offer that as a conceptual amendment if [tape hiss]....

DAVIS: Mr. Chairman.

CHAIRMAN: Representative Davis.

DAVIS: Because Ms. Gordon is not here, could we save that for the full committee? Does it matter?

UNIDENTIFIED SPEAKER: Okay, that's fine.
DAVIS: Thank you.

UNIDENTIFIED SPEAKER: ...maybe there's a reason....

DAVIS: Thank you.

CHAIRMAN: Anybody wish to be heard on this bill? As amended?
Any discussion by the committee members on the bill?

UNIDENTIFIED SPEAKER: Mr. Chairman.

CHAIRMAN: Representative Upchurch.

UPCHURCH: Uh, I would like to ask Miss Jacobs to furnish us with
the newscaps on this bill. What you've just said
kinda alarmed me that, uh, I remember something about
it that these children because they were not, she was
not married to the father of these children, the children
and the father were living in abject poverty whereas she had received a rather large recovery, but the
part that you said the lawyers got it all, ah, disturbs me some and I....

JACOBS: Okay.

UPCHURCH: ...I would like to see the clips on that, I, I thought
that a lot of that went to her care, that she was, ah, ah.....

CHAIRMAN: Representative Upchurch, if I could, the, my reading
of the articles—and certainly give it to Representative Upchurch—was that the bulk of the moneys went to
the medical bills and the hospital care primarily that
this woman received. That was my [tape hiss]....

UPCHURCH: There was also for future medical, she was, ah....

CHAIRMAN: She had a ton of bills...

UPCHURCH: Well, she was in a coma, and it looked like she had a
life expectancy that would go on.....

CHAIRMAN: They're holding those monies in escrow for future
medicals.

UPCHURCH: But the part that—maybe I should quit defending the
members of the bar, they can defend themselves—but I,
I just felt that they got a, a share pursuant to a,
ah....

CHAIRMAN: That was my understanding.

UPCHURCH: ...contingent fee arrangement, but that she was get-
ting the benefit—she the woman that was comatose—was
getting the benefit of this recovery, at least I hope so.

CHAIRMAN: All right, while you're looking at that.....

UNIDENTIFIED SPEAKER: Mr. Chairman.

CHAIRMAN: ...is there anybody else that wants to be heard on the bill?

UNIDENTIFIED SPEAKER: ...well, I'd like to ask, ah, is the individual still in a coma?

CHAIRMAN: Miss Jacobs?

JACOBS: [Remark inaudible].

UNIDENTIFIED SPEAKER: Is the individual in this case still in a coma?

JACOBS: Yes.

UNIDENTIFIED SPEAKER: And what is the life expectancy...?

JACOBS: [Muffled remark obscured by tape hiss.]

UNIDENTIFIED SPEAKER [staff?): My understanding is that she is on machines and they have no reason to expect it won't be for a relatively long period of time, but she is, quote, brain dead.

CHAIRMAN: Representative Upchurch, have you, ah, had a chance to look at the article?

UPCHURCH: Well, yeah, ah, I don't have any objection to the bill, I just was, uh, as I said, as a preface to my remarks, I was trying to defend the members of the bar that do this kinda work...(laughs) I didn't wanna, want it to be said publicly that the lawyers got all of the, of the money. It appears that we had a rather generous contingent fee arrangement, but, ah, the rest of the money was going for this woman's continuing care, and her minor children are not deriving any benefit from this, nor was her common-law husband.

CHAIRMAN: Well, and we're going to correct this by this bill, hopefully.

UPCHURCH: I think that, ah, the bill as amended will correct....

CHAIRMAN: You wanna close on the bill?

