Session Law 03-416

Florida Senate & House of Representatives

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2003-466  TAPES

5B 2-D Passed
8/12/03 Health Aging & LT Care
8/13/03 5 Floor
8/19/03 H Floor (H5 18)

H8 1-D (Sim)
8/12/03 H, Select Care on Medical Liability Ins. (Workshop)

5B 2-C
7/10/03 H. Aging & LT Care
7/11/03 5 Floor (55 19)
H8 15-C
7/10/03 H. Floor

5B 2-B
6/17/03 Health Aging & LT Care
6/18/03 5, Floor
6/19/03 5 Floor

H8 63-B
6/18/03 M Floor
Florida Statutes §766.118 was created by Laws of Florida 2003, Chapter 2003-416, Section 24 and has not been subsequently amended through the 2006 Regular Session of the Florida Legislature. This was one of the most controversial pieces of legislation in 2003 and it took three special sessions (B, C & D) for it to be enacted.

The legislation creating this statutory section, while passed in Special Session D of 2003 of the Florida Legislature as Committee Substitute for Senate Bill (CS/SB) 2-D, actually originated in the 2003 Regular Session as House Bill (HB) 1713. This House bill incorporated the recommendations of two entities: The Governor’s Select Task Force on Healthcare Professional Liability Insurance (Item 02 below) and the House Select Committee on Medical Liability Insurance (Item 03 below).

HB 1713 originated as Proposed Committee Bill (PCB) HC 03-03 by the House Committee on Health Care. Neither the PCB nor the filed bill had any relevant language to the passed bill, other than setting a cap on non-economic damages at $250,000.00. There was an attempt on the House Floor on March 19, 2003 (Amendment 19, by Rep. Bucher) to exclude this cap in instances where there has been two or more incidents of medical malpractice. This amendment failed adoption. HB 1713 later died in the Senate Committee on Health, Aging and Long-Term Care.

In Special Session B, June 16-27, 2003, there were five bills filed that contained language creating FS §766.118. CS/SB 2-B and HB 55-B had language considerably expanding on the provisions of failed Regular Session bill, HB 1713. CS/SB 2-B was amended on the Senate Floor and and increased the cap on non-economic damages to $500,000.00. HB 55-B was never considered. The three other bills, HB 63-B, HB 65-B, and HB 67-B are essentially the same as HB 1713. Only HB 63-B was considered and amended. The remaining two were never considered.
In Special Session C, July 9-21, 2003, three bills had language creating FS §766.118 CS/SB 2-C, HB 15-C and HB 19-C. None of these bills passed. The C session bills appear to be more complex than previous session bills. CS/SB 2-C and HB 15-C were given some debate, but HB 19-C was withdrawn prior to introduction.

In Special Session D, August 12-13, 2003, the creation of FS §766.118 was finally enacted by CS/SB 2-D. The language of the current statutory section was mostly in the original version of SB 2-D (Section 54). The committee substitute for this bill (Section 54) added the paragraphs after sub-sections (4)(b) and (5)(c). Senate floor amendments 6 and 7 of August 13, 2003 added the references to “42 U.S.C. s. 1395dd” in subsections (4) and (5). There was also a similar bill, HB 1-D, in this session that affected FS §766 118. HB 1-D fairly tracked SB 2-D and was made to conform to that bill in House floor amendments 1-7 on August 13, 2007.

DOCUMENTATION

01. FS §766.118 (2006) [reformatted for clarity]

02. Governor’s Select Task Force on Healthcare Professional Liability Insurance, Report, [1/29/03]
   Cover Letter.
   Table of Contents (i-ii).
   Executive Summary (iii-v).
   Recommendation #27 - Cap on Non-economic Damages (xi).
   CH. 8 - Tort Reform - Cap on Non-Economic Damages (189-221).

03. House Select Committee on Medical Liability Insurance, Report, March, 2003
   Table of Contents (i).
   Cover Letter (2)
   Executive Summary (3-13).
   Caps on Non-economic Damages (60-62).

2003 Regular Session (3/4/03-5/2/03)

04. Bill History, HB 1713.

05. PCB HC 03-03, Section 26 (Health Care) (pp. 1,3, 40)
CH. 2003-416, FS Ch. 766.118 (continued)

06. House. Committee on Health Care. Staff Analysis of PCB HC 03-03, March 11, 2003. (Note: a detailed analysis of Section 26 begins at p. 18)

07. HB 1713 (2003), Section 28 (pp. 1, 3, 39).

08 House. Committee on Health Care. Staff Analysis of HB 1713, March 11, 2003. (Note: a detailed analysis of Section 28 begins at p. 17 that appears to be identical to the Analysis of the PCB, item 06 above).


2003 Special Session B (6/16/03-6/27/03)

10. Bill History, CS/SB 2-B.

11. CS/SB 2-B, Section 60, and Statement of Substantial Changes.... (pp. 1, 14, 131-132, 207). [Note: There was no provision for FS §766.118 in the original version of SB 2-B]

12. Senate. Committee on Health Care Staff Analysis of CS/SB 2-B, June 17, 2003. [Note: Medical malpractice is treated at p.4, Section 60 at p. 254, and Constitutional issues at pp. 260-261].


