

2003

Session Law 03-416

Florida Senate & House of Representatives

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2003-466 TAPES

SB 2-D Passed

8/12/03 HEALTH Aging + LT care

8/13/03 S FLOOR

8/12/03 H FLOOR (HJ 18)

HB 1-D (Sim.)

8/12/03 H. select cont. on Medical
Liability Ins. (workshop)

SB 2-C

7/10/03 H. Aging + LT Care

7/14/03 S. FLOOR (SJ 19)

HB 15-C

7/10/03 H. FLOOR

SB 2-B

6/17/03 HEALTH Aging + LT care

6/18/03 S. FLOOR

6/19/03 S FLOOR

HB 63-B

6/18/03 H. FLOOR

Florida Legislative History Documentation
Laws of Florida, 2003, Chapter 2003-416, Section 54
creating
Florida Statutes §766.118
“Medical Malpractice... Determination of noneconomic damages”

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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 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.

CH. 2003-416, FS Ch. 766.118 (continued)

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).
09. Journal of the Florida House of Representatives, March 19, 2003, pp. 211-212, Amendment 19 (bar code. 360065) [failed]

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].
13. Journal of the Florida Senate, June 18, 2003, pp. 9-25. Re Amendment 27 [deferred] (pp. 22-23).
14. Journal of the Florida Senate, June 19, 2003, pp. 29-35. Re: Amendmen 27, 27A and 27B [adopted] (pp 31-32).
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]

CH. 2003-416, FS Ch. 766.118 (continued)

19. Bill History, HB 65-B.
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*]
25. Senate. Committee on Health Care. Staff Analysis of CS/SB 2-C, July 10, 2003.
[**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 15C 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.

CH. 2003-416, FS Ch. 766.118 (continued)

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*]
39. Journal of the Florida House of Representatives, August 13, 2003, pp. 11-16 Re: Amendments 3-7 (pp. 14-15).
40. Laws of Florida, 2003, Ch. 2003-416, Section 54 and effective date.

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

3 (2) (a) (1) In any action for damages based on personal
4 injury or wrongful death arising out of medical malpractice,
5 whether in tort or contract, the court shall require a
6 settlement conference at least 3 weeks before the date set for
7 trial.

8 (b) (2) Attorneys who will conduct the trial, parties,
9 and persons with authority to settle shall attend the
10 settlement conference held before the court unless excused by
11 the court for good cause

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

14 766 118 Determination of noneconomic damages --

15 (1) With respect to a cause of action for personal
16 injury or wrongful death resulting from an occurrence of
17 medical negligence, damages recoverable for noneconomic losses
18 to compensate for pain and suffering, inconvenience, physical
19 impairment, mental anguish, disfigurement, loss of capacity
20 for enjoyment of life, and all other noneconomic damages shall
21 not exceed \$500,000 aggregate for all defendant health care
22 practitioners, \$500,000 aggregate for all defendant health
23 care facilities, and \$500,000 aggregate for all other
24 defendants regardless of the number of claimants involved in
25 the action subject to the limitations set forth in subsection
26 (2)

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

1 loss of reproductive capabilities, hemiplegia, quadriplegia,
2 paraplegia, blindness, or a permanent vegetative state.
3 Regardless of the number of individual claimants, the total
4 noneconomic damages that may be awarded for all claims arising
5 out of the same incident, shall be limited to a maximum of \$2
6 million aggregate for all defendant practitioners, \$2 million
7 aggregate for all defendant facilities, and \$2 million
8 aggregate for all other defendants.

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

16 (4) Notwithstanding any law to the contrary, the caps
17 on noneconomic damages provided in subsection (1) of this
18 section do not apply to any incident involving a physician or
19 osteopathic physician who is not in compliance with the
20 financial responsibility requirements set forth in ss. 458 320
21 and 459 0085, respectively.

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

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

27 766.202 Definitions, ss. 766.201-766 212.--As used in
28 ss 766.201-766.212, the term:

29 (1) "Claimant" means any person who has a cause of
30 action for damages based on personal injury or wrongful death
31 arising from medical negligence.