JACOBS [?]: No, that's okay.
CHAIRMAN: Call the roll on the bill....
COMMITTEE INFORMATION RECORD

Committee on JUDICIARY

Date of meeting 4/27/88
Time 8:00 a.m.
Place 214 C

AS REPORTED TO CLERK

FINAL ACTION: ___ FAVORABLE

FAVORABLE WITH ___AMENDMENTS
FAVORABLE WITH SUBSTITUTE ___ FAVORABLE

VOTE:

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Total Yea 12 Total Nays 0

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

FILE 2 copies with Clerk

H-22(1976)
PRELIMINARY COMMITTEE REPORT
House of Representatives

Judiciary

Full Committee

April 27 8:00 A.M.-10:00 A.M. 214 C

PCB JUD 88-3--Mechanics' Liens (Favorable, 16/0)

PCB JUD 88-14--Surrogate Parenthood (Favorable with 1 amendment, 13/4)

HB 0426 By Drage--Estate Probate/Discovery of Will (Favorable, 15/0)

HB 0678 By Upchurch--Judgments/Liens on Real Estate (Favorable with 1 amendment, 15/1)

HB 0410 By Titone & others--Laborers/Mechanics' Lien Law (Unfavorable, 6/9)

HB 0067 By Renke & others--Punitive Damages/Equity Cases (Favorable, 10/5)

HJR 0692 By Press & others--Legislative Sessions/Date & Length (Not considered)

HB 0715 By Simon & others--Garnishment/Fee Increased (Favorable with 1 amendment, 14/0)

HB 0750 By Rush & others--Medical Malpractice Actions (C/S, 14/0)

HB 0816 By Gordon & others--Negligence/Brain Death (C/S, 12/0)

HB 0880 By Langton & others--Trials/Exclusion of Witnesses (Not considered)

HB 0936 By Langton & others--Criminal Proceedings/Foreign Records (Favorable, 14/0)

HB 1134 By Upchurch & others--Property Assessment/Judicial Review (C/S, 11/0)

HB 1194 By Cosgrove & others--Uniform Certified Process Server Act (C/S, 16/0)

HB 1311 By Drage & others--Garnishment/Continuing Writ/Costs (Favorable with 2 amendments, 13/1)

HB 1318 By Bell & others--Civil Justice System (Not considered)

HB 0347 By Tobin & others--Guardianship Law/General Revision (C/S, 16/0)

HB 0866 By Metcalf & others--Guardians/General Revision (C/S, 16/0)

HB 1343 By Liberti & others--Study Commission on Guardianship Law (C/S, 16/0)

HB 1203 By Crotty & others--Real Estate Time-Sharing Act (C/S, 11/2)

Distribution: Legislative Information
HL 0087 By Guber & others--Marriage/Liability for Medical Serv. (C/S, 9/6)

HB 0774 By Press & others--Statutes of Limitations/Minority (Favorable with 1 amendment, 9/4)

HB 0537 By Rochlin & others--Condominiums/Liens & Assessments (Favorable with 1 amendment, 14/0)

HB 0405 By Tobin & others--Condos & Co-ops/Officers & Directors (Not considered)

Ratification of referral to the Subcommittee on Court Systems, Probate & Consumer Law:
(Ratified to Subcommittee)

SB 0331 By Judiciary-Criminal & others--Obscene Materials/Criminal Offenses

HR 1434 By Figg & others--Marsicano, Ralph A.

Ratification of referral to the Subcommittee on Real Property & Family Law:
(Ratified to Subcommittee)

CS/SB 0054 By Economic, Community and Consumer Affairs, Weinstock & others--Condos/Additional Expense Items
PRELIMINARY COMMITTEE REPORT
House of Representatives

Judiciary

Full Committee

April 27 8:00 A.M.-10:00 A.M. 214 C

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Judiciary
Full Committee
PAGE 2
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CS/SB 0054 By Economic, Community and Consumer Affairs, Weinstock & others--Condos/Additional Expense Items
4/27/88 HOUSE JUDICIARY FULL COMMITTEE MEETING-BILL HEARING
Tape 1 of 2

4/27/88 HOUSE JUDICIARY FULL COMMITTEE MEETING-BILL HEARING
Tape 2 of 2

Series 419, Box 688
CHAIRMAN: Take up item 6 on the agenda, House bill 816 by Gordon. Ms. Jacobs, you're recognized. [Inaudible comments off-mike.] Representative Simon moves that we take up the committee substitute. Is there objection, if not show that done.