15. Bill History, HB 55-B.

16. HB 55-B, Section 59 (pp 1, 11, 115-116)
   [Note: no bill analysis is available for this bill]

17. Bill History, HB 63-B

18. HB 63-B, Section 37 (pp. 1, 5, 61-62)
   [Note: no bill analysis is available for this bill]

20. HB 65-B, Section 28 (pp. 1, 3, 44).
   [Note: no bill analysis is available for this bill]

21. Bill History, HB 67-B.

22. HB 67-B, Section 64 (pp. 1, 9, 107-108).
   [Note: no bill analysis is available for this bill]

2003 Special Session C (7/9/03-7/21/03)

23. Bill History, CS/SB 2-C.

24. CS/SB 2-C, Section 58 and Statement of Substantial Changes... (pp. 1, 13, 138-139, 173-175). [Note: The section in the original SB 2-C (Section 62) is identical to Section 58 in the committee substitute]

   [Note: Medical Malpractice is summarized at p. 4; Section 58 is summarized at pp. 46-47; Constitutional issues at pp. 54-55 and Relate issues at p. 61]

26. Bill History, HB 15-C.

27. HB 15-C, Section 48 (pp. 1, 7, 94-96).

28. House. [Speaker’s Office]. “Background Information for HB 15 C Relating to Medical Incidents–Special Session C” [7/11/03?]

29. Bill History, HB 19-C.

30. HB 19-C, Section 59 (pp. 1, 11, 115-116).
   [Note: no bill analysis is available for this bill]

2003 Special Session D (8/12/03-8/13/03)

31. Bill History, CS/SB 2-D.
32. SB 2-D, Section 54 and Senate Summary (pp. 1, 12, 127-131, 170)

33. CS/SB 2-D, Section 54 and Statement of Substantial Changes... (pp. 1, 12, 127-132, 171)

34. Senate. Committee on Health Care. Staff Analysis of CS/SB 2-D, August 12, 2003. [Note: Summary of caps on non-economic damages at p. 5; Section 54 at pp. 45-47; and Constitutional issues at pp. 53-54]

35. Journal of the Florida Senate, August 13, 2003, pp. 18-24 Re: Amendment 3 (failed) at p. 21, Amendment 6 at p. 22, and Amendment 7 at p. 24

36. CS/SB 2-D First Engrossed, Section 54 (pp. 1, 12, 127-132).

37. Bill History, HB 1-D.

38. HB 1-D, Section 43 (pp. 1, 9, 117-122). [Note: no bill analysis is available for this bill]


The Florida Rules of Civil Procedure shall apply to mediation held pursuant to this section.

(2) (a) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, the court shall require a settlement conference at least 3 weeks before the date set for trial.

(b) Attorneys who will conduct the trial, parties, and persons with authority to settle shall attend the settlement conference held before the court unless excused by the court for good cause.

Section 58. Section 766.118, Florida Statutes, is created to read:

766.118 Determination of noneconomic damages.

(1) With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, damages recoverable for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall not exceed $500,000 aggregate for all defendant health care practitioners, $500,000 aggregate for all defendant health care facilities, and $500,000 aggregate for all other defendants regardless of the number of claimants involved in the action subject to the limitations set forth in subsection (2).

(2) Notwithstanding subsection (1), the trier of fact may award noneconomic damages under this section in an amount not to exceed $2 million per incident in cases where medical negligence results in certain catastrophic injuries including death, coma, severe and permanent brain damage, mastectomy.

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loss of reproductive capabilities, hemiplegia, quadriplegia, paraplegia, blindness, or a permanent vegetative state.

Regardless of the number of individual claimants, the total noneconomic damages that may be awarded for all claims arising out of the same incident, shall be limited to a maximum of $2 million aggregate for all defendant practitioners, $2 million aggregate for all defendant facilities, and $2 million aggregate for all other defendants.

(3) The maximum amount of noneconomic damages which may be awarded under this section must be adjusted each year on July 1 to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor. However, the maximum amount of noneconomic damages which may be awarded may not be less than $500,000.

(4) Notwithstanding any law to the contrary, the caps on noneconomic damages provided in subsection (1) of this section do not apply to any incident involving a physician or osteopathic physician who is not in compliance with the financial responsibility requirements set forth in ss. 458.320 and 459.0085, respectively.

(5) This section expires effective September 1, 2006, but shall continue to apply with respect to incidents that occur prior to that date.

Section 59. Section 766.202, Florida Statutes, is amended to read.

766.202 Definitions, ss. 766.201-766.212.--As used in ss. 766.201-766.212, the term:

(1) "Claimant" means any person who has a cause of action for damages based on personal injury or wrongful death arising from medical negligence.
766.108 Mandatory mediation and mandatory settlement
conference in medical malpractice actions —
(1) Within 120 days after suit being filed, unless
such period is extended by mutual agreement of all parties,
all parties shall attend in-person mandatory mediation in
accordance with s. 44102 if binding arbitration under s.
766.106 or s. 766.207 has not been agreed to by the parties.
The Florida Rules of Civil Procedure shall apply to mediation
held pursuant to this section.
(2) (a) In any action for damages based on personal
injury or wrongful death arising out of medical malpractice,
whether in tort or contract, the court shall require a
settlement conference at least 3 weeks before the date set for
trial.
(b) Attorneys who will conduct the trial, parties,
and persons with authority to settle shall attend the
settlement conference held before the court unless excused by
the court for good cause.
Section 62 Section 766.118, Florida Statutes, is
created to read:
766.118 Determination of noneconomic damages.—
(1) With respect to a cause of action for personal
injury or wrongful death resulting from an occurrence of
medical negligence, damages recoverable for noneconomic losses
to compensate for pain and suffering, inconvenience, physical
impairment, mental anguish, disfigurement, loss of capacity
for enjoyment of life, and all other noneconomic damages shall
not exceed $500,000 aggregate for all defendant practitioners,
$500,000 aggregate for all defendant facilities, and $500,000
aggregate for all other defendants regardless of the number of

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claimants involved in the action subject to the limitations
set forth in subsection (2).