1 766.108 Mandatory mediation and mandatory settlement
2 conference in medical malpractice actions --

3 (1) Within 120 days after suit being filed, unless
4 such period is extended by mutual agreement of all parties,
5 all parties shall attend in-person mandatory mediation in
6 accordance with s. 44 102 if binding arbitration under s.
7 766.106 or s 766.207 has not been agreed to by the parties.
8 The Florida Rules of Civil Procedure shall apply to mediation
9 held pursuant to this section

10 (2) (a) (1) In any action for damages based on personal
11 injury or wrongful death arising out of medical malpractice,
12 whether in tort or contract, the court shall require a
13 settlement conference at least 3 weeks before the date set for
14 trial

15 (b) (2) Attorneys who will conduct the trial, parties,
16 and persons with authority to settle shall attend the
17 settlement conference held before the court unless excused by
18 the court for good cause.

19 Section 62 Section 766.118, Florida Statutes, is
20 created to read:

21 766 118 Determination of noneconomic damages.--

22 (1) With respect to a cause of action for personal
23 injury or wrongful death resulting from an occurrence of
24 medical negligence, damages recoverable for noneconomic losses
25 to compensate for pain and suffering, inconvenience, physical
26 impairment, mental anguish, disfigurement, loss of capacity
27 for enjoyment of life, and all other noneconomic damages shall
28 not exceed \$500,000 aggregate for all defendant practitioners,
29 \$500,000 aggregate for all defendant facilities, and \$500,000
30 aggregate for all other defendants regardless of the number of
31

1 claimants involved in the action subject to the limitations
2 set forth in subsection (2)
3 (2) Notwithstanding subsection (1), the trier of fact
4 may award noneconomic damages under this section in an amount
5 not to exceed \$2 million per incident in cases where medical
6 negligence results in certain catastrophic injuries including
7 death, coma, severe and permanent brain damage, mastectomy,
8 loss of reproductive capabilities, hemiplegia, quadriplegia,
9 paraplegia, blindness, or a permanent vegetative state.
10 Regardless of the number of individual claimants, the total
11 noneconomic damages that may be awarded for all claims arising
12 out of the same incident, shall be limited to a maximum of \$2
13 million aggregate for all defendant practitioners, \$2 million
14 aggregate for all defendant facilities, and \$2 million
15 aggregate for all other defendants
16 (3) The maximum amount of noneconomic damages which
17 may be awarded under this section must be adjusted each year
18 on July 1 to reflect the rate of inflation or deflation as
19 indicated in the Consumer Price Index for All Urban Consumers
20 published by the United States Department of Labor. However,
21 the maximum amount of noneconomic damages which may be awarded
22 may not be less than \$500,000.
23 (4) Notwithstanding any law to the contrary, the caps
24 on noneconomic damages provided in subsection (1) of this
25 section do not apply to any incident involving a physician or
26 osteopathic physician who is not in compliance with the
27 financial responsibility requirements set forth in ss. 458.320
28 and 459 0085, respectively
29 (5) This section expires effective September 1, 2006,
30 but shall continue to apply with respect to incidents that
31 occur prior to that date.



HB 0015C

2003

2787 travel in preparing for and attending such deposition shall be
2788 the responsibility of the party retaining such expert.

2789 (b) An expert shall be deemed available for deposition if
2790 suitable accommodations can be made for appearance of said
2791 expert via real-time video technology

2792 Section 47. Section 766.1067, Florida Statutes, is created
2793 to read:

2794 766.1067 Mandatory mediation after suit is filed.--Within
2795 120 days after suit being filed, unless such period is extended
2796 by mutual agreement of all parties, all parties shall attend in-
2797 person mandatory mediation in accordance with s. 44.102 if
2798 binding arbitration under s. 766.106 or s. 766.207 has not been
2799 agreed to by the parties. The Florida Rules of Civil Procedure
2800 shall apply to mediation held pursuant to this section.

2801 Section 48. Section 766.118, Florida Statutes, is created
2802 to read:

2803 766.118 Determination of noneconomic damages.--

2804 (1) With respect to a cause of action for personal injury
2805 or wrongful death arising from medical negligence by physicians
2806 licensed under chapter 458 or chapter 459, regardless of the
2807 number of such defendant physicians, noneconomic damages, as
2808 defined in s. 766.202(7), shall not exceed \$250,000 per
2809 claimant, provided that the total noneconomic damages
2810 recoverable by all claimants from all such physicians shall not
2811 exceed \$500,000.