JACOBS: And I believe you have another amendment on the desk, uh, Mr. Chairman.

CHAIRMAN: Do we have.....

JACOBS: ...incorporated, okay, very good. I guess I didn't have a copy of that. Just very briefly, this bill, uh, addresses damages for dependents and would permit the dependent child of an injured person to seek recovery for permanent loss of companionship and loss of services. If there's any questions, ah, it's a very good bill that Representative Gordon filed as a result of a recent case in Dade County and the articles regarding that case are being, uh, passed out to you now.

CHAIRMAN: Staff tells me that we have a technical amendment, ah, technical problem with the proposed committee substitute, and he's preparing an amendment at this time. Are there questions of Ms. Jacobs? [Brief period of shuffling papers, no remarks.] This legislation, uh, grew out of a very unfortunate situation in Dade County and I think you've received, uh, press clips about that if you hadn't already read 'em. Uh, Representative Drage offers the following amendment: On page 1 at line 13 strike "under the age of 21."

UNIDENTIFIED SPEAKER: Yes, sir, that was the subcommittee amendment on that that we just copied the wrong PCS on [remainder of remark garbled].

CHAIRMAN: All right. Is there objection?

[Inaudible remark.]

UNIDENTIFIED SPEAKER: ...take out the "under the age of 21" and leave it as it [remainder of remark lost in noise of shuffling papers].
UNIDENTIFIED SPEAKER: ...subcommittee objected to limiting it to....

CHAIRMAN [?]: All right. Is there objection? If not show the amendment adopted. Now we're on the bill as amended. Is there debate on the bill? Call the roll please....
I. SUMMARY:

A. Present Situation:

Florida's Good Samaritan Act, s. 768.13, F.S., establishes immunity for any person who gratuitously and in good faith, renders emergency care or treatment at the scene of an emergency, outside a hospital, where the person acts as an ordinary reasonably prudent person would have acted under the same circumstances. In 1986, the Legislature added paragraph (2)(b) which provides additional immunity for any person licensed to practice medicine who renders emergency care in response to an emergency within a hospital or trauma center, if he or she acts as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.

Hospitals and ambulatory surgical centers are licensed by the Department of Health and Rehabilitative Services (HRS) under ch. 395, F.S.

In addition to practicing or offering their services to hospitals, physicians, both active and retired, often volunteer their services at various types of nonprofit neighborhood clinics, transient care centers, and other types of facilities offering free medical care to elderly, homeless, and indigents.

Physicians also from time to time lend their support to various "health screening" efforts. Such screenings are for the purpose of detecting conditions such as high blood pressure, sickle cell anemia, glaucoma, and high cholesterol levels. These screenings are offered by a variety of nonprofit, voluntary health agencies and medical/health clinics as part of their community service, public awareness efforts.

B. Effect of Proposed Changes:

Committee Substitute for Senate Bills 42 and 49 adds paragraph (c) to s. 768.13(2), F.S., providing immunity from liability for civil damages to any person licensed to practice medicine who renders volunteer services to nonprofit medical facilities other than hospitals licensed under ch. 395, F.S., provided they act as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.

Committee Substitute for Senate Bills 42 and 49 also adds subsection (4) to s. 768.13, F.S., providing immunity from liability for civil damages to any person licensed to practice medicine who gratuitously and in good faith performs health screening services, provided that person acts as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.
II. ECONOMIC IMPACT AND FISCAL NOTE:
   A. Public:
      Indeterminate.
   B. Government:
      Indeterminate.

III. COMMENTS:
     None.

IV. AMENDMENTS:
     None.
I. SUMMARY:

A. PRESENT SITUATION:

The four-year statute of limitations provided in section 768.28 Florida Statutes, relating to actions against the state, its agencies, and subdivisions, has been held to supersede the two-year statute of limitations for medical malpractice and wrongful death actions found in section 95.11(4)(a) Florida Statutes, where a governmental agency is the defendant in a medical malpractice action. See, e.g., Cliffin v. H.R.S., 453 So.2d 29 (Fla. 1st DCA 1984); Whack v. Seminole Memorial Hosp., Inc., 456 So.2d 561 (Fla 5th DCA 1981). The effect of this holding is two-fold:

1) A governmental hospital may be sued in a malpractice or wrongful death action although the claim against the physician or other health care providers has been barred by the two-year limitation, thus making the governmental hospital the sole defendant; and

2) Although actions against the other health care providers have been barred, they would remain liable to the governmental hospital for contribution actions, and thus their exposure remains unless the hospital is found to have not acted in a negligent manner.