(2) Notwithstanding subsection (1), the trier of fact
may award noneconomic damages under this section in an amount
not to exceed $2 million per incident in cases where medical
negligence results in certain catastrophic injuries including
death, coma, severe and permanent brain damage, mastectomy,
loss of reproductive capabilities, hemiplegia, quadriplegia,
paraplegia, blindness, or a permanent vegetative state.
Regardless of the number of individual claimants, the total
noneconomic damages that may be awarded for all claims arising
out of the same incident, shall be limited to a maximum of $2
million aggregate for all defendant practitioners, $2 million
aggregate for all defendant facilities, and $2 million
aggregate for all other defendants.

(3) The maximum amount of noneconomic damages which
may be awarded under this section must be adjusted each year
on July 1 to reflect the rate of inflation or deflation as
indicated in the Consumer Price Index for All Urban Consumers
published by the United States Department of Labor. However,
the maximum amount of noneconomic damages which may be awarded
may not be less than $500,000.

(4) Notwithstanding any law to the contrary, the caps
on noneconomic damages provided in subsection (1) of this
section do not apply to any incident involving a physician or
osteopathic physician who is not in compliance with the
financial responsibility requirements set forth in ss. 458.320
and 459.0085, respectively.

(5) This section expires effective September 1, 2006,
but shall continue to apply with respect to incidents that
occur prior to that date.

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travel in preparing for and attending such deposition shall be
the responsibility of the party retaining such expert.

(b) An expert shall be deemed available for deposition if
suitable accommodations can be made for appearance of said
expert via real-time video technology.

Section 47. Section 766.1067, Florida Statutes, is created
to read:

766.1067 Mandatory mediation after suit is filed.--Within
120 days after suit being filed, unless such period is extended
by mutual agreement of all parties, all parties shall attend in-
person mandatory mediation in accordance with s. 44.102 if
binding arbitration under s. 766.106 or s. 766.207 has not been
agreed to by the parties. The Florida Rules of Civil Procedure
shall apply to mediation held pursuant to this section.

Section 48. Section 766.118, Florida Statutes, is created
to read:

766.118 Determination of noneconomic damages.--

(1) With respect to a cause of action for personal injury
or wrongful death arising from medical negligence by physicians
licensed under chapter 458 or chapter 459, regardless of the
number of such defendant physicians, noneconomic damages, as
defined in s. 766.202(7), shall not exceed $250,000 per
claimant, provided that the total noneconomic damages
recoverable by all claimants from all such physicians shall not
exceed $500,000.

(2) With respect to a cause of action for personal injury
or wrongful death arising from medical negligence by defendants
other than physicians licensed under chapter 458 or chapter 459,
regardless of the number of such nonphysician defendants,
noneconomic damages, as defined in s. 766.202(7), shall not
exceed $250,000 per claimant, provided that the total
noneconomic damages recoverable by all claimants from all such
nonphysician defendants shall not exceed $500,000.

(3) Notwithstanding subsections (1) and (2), with respect
to a cause of action for personal injury or wrongful death
arising from medical negligence by physicians licensed under
chapter 458 or chapter 459 providing emergency services and
care, as defined in s. 395.002(10), regardless of the number of
such defendant physicians, noneconomic damages, as defined in s.
766.202(7), shall not exceed $100,000 per claimant, provided
that the total noneconomic damages recoverable by all claimants
from all such physicians shall not exceed $250,000.

(4) Notwithstanding subsections (1) and (2), with respect
to a cause of action for personal injury or wrongful death
arising from medical negligence by defendants, other than
physicians licensed under chapter 458 or chapter 459, providing
emergency services and care pursuant to obligations imposed by
ss. 395.1041 and 401.45, regardless of the number of such
nonphysician defendants, noneconomic damages, as defined in s.
766.202(7), shall not exceed $250,000 per claimant, provided
that the total noneconomic damages recoverable by all claimants
from all such nonphysician defendants shall not exceed $500,000.

(5) For the purpose of determining the limitations on
noneconomic damages set forth in this section, the term
"physician licensed under chapter 458 or chapter 459" includes
any person for whom a physician licensed under chapter 458 or
chapter 459 is vicariously liable and any person whose liability
is based solely on such person being vicariously liable for the
actions of a physician licensed under chapter 458 or chapter 459
or the actions of a person for whom a physician licensed under
chapter 458 or chapter 459 is vicariously liable.

(6) This section shall not apply to actions governed by s. 766.28.

Section 49. Subsections (3), (5), (7), and (8) of section 766.202, Florida Statutes, are amended to read:

766.202 Definitions; ss. 766.201-766.212.--As used in ss. 766.201-766.212, the term:

(3) "Economic damages" means financial losses that would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity, to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

(5) "Medical expert" means a person duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and who meets the requirements of an expert witness as set forth in s. 766.102, has had special professional training and experience or one possessed of special health care knowledge or skill about the subject upon which he or she is called to testify or provide an opinion.

(7) "Noneconomic damages" means nonfinancial losses which would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses, to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

(8) "Periodic payment" means provision for the structuring of future economic and future noneconomic damages payments, in...
Section 59. Section 766.118, Florida Statutes, is created to read:

766.118 Determination of noneconomic damages.---With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, including actions pursuant to s. 766.209, damages recoverable for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall be determined as follows:

(1) The award for noneconomic damages from the jury shall be reviewed by the judge to determine the appropriateness of the award.