2812 (2) With respect to a cause of action for personal injury
2813 or wrongful death arising from medical negligence by defendants
2814 other than physicians licensed under chapter 458 or chapter 459,
2815 regardless of the number of such nonphysician defendants,
2816 noneconomic damages, as defined in s. 766.202(7), shall not



HB 0015C

2003

2817 exceed \$250,000 per claimant, provided that the total
 2818 noneconomic damages recoverable by all claimants from all such
 2819 nonphysician defendants shall not exceed \$500,000

2820 (3) Notwithstanding subsections (1) and (2), with respect
 2821 to a cause of action for personal injury or wrongful death
 2822 arising from medical negligence by physicians licensed under
 2823 chapter 458 or chapter 459 providing emergency services and
 2824 care, as defined in s. 395.002(10), regardless of the number of
 2825 such defendant physicians, noneconomic damages, as defined in s.
 2826 766.202(7), shall not exceed \$100,000 per claimant, provided
 2827 that the total noneconomic damages recoverable by all claimants
 2828 from all such physicians shall not exceed \$250,000.

2829 (4) Notwithstanding subsections (1) and (2), with respect
 2830 to a cause of action for personal injury or wrongful death
 2831 arising from medical negligence by defendants, other than
 2832 physicians licensed under chapter 458 or chapter 459, providing
 2833 emergency services and care pursuant to obligations imposed by
 2834 ss. 395.1041 and 401.45, regardless of the number of such
 2835 nonphysician defendants, noneconomic damages, as defined in s.
 2836 766.202(7), shall not exceed \$250,000 per claimant, provided
 2837 that the total noneconomic damages recoverable by all claimants
 2838 from all such nonphysician defendants shall not exceed \$500,000.

2839 (5) For the purpose of determining the limitations on
 2840 noneconomic damages set forth in this section, the term
 2841 "physician licensed under chapter 458 or chapter 459" includes
 2842 any person for whom a physician licensed under chapter 458 or
 2843 chapter 459 is vicariously liable and any person whose liability
 2844 is based solely on such person being vicariously liable for the
 2845 actions of a physician licensed under chapter 458 or chapter 459
 2846 or the actions of a person for whom a physician licensed under



HB 0015C

2003

2847 chapter 458 or chapter 459 is vicariously liable.

2848 (6) This section shall not apply to actions governed by s.
 2849 768.28.

2850 Section 49. Subsections (3), (5), (7), and (8) of section
 2851 766.202, Florida Statutes, are amended to read:

2852 766.202 Definitions; ss. 766.201-766.212.--As used in ss.
 2853 766.201-766.212, the term·

2854 (3) "Economic damages" means financial losses that which
 2855 would not have occurred but for the injury giving rise to the
 2856 cause of action, including, but not limited to, past and future
 2857 medical expenses and 80 percent of wage loss and loss of earning
 2858 capacity, to the extent the claimant is entitled to recover such
 2859 damages under general law, including the Wrongful Death Act.

2860 (5) "Medical expert" means a person duly and regularly
 2861 engaged in the practice of his or her profession who holds a
 2862 health care professional degree from a university or college and
 2863 who meets the requirements of an expert witness as set forth in
 2864 s. 766.102 ~~has had special professional training and experience~~
 2865 ~~or one possessed of special health care knowledge or skill about~~
 2866 ~~the subject upon which he or she is called to testify or provide~~
 2867 ~~an opinion.~~

2868 (7) "Noneconomic damages" means nonfinancial losses which
 2869 would not have occurred but for the injury giving rise to the
 2870 cause of action, including pain and suffering, inconvenience,
 2871 physical impairment, mental anguish, disfigurement, loss of
 2872 capacity for enjoyment of life, and other nonfinancial losses,
 2873 to the extent the claimant is entitled to recover such damages
 2874 under general law, including the Wrongful Death Act.

2875 (8) "Periodic payment" means provision for the structuring
 2876 of future economic and future noneconomic damages payments, in



HB 0019C

2003

3411 Section 59. Section 766.118, Florida Statutes, is created
3412 to read:

3413 766.118 Determination of noneconomic damages.--With
3414 respect to a cause of action for personal injury or wrongful
3415 death resulting from an occurrence of medical negligence,
3416 including actions pursuant to s. 766.209, damages recoverable
3417 for noneconomic losses to compensate for pain and suffering,
3418 inconvenience, physical impairment, mental anguish,
3419 disfigurement, loss of capacity for enjoyment of life, and all
3420 other noneconomic damages shall be determined as follows.

3421 (1) The award for noneconomic damages from the jury shall
3422 be reviewed by the judge to determine the appropriateness of the
3423 award.

3424 (2) In reviewing the award, the judge shall utilize the
3425 Florida Jury Verdict Database as provided in s. 766.26.