In addition to filing an action in the court within four years under section 768.28, Florida Statutes, a claimant must present the claim to the state within three years from the date on which the cause of action accrues. Failure to file a claim is not jurisdictional; it must be raised either by an affirmative defense or by a motion to dismiss, or it will be waived. Bhattachary v. Duval County Hosp. Authority, 502 So.2d 459 (Fla. 1st DCA 1987); McSwain v. Dussia, 399 So.2d 863 (Fla 1st DCA 1983), review denied, 511 So.2d 298 (Fla 1986).
B EFFECT OF PROPOSED CHANGES:

This legislation would change the statute of limitations in medical malpractice actions against the state to be two years from the date on which the cause of action accrued, not to exceed four years from the date on which the malpractice is alleged to have occurred, or seven years where the injury has not been discovered because of fraud, concealment, or intentional misrepresentation. In shortening the statute of limitations for medical malpractice actions against a governmental agency to the same period of time permitted for filing an action against a private person, the practical effect is also to move forward the period of time during which private practitioners could be sued in contribution by the governmental agency.

In keeping with the changes proposed in the statute of limitations, notice requirements to the state have been shortened from three years after the cause of action accrues to ninety days prior to filing suit in medical malpractice claims. The ninety day provision is presently applied to persons suing private health care defendants.

It is assumed that in changing the word "shall" to "must", the filing of a claim against the state for an action in medical malpractice or in contribution will become jurisdictional, and the notice requirement could not be waived.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 768.28, Florida Statutes, to exempt medical malpractice against the state, from the requirement that claims be presented to the agency sued and the Department of Insurance (to the municipality when a municipality is being sued) within three years after the cause of action accrues. In an action for contribution against the state, the claim "must" (as opposed to "shall") be made within six months after judgment entered against the tortfeasor seeking contribution becomes final or has paid or settled the claim against him.

By exempting medical malpractice actions from the claims provisions of section 768.28, Florida Statutes, the provisions of notice and related provisions governing presuit investigation, found in section 768.57, Florida Statutes, and Chapter 88-1, Laws of Florida, would become clearly applicable in medical malpractice cases involving governments. Under these provisions, the plaintiff would be required to investigate his case and obtain a medical expert opinion prior to mailing a notice of intent to initiate litigation and then to mail the notice at least ninety days prior to filing suit. Notice would also be provided to the Department of Insurance. Upon receipt of the notice, the governmental entity would be required to investigate its case and to obtain a written medical opinion as well.

Section 1 further amends section 768.28, Florida Statutes, to provide that an action for medical malpractice against a governmental entity must be brought within the general statute of
limitations provided in section 95.11(4), Florida Statutes, rather than within the four-year statute of limitations provided in section 768.28, Florida Statutes. Under section 95.11(4), Florida Statutes, a medical malpractice action must be brought within two years from the date on which the malpractice was discovered, or should have been discovered, not to exceed four years, absent a showing of fraud, concealment, or intentional misrepresentation, in which case the action may be brought within seven years. Notice must be provided within the time period provided in section 768.57, Florida Statutes.

Section 2 amend s. 768.57, Florida Statutes, to provide that in actions for medical malpractice against a governmental defendant, must be provided at least ninety days prior to filing suit, rather than 180 days prior to filing suit. Because the statute of limitations is shortened by section 1 to conform with the statute of limitations in actions against private providers, the shorter notice requirement which applies to private providers is also adopted.

Section 3 provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   Unknown

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:
   Unknown, but should be positive over a period of time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   Unknown

3. Long Run Effects Other Than Normal Growth:
   None
C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   This legislation would require medical malpractice plaintiffs to bring their claims against the state or other governmental entities within a shorter period of time, which could result in a claim not being timely filed, which would result in a plaintiff not being able to recover damages.