(2) In reviewing the award, the judge shall utilize the Florida Jury Verdict Database as provided in s. 766.26.

(3) (a) The judge shall examine all cases where the injuries alleged and the economic damages awarded are substantially similar.

(b) The judge shall adopt a presumptively reasonable range of similar awards that shall be one standard deviation above and below the mean award for similar cases. The judge shall then subtract the economic damages awarded by the jury from the valid range to find the valid range for noneconomic damages.

(c) If the award for noneconomic damages is outside of the presumptively reasonable range for noneconomic damages based on similar cases, the judge may elect to change the award so that it falls within said range, which is subject to appeal based on abuse of discretion standards, or the judge may elect to leave the amount as awarded by providing findings of fact on the record, which shall be subject to appeal based on clear and...
convincing evidence standards.

(4) If a health care professional does not meet his or her financial responsibility requirements as provided in s. 458.320(1)(b) or s. 459.0085(1)(b), as applicable, by July 1, 2004, the limits on damages established in this section shall not apply and awards for economic and noneconomic damages shall not be limited during arbitration or at trial.

Section 60. Section 766.185, Florida Statutes, is created to read:

766.185 Apportionment of fault in medical negligence actions.--

(1) In an action for damages for personal injury or wrongful death arising out of medical negligence, whether in contract or tort, when a defendant asserts an affirmative defense that one or more nonparties is liable, in whole or in part, for damages arising out of medical negligence, such defendant must join the nonparties into the action by means of a third-party complaint asserting a cause of action for comparative fault in medical negligence against the nonparties, except with respect to a nonparty who meets one of the following criteria:

(a) The nonparty has entered into a settlement with each of the plaintiffs;

(b) The nonparty has complete immunity from suit;

(c) The statute of limitations involving the nonparty expired prior to filing of the presuit notice of intent to initiate medical malpractice litigation; or

(d) The nonparty cannot be otherwise legally joined to the suit.

(2) If the defendant has reasonable grounds to believe
The 2006 Florida Statutes

Title XLV
TORTS

Chapter 766
MEDICAL MALPRACTICE AND RELATED MATTERS

View Entire Chapter

766.118 Determination of noneconomic damages.--

(1) DEFINITIONS. -- As used in this section, the term:

(a) "Catastrophic injury" means a permanent impairment constituted by:

1. Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

2. Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;

3. Severe brain or closed-head injury as evidenced by:
   a. Severe sensory or motor disturbances;
   b. Severe communication disturbances,
   c. Severe complex integrated disturbances of cerebral function,
   d. Severe episodic neurological disorders, or
   e. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in sub-subparagraphs a -d ,

4. Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands,

5. Blindness, defined as a complete and total loss of vision; or

6. Loss of reproductive organs which results in an inability to procreate.

(b) "Noneconomic damages" means noneconomic damages as defined in s. 766.202(8).

(c) "Practitioner" means any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, or chapter 486 or certified under s. 464.012. "Practitioner" also means any association, corporation, firm, partnership, or other business entity under which such practitioner practices or any employee of such practitioner or entity acting in the scope of his or her employment. For the purpose of determining the limitations on noneconomic damages set forth in this section, the term "practitioner" includes any person or entity for whom a practitioner is vicariously liable and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of a practitioner.
(2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS --

(a) With respect to a cause of action for personal injury or wrongful death arising from medical negligence of practitioners, regardless of the number of such practitioner defendants, noneconomic damages shall not exceed $500,000 per claimant. No practitioner shall be liable for more than $500,000 in noneconomic damages, regardless of the number of claimants.

(b) Notwithstanding paragraph (a), if the negligence resulted in a permanent vegetative state or death, the total noneconomic damages recoverable from all practitioners, regardless of the number of claimants, under this paragraph shall not exceed $1 million. In cases that do not involve death or permanent vegetative state, the patient injured by medical negligence may recover noneconomic damages not to exceed $1 million if:

1. The trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe; and

2. The trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient.

(c) The total noneconomic damages recoverable by all claimants from all practitioner defendants under this subsection shall not exceed $1 million in the aggregate.

(3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF NONPRACTITIONER DEFENDANTS --

(a) With respect to a cause of action for personal injury or wrongful death arising from medical negligence of nonpractitioners, regardless of the number of such nonpractitioner defendants, noneconomic damages shall not exceed $750,000 per claimant.

(b) Notwithstanding paragraph (a), if the negligence resulted in a permanent vegetative state or death, the total noneconomic damages recoverable by such claimant from all nonpractitioner defendants under this paragraph shall not exceed $1.5 million. The patient injured by medical negligence of a nonpractitioner defendant may recover noneconomic damages not to exceed $1.5 million if:

1. The trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe, and

2. The trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient.

(c) Nonpractitioner defendants are subject to the cap on noneconomic damages provided in this subsection regardless of the theory of liability, including vicarious liability.

(d) The total noneconomic damages recoverable by all claimants from all nonpractitioner defendants under this subsection shall not exceed $1.5 million in the aggregate.

(4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND CARE --Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of practitioners providing emergency services and care, as defined in s. 395.002(10), or providing services as provided in s. 401.265, or providing services pursuant to obligations imposed by 42 U.S.C. s. 1395dd to persons with whom the
practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition:

(a) Regardless of the number of such practitioner defendants, noneconomic damages shall not exceed $150,000 per claimant

(b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such practitioners shall not exceed $300,000.

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

(5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF NONPRACTITIONER DEFENDANTS PROVIDING EMERGENCY SERVICES AND CARE.--Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of defendants other than practitioners providing emergency services and care pursuant to obligations imposed by s 395.1041 or s 401.45, or obligations imposed by 42 U.S.C. s. 1395dd to persons with whom the practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition:

(a) Regardless of the number of such nonpractitioner defendants, noneconomic damages shall not exceed $750,000 per claimant

(b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such nonpractitioner defendants shall not exceed $1.5 million

(c) Nonpractitioner defendants may receive a full setoff for payments made by practitioner defendants.

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

(6) SETOFF.--In any case in which the jury verdict for noneconomic damages exceeds the limits established by this section, the trial court shall reduce the award for noneconomic damages within the same category of defendants in accordance with this section after making any reduction for comparative fault as required by s 768.81 but before application of a setoff in accordance with ss 46.015 and 768.041. In the event of a prior settlement or settlements involving one or more defendants subject to the limitations of the same subsection applicable to a defendant remaining at trial, the court shall make such reductions within the same category of defendants as are necessary to ensure that the total amount of noneconomic damages recovered by the claimant does not exceed the aggregate limit established by the applicable subsection. This subsection is not intended to change current law relating to the setoff of economic damages.
(7) ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW -- This section shall not apply to actions governed by s 768.28.

History.--s 54, ch 2003-416
BILLS UNDERLINED HAVE PASSED BOTH CHAMBERS
(CITATOR INCLUDES COMMITTEE SUBS & AMENDED BILLS)

(CONTINUED ON NEXT PAGE)
Senate Bill: Relating to Medical Incidents

S 0002: GENERAL BILL/CS/1ST ENG by Health, Aging, and Long-Term Care–Jones; (CO-SPONSORS) King; Clary; Diaz de la Portilla; Lawson; Lee; Peaden; Pruitt; Saunders; Sebesta; Smith (Similar H 0001-D)

Medical Incidents: deletes requirement that persons act in good faith to avoid liability or discipline for their actions re awarding of staff membership or clinical privileges; limits noneconomic damages in medical negligence actions; provides limitation on amount of damages which may be awarded to certain third parties in actions alleging bad faith by medical malpractice insurer, etc. Amends FS. APPROPRIATION: $4,617,780.

EFFECTIVE DATE: 09/15/2003 except as otherwise provided.

08/12/03 SENATE Filed; introduced, referred to Health, Aging, and Long-Term Care -SJ 00002; On Committee agenda-- Health, Aging, and Long-Term Care, 08/12/03, 2:30 pm, 412-K; CS by- Health, Aging, and Long-Term Care, YEAS 9 NAYS 0 -SJ 00025; CS read first time on 08/13/03 -SJ 00026; Placed on Calendar, on second reading -SJ 00025

08/13/03 SENATE Placed on Special Order Calendar -SJ 00025; Read second time -SJ 00018; Amendment(s) failed -SJ 00020; Amendment(s) adopted -SJ 00022; Read third time -SJ 00024; CS passed as amended; YEAS 32 NAYS 4 -SJ 00024

08/13/03 HOUSE In Messages; Received -HJ 00016; Read second and third times -HJ 00018; CS passed; YEAS 87 NAYS 26 -HJ 00018

08/13/03 SENATE Ordered enrolled -SJ 00028

08/14/03 Signed by Officers and presented to Governor; Approved by Governor; Chapter No. 2003-416

Bill Text

Committee Amendments and Filed Floor Amendments:
### Staff Analysis:

**Analysis:**

- s 0002

**Committee:**

- Health, Aging and Long-Term Care

**Format:**

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### Vote History - Committee

**Chamber:** Senate  
**Committee:** Health, Aging and Long-Term Care  
**Date:** 08/12/03  
**Format:** Web Page

### Vote History - Floor

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### Citations - Statute
Hill Text

Version: H 0001D
 Posted: 08/13/2003
 Format: Web Page | PDF

Amendments:

HB0001DAM
Amendment: 015131
 Posted: 08/13/2003
 Format: Web Page | PDF

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Bill Analysis:
NO BILL ANALYSIS AVAILABLE FOR HOUSE BILL 0001.

Vote History:
Chamber: Roll Call: Date: Format:
HOUSE 0638 08/13/03 Web Page

Citations - Statute

0163.01
0391.025
0391.029
0395.0056
0395.0191
0395.0197
0395.0198
0395.1012
0395.1051
0456.013
0456.025
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0456.073
0456.077
0456.078
0458.319
0458.320
0458.331
0458.3311
0459.0085
0459.015
0459.0151
From: "Thompson, Pam" <PThompson@dos.state.fl.us>
To: "Ed Tribble" <etfia@earthlink.net>
Sent: Wednesday, September 20, 2006 7:13 AM
Subject: RE 2003 Medical Liability Legislation Research

Hi, Ed-
Here are the numbers:

Kluger - No. 42799
Smith - Nos. 69551, 69703 and 69704
U. of Miami - No 78210
St. Mary's - Nos. SC91895, SC91896, SC91894 and SC91934.

Let me know if you need additional information.