2. Direct Private Sector Benefits:
   This legislation should benefit health care practitioners and their insurers by limiting the time of their ultimate exposure through actions for contribution.

3. Effects on Competition, Private Enterprise, and Employment Markets:
   None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:
   None.

IV. COMMENTS:
   This legislation should permit the state and local governments to defend malpractice actions more effectively, which should produce a cost savings, where the government is a defendant.

   In not specifying which actions this legislation is intended to address, it may be presumed that it would apply only to malpractice incidents occurring after the effective date of the act.

V. AMENDMENTS:

VI. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by: Thomas R. Tedcastle
Staff Director: Richard Hixson

FINANCE & TAXATION:
Prepared by: Staff Director:

2019
GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968
During the Regular Session
April 5, 1988 through June 7, 1988
and Special Sessions
September 21 - October 8, 1987; October 12 - 14, 1987;
December 8 - 10, 1987; February 2 - 4, 1988; and
June 8, 1988

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1988
department; and following such other rules as relate to the practice of the profession of pharmacy. The nuclear pharmacist must have completed such additional training and demonstrate such additional qualifications in the practice of nuclear pharmacy as are required by the Board of Pharmacy. The permittee shall notify the department within 10 days of any change of the licensed pharmacist responsible for the compounding and dispensing of nuclear pharmaceuticals.

Section 5. Subsection (7) is added to section 499.0054, Florida Statutes, to read:

499.0054 Advertising and labeling of drugs, devices, and cosmetics.—The following acts and the causing thereof are violations of the Florida Drug and Cosmetic Act:

(7) The advertising of any legend drug in a publication of general circulation, unless such advertisement clearly states that such drug can be dispensed only by the prescription of a licensed practitioner.

Section 6. Subsection (8) of section 465.022, Florida Statutes, is amended to read:

465.022 Pharmacies; general requirements; fees.—

(8) The board shall set the fees for the following:

(a) Initial permit fee not to exceed $250.

(b) Biennial permit renewal not to exceed $250.

(c) Delinquent fee not to exceed $100.

(d) Change of ownership or location fee not to exceed $100.

Section 7. There is hereby appropriated the sum of $105,000 from the Professional Regulation Trust Fund to the Department of Professional Regulation for the fiscal year 1988-1989, and an additional three positions to be filled by licensed pharmacists are authorized for the department, for the purpose of inspection of pharmacies and training and supervision of pharmacy inspectors. One of the pharmacists shall be assigned to the Division of Professions to assist the operations of the Board of Pharmacy and two of the pharmacists shall be assigned to the Division of Regulations, one in the central portion of the state and one in the southern portion of the state.

Section 8. This act shall take effect October 1, 1988.

Approved by the Governor July 1, 1988.

Filed in Office Secretary of State July 1, 1988.

CHAPTER 88-173

Committee Substitute for Senate Bill No. 460

An act relating to liability for damages; providing that certain dependents are entitled to recover damages for
injuries to their parents under certain circumstances; amending s. 768.28, F.S.; providing that failure of agency to act within specified time is deemed final denial of a claim; prescribing the statute of limitations for such actions; amending s. 768.57, F.S.; limiting the period for agency review of a claim of medical malpractice against the state or its agencies; amending s. 768.13, F.S.; providing an exemption from civil liability for licensed medical personnel working gratuitously in nonprofit medical facilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. A person who, through negligence, causes significant permanent injury to the natural or adoptive parent of an unmarried dependent resulting in a permanent total disability shall be liable to the dependent for damages, including damages for permanent loss of services, comfort, companionship, and society. This section shall apply to acts of negligence occurring on or after the effective date of this act.

Section 2. Paragraph (a) of subsection (6), and subsection (12) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.--

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, presents such claim in writing to the Department of Insurance, within 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it must shall be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against him, to discharge the common liability. The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(12) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution--the action must be commenced within the limitations provided in s. 768.31(4) and an