Pam T

The quilt show was great - I really enjoy seeing the incredible creativity of people expressed in such a beautiful enduring fashion

From: Ed Tribble [mailto etfia@earthlink.net]
Sent: Tuesday, September 19, 2006 4:46 PM
To: Thompson, Pam
Subject: 2003 Medical Liability Legislation Research

Hello Pam

I'm working on the Medical Liability Reform Legislation of 2003 (ch 2003-416) One of the reports I've got cites 4 Florida Supreme Court Cases that relate to this legislation. I've only got the West cites Could you look these up for me and get the Supreme Court Case numbers? Thanks - Ed Tribble

Kluger v White 281 So 2d 1 (Fla 1973)

Smith v Department of Insurance 507 so 2d 1080 (Fla 1987)

University of Miami v Echarte 618 So 2d 189 (Fla , 1993)

St Mary's Hospital Inc v Phillipe 769 So 2d 961 (Fla 2000) 9K

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P S - Really like the family quilt - I know you are proud of it!
The 2006 Florida Statutes
Title XLV
TORTS
Chapter 766
MEDICAL MALPRACTICE AND RELATED MATTERS

[editorial note The formatting of this section has been altered to effect a more readable version of this statutory section]

766.118 Determination of noneconomic damages --

(1) DEFINITIONS -- As used in this section, the term
(a) "Catastrophic injury" means a permanent impairment constituted by
1. Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk,
2. Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage,
3. Severe brain or closed-head injury as evidenced by
   a. Severe sensory or motor disturbances,
   b. Severe communication disturbances,
   c. Severe complex integrated disturbances of cerebral function,
   d. Severe episodic neurological disorders, or
   e. Other severe brain and closed-head injury conditions at least as severe in nature as any condition provided in sub-subparagraphs a - d,
4. Second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands,
5. Blindness, defined as a complete and total loss of vision, or
6. Loss of reproductive organs which results in an inability to procreate
(b) "Noneconomic damages" means noneconomic damages as defined in s 766.202(8)
(c) "Practitioner" means any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, or chapter 486 or certified under s 464.012. "Practitioner" also means any association, corporation, firm, partnership, or other business entity under which such practitioner practices or any employee of such practitioner or entity acting in the scope of his or her employment. For the purpose of determining the limitations on noneconomic damages set forth in this section, the term "practitioner" includes any person or entity for whom a practitioner is vicariously liable and any person or entity whose liability is based solely on such person or entity being vicariously liable for the actions of a practitioner.

(2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS --
(a) With respect to a cause of action for personal injury or wrongful death arising from medical negligence of practitioners, regardless of the number of such practitioner defendants, noneconomic damages shall not exceed $500,000 per claimant. No practitioner shall be liable for more than $500,000 in noneconomic damages, regardless of the number of claimants.
(b) Notwithstanding paragraph (a), if the negligence resulted in a permanent vegetative state or death, the total noneconomic damages recoverable from all practitioners, regardless of the number of claimants, under this paragraph shall not exceed $1 million. In cases that do not involve death or permanent vegetative state, the patient injured by medical negligence may recover noneconomic damages not to exceed $1 million if
   1. The trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe, and
   2. The trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient.
(c) The total noneconomic damages recoverable by all claimants from all practitioner defendants under this subsection shall not exceed $1 million in the aggregate.

(3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF NONPRACTITIONER DEFENDANTS --
(a) With respect to a cause of action for personal injury or wrongful death arising from medical negligence of nonpractitioners, regardless of the number of such nonpractitioner defendants, noneconomic damages shall not exceed $750,000 per claimant.
(b) Notwithstanding paragraph (a), if the negligence resulted in a permanent vegetative state or death, the total noneconomic damages recoverable by such claimant from all nonpractitioner defendants under this paragraph shall not exceed $1.5 million. The patient injured by medical negligence of a nonpractitioner defendant may recover noneconomic damages not to exceed $1.5 million if

...
1 The trial court determines that a manifest injustice would occur unless increased noneconomic damage are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe, and
2 The trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient

(4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND CARE —Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of practitioners providing emergency services and care, as defined in ss 395.002(10), or providing services as provided in ss 401.265, or providing services pursuant to obligations imposed by 42 U.S.C. s 1395dd to persons with whom the practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition
   (a) Regardless of the number of such practitioner defendants, noneconomic damages shall not exceed $150,000 per claimant
   (b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such practitioners shall not exceed $300,000

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery

(5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF NONPRACTITIONER DEFENDANTS PROVIDING EMERGENCY SERVICES AND CARE —Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of defendants other than practitioners providing emergency services and care pursuant to obligations imposed by ss 395.1041 or ss 401.45, or obligations imposed by 42 U.S.C. s 1395dd to persons with whom the practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition
   (a) Regardless of the number of such nonpractitioner defendants, noneconomic damages shall not exceed $750,000 per claimant
   (b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such nonpractitioner defendants shall not exceed $1.5 million
   (c) Nonpractitioner defendants may receive a full setoff for payments made by practitioner defendants

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery

(6) SETOFF —In any case in which the jury verdict for noneconomic damages exceeds the limits established by this section, the trial court shall reduce the award for noneconomic damages within the same category of defendants in accordance with this section after making any reduction for comparative fault as required by ss 768.81 but before application of a setoff in accordance with ss 46.015 and 768.041 in the event of a prior settlement or settlements involving one or more defendants subject to the limitations of the same subsection applicable to a defendant remaining at trial, the court shall make such reductions within the same category of defendants as are necessary to ensure that the total amount of noneconomic damages recovered by the claimant does not exceed the aggregate limit established by the applicable subsection. This subsection is not intended to change current law relating to the setoff of economic damages

(7) ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW —This section shall not apply to actions governed by ss 768.28

History —s 54, ch 2003-416
(7) \( H S \Rightarrow B \)

(8) \( H \Rightarrow B \)

(9) \( H S \Rightarrow B \)

(10) \( H S \Rightarrow B \)

(11) \( H S \Rightarrow B \)
1133 subsequent offer or demand by either party shall apply in the
determination of whether sanctions will be assessed by the court
under this section.

1136 (5) Notwithstanding any provision of law to the contrary,
ss. 45.061 and 768.79 shall not be applicable to medical
negligence causes of action.

1139 Section 28. Section 766.118, Florida Statutes, is created
to read:

1141 766.118 Determination of noneconomic damages.--With
respect to a cause of action for personal injury or wrongful
death resulting from an occurrence of medical negligence,
including actions pursuant to s. 766.209, damages recoverable
for noneconomic losses to compensate for pain and suffering,
inconvenience, physical impairment, mental anguish,
disfigurement, loss of capacity for enjoyment of life, and all
other noneconomic damages shall not exceed $250,000, regardless
of the number of claimants or defendants involved in the action.

1150 Section 29. Subsection (5) of section 766.202, Florida
Statutes, is amended to read:

1152 766.202 Definitions, ss. 766.201-766.212.--As used in ss.
766.201-766.212, the term.

1154 (5) "Medical expert" means a person familiar with the
evaluation, diagnosis, or treatment of the medical condition at
issue who:

1157 (a) Is duly and regularly engaged in the practice of his
or her profession who holds a health care professional degree
from a university or college and has had special professional
training and experience or
(3) If the judgment obtained at trial is not more favorable to a defendant than the final demand for judgment made by the claimant to the defendant during mediation, the court shall assess against the defendant the mediation costs, and reasonable costs, expenses, and attorneys' fees that were incurred after the date of mediation. Prejudgment interest at the rate established in s. 55.03 from the date of the final demand shall also be assessed. The defendant and the insurer of the defendant, if any, shall be liable for the costs, fees, and interest awardable under this section.

(4) The final offer and final demand made during the mediation required in this section shall be the only offer and demand considered by the court in assessing costs, expenses, and attorneys' fees and prejudgment interest under this section. No subsequent offer or demand by either party shall apply in the determination of whether sanctions will be assessed by the court under this section.

(5) Notwithstanding any provision of law to the contrary, s. 45.061 and s. 768.79 shall not be applicable to medical negligence causes of action.

Section 26. Section 766.118, Florida Statutes, is created to read:

766.118 Determination of noneconomic damages.—In an action for personal injury or wrongful death due to medical negligence, including actions pursuant to s. 766.209, damages recoverable from any one defendant for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall not exceed $250,000, regardless of the number of claimants involved in the action.
House 1713: Relating to Medical Incidents

H1713  GENERAL BILL/1ST ENG by Health Care; (CO-SPONSORS) Bullard; Farkas; Homan (Linked H 1905, Compare H 0971, H 1271, H 1647, 1ST ENG/H 1925, CS/CS/1ST ENG/S 0560, CS/CS/1ST ENG/S 0562, CS/CS 1154, S 1912, S 2120, S 2570, CS/S 2750) -- Medical Incidents; deletes requirement that persons act in good faith to avoid liability or discipline for their actions re awarding of staff membership or clinical privileges; requires hospitals, ambulatory surgical centers, & mobile surgical facilities to establish patient safety plans & committees; increases amount of paid liability claims requiring investigation by Health Dept.; creates Health Care Professional Liability Ins. Facility, etc. Amends FS. EFFECTIVE DATE: Upon becoming law.

03/13/03 HOUSE Filed; Introduced ·HJ 00193
03/14/03 HOUSE Referred to Calendar -HJ 00225
03/19/03 HOUSE Placed on Special Order Calendar; Read second time -HJ 00204
Amendment(s) adopted -HJ 00204; Amendment(s) failed -HJ 00209; Ordered engrossed -HJ 00217
03/21/03 HOUSE Read third time -HJ 00231, Passed as amended; YEAS 95 NAYS 19 -HJ 00234, -HJ 00235
03/25/03 SENATE In Messages
03/27/03 SENATE Received, referred to Health, Aging, and Long-Term Care; Judiciary; Banking and insurance; Appropriations Subcommittee on General Government; Appropriations; Rules and Calendar -SJ 00292
05/02/03 SENATE Died in Committee on Health, Aging, and Long-Term Care, Link/Iden/Num/Compare passed, refer to CS/SB 2-D (Ch. 2003-416)

Bill Text

Version: H 1713
Posted: 03/13/2003
Format: Web Page | PDF

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Bill Analysis:

Analysis: Health Care
Sponsor: H 1713
Format: PDF

Vote History:

Chamber: Roll Call: Date: Format:
HOUSE 0043 03/21/03 Web Page
HOUSE 0044 03/21/03 Web Page

Citations - Statute

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0627.3575
0627.912
0627.9121
0766.106
0766.1065
0766.1067
0766.118
0766.202
766.108 Mandatory mediation and mandatory settlement conference in medical malpractice actions --

(1) Within 120 days after suit being filed, unless such period is extended by mutual agreement of all parties, all parties shall attend in-person mandatory mediation in accordance with s. 44.102 if binding arbitration under s. 766.106 or s. 766.207 has not been agreed to by the parties. The Florida Rules of Civil Procedure shall apply to mediation held pursuant to this section.

(2) (a) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, the court shall require a settlement conference at least 3 weeks before the date set for trial.

(b) Attorneys who will conduct the trial, parties, and persons with authority to settle shall attend the settlement conference held before the court unless excused by the court for good cause.

Section 60. Section 766.118, Florida Statutes, is created to read:

766 118 Determination of noneconomic damages --

(1) With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, including actions pursuant to ss.

766 207-766.212, damages recoverable for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall not exceed $500,000 per defendant, regardless of the number of claimants involved in the action subject to the limitations set forth in subsection (2).

CODING: Words stricken are deletions; words underlined are additions.
(2) Notwithstanding subsection (1), a trier of fact may award noneconomic damages under this section in excess of the limits described in subsection (1) in cases where medical negligence results in certain catastrophic injuries, including death, severe and permanent brain damage, coma, paralysis, quadriplegia, paraplegia, blindness, or a permanent vegetative state, except in those actions under ss 766.207-766.212.

Section 61 Subsections (3), (5), (7), and (8) of section 766.202, Florida Statutes, are amended to read:

766 202 Definitions; ss 766 201-766.212.--As used in ss 766.201-766.212, the term:

(3) "Economic damages" means financial losses that which would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity, to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

(5) "Medical expert" means a person duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and who meets the requirements of an expert witness as set forth in s. 766.102 has had special professional training and experience or one possessed of special health care knowledge or skill about the subject upon which he or she is called to testify or provide an opinion.

(7) "Noneconomic damages" means nonfinancial losses which would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and

CODING: Words struck are deletions, words underlined are additions.
(2) Within 60 days after service of the presuit notice of intent to initiate medical malpractice litigation, all parties must be made available for a sworn deposition. Such deposition may not be used in a civil suit for medical negligence.

(3) Within 120 days after service of the presuit notice of intent to initiate medical malpractice litigation, each party's corroborating expert, who will otherwise be tendered as the expert complying with the affidavit provisions set forth in s. 766.203, must be made available for a sworn deposition.

(a) The expenses associated with the expert's time and travel in preparing for and attending such deposition shall be the responsibility of the party retaining such expert.

(b) An expert shall be deemed available for deposition if suitable accommodations can be made for appearance of said expert via real-time video technology.

Section 36. Section 766.1067, Florida Statutes, is created to read:

766.1067 Mandatory mediation after suit is filed.--Within 120 days after suit being filed, unless such period is extended by mutual agreement of all parties, all parties shall attend in-person mandatory mediation in accordance with s. 44.102 if binding arbitration under s. 766.106 or s. 766.207 has not been agreed to by the parties. The Florida Rules of Civil Procedure shall apply to mediation held pursuant to this section.

Section 37. Section 766.118, Florida Statutes, is created to read:

766.118 Determination of noneconomic damages.--With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, including actions pursuant to s. 766 209, damages recoverable
for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall not exceed $250,000, regardless of the number of claimants or defendants involved in the action.

Section 38. Subsections (3), (5), (7), and (8) of section 766.202, Florida Statutes, are amended to read:

766.202 Definitions; ss. 766.201-766.212.--As used in ss. 766.201-766.212, the term:

(3) "Economic damages" means financial losses that would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity, to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

(5) "Medical expert" means a person familiar with the evaluation, diagnosis, or treatment of the medical condition at issue who:

(a) Is duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and has had special professional training and experience; or

(b) Has possessed of special health care knowledge or skill about the subject upon which he or she is called to testify or provide an opinion.

Such expert shall certify that he or she has similar credentials and expertise in the area of the defendant's particular practice or specialty, if the defendant is a specialist.

(7) "Noneconomic damages" means nonfinancial losses which
of each year.

Section 59. Section 766.118, Florida Statutes, is created to read:

766.118 Determination of noneconomic damages.-- With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, including actions pursuant to s. 766.209, damages recoverable for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and all other noneconomic damages shall be determined as follows:

(1) The award for noneconomic damages from the jury shall be reviewed by the judge to determine the appropriateness of the award.

(2) In reviewing the award, the judge shall utilize the Florida Jury Verdict Database as provided in s. 766.26.

(3)(a) The judge shall examine all cases where the injuries alleged and the economic damages awarded are substantially similar

(b) The judge shall adopt a presumptively reasonable range of similar awards that shall be one standard deviation above and below the mean award for similar cases. The judge shall then subtract the economic damages awarded by the jury from the valid range to find the valid range for noneconomic damages.

(c) If the award for noneconomic damages is outside of the presumptively reasonable range for noneconomic damages based on similar cases, the judge may elect to change the award so that it falls within said range, which is subject to appeal based on abuse of discretion standards, or the judge may elect to leave the amount as awarded by providing findings of fact on the
record, which shall be subject to appeal based on clear and
convincing evidence standards.

(4) If a health care professional does not meet his or her
financial responsibility requirements as provided in s. 458.320
or 459.0085, as applicable, by July 1, 2004, the limits
established in this section shall not apply and awards for
economic and noneconomic damages shall not be limited.

Section 60. Section 766.185, Florida Statutes, is created
to read:

766.185 Apportionment of fault in medical negligence
actions.--

(1) In an action for damages for personal injury or
wrongful death arising out of medical negligence, whether in
contract or tort, when a defendant asserts an affirmative
defense that one or more nonparties is liable, in whole or in
part, for damages arising out of medical negligence, such
defendant must join the nonparties into the action by means of a
third-party complaint asserting a cause of action for
comparative fault in medical negligence against the nonparties,
except with respect to a nonparty who meets one of the following
criteria:

(a) The nonparty has entered into a settlement with each
of the plaintiffs;

(b) The nonparty has complete immunity from suit;

(c) The statute of limitations involving the nonparty
expired prior to filing of the presuit notice of intent to
initiate medical malpractice litigation; or

(d) The nonparty cannot be otherwise legally joined to the
suit.

(2) If the defendant has reasonable grounds to believe