3426 (3)(a) The judge shall examine all cases where the
3427 injuries alleged and the economic damages awarded are
3428 substantially similar.

3429 (b) The judge shall adopt a presumptively reasonable range
3430 of similar awards that shall be one standard deviation above and
3431 below the mean award for similar cases. The judge shall then
3432 subtract the economic damages awarded by the jury from the valid
3433 range to find the valid range for noneconomic damages.

3434 (c) If the award for noneconomic damages is outside of the
3435 presumptively reasonable range for noneconomic damages based on
3436 similar cases, the judge may elect to change the award so that
3437 it falls within said range, which is subject to appeal based on
3438 abuse of discretion standards, or the judge may elect to leave
3439 the amount as awarded by providing findings of fact on the
3440 record, which shall be subject to appeal based on clear and



HB 0019C

2003

3441 convincing evidence standards.

3442 (4) If a health care professional does not meet his or her
 3443 financial responsibility requirements as provided in s.
 3444 458.320(1)(b) or s. 459.0085(1)(b), as applicable, by July 1,
 3445 2004, the limits on damages established in this section shall
 3446 not apply and awards for economic and noneconomic damages shall
 3447 not be limited during arbitration or at trial.

3448 Section 60. Section 766.185, Florida Statutes, is created
 3449 to read:

3450 766.185 Apportionment of fault in medical negligence
 3451 actions.--

3452 (1) In an action for damages for personal injury or
 3453 wrongful death arising out of medical negligence, whether in
 3454 contract or tort, when a defendant asserts an affirmative
 3455 defense that one or more nonparties is liable, in whole or in
 3456 part, for damages arising out of medical negligence, such
 3457 defendant must join the nonparties into the action by means of a
 3458 third-party complaint asserting a cause of action for
 3459 comparative fault in medical negligence against the nonparties,
 3460 except with respect to a nonparty who meets one of the following
 3461 criteria:

3462 (a) The nonparty has entered into a settlement with each
 3463 of the plaintiffs;

3464 (b) The nonparty has complete immunity from suit;

3465 (c) The statute of limitations involving the nonparty
 3466 expired prior to filing of the presuit notice of intent to
 3467 initiate medical malpractice litigation; or

3468 (d) The nonparty cannot be otherwise legally joined to the
 3469 suit.

3470 (2) If the defendant has reasonable grounds to believe

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TORTS

[Chapter 766](#)

MEDICAL MALPRACTICE AND RELATED MATTERS

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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

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CITATOR—BILLS INTRODUCED AND PASSED

(Citator reflects Florida Statute numbers listed in final passed bill—not necessarily final statutory placement. Verify with Table of Section Changes.)

FLORIDA STATUTE CHAPTER 766 (CONT.)		FLORIDA STATUTE CHAPTER 766 (CONT.)		FLORIDA STATUTE CHAPTER 784 (CONT.)	
766 108	S 564, S 2-C, H 1-D	S 2-B, <u>S 2-D</u> (2003-416),	H 1435, H 1925, H 67-B, H 1-D	H 1803, H 121-A, H 15-C,	784 07 S 2394, 784 071 H 311 784 08 S 1328, 784 081 S 1062, H 557, H 1925, H 121-A
766 1095	S 2120				H 1287, S 2738, H 1831, H 49-A,
766 110	S 564, S 2-B, H 19-C	S 2120, H 55-B,	766 315 <u>S 1712</u> (2003-261), 766 316 H 1931	H 1803	
FLORIDA STATUTE CHAPTER 768		FLORIDA STATUTE CHAPTER 768		FLORIDA STATUTE CHAPTER 787	
766 1115	<u>S 1712</u> (2003-261), H 1803, <u>S 2-D</u> (2003-416), H 63-B, H 15-C, H 1-D	<u>S 2-D</u> (2003-416), H 67-B, H 55-B, H 67-B, H 19-C,	768 041 S 564, S 2-C, H 67-B, 768 0981 <u>S 2-D</u> (2003-416), 768 13 S 564, S 2-B, <u>S 2-D</u> (2003-416), H 67-B, H 1-D	S 2-B, H 63-B, H 15-C, H 1-D	784 0815 S 2076, H 1181
766 112	<u>S 2-D</u> (2003-416), H 63-B, H 15-C, H 1-D	H 55-B, H 67-B, H 19-C,			FLORIDA STATUTE CHAPTER 787
766 113	S 2120, H 971, S 2120	<u>S 2-D</u> (2003-416), H 1-D			787.01 S 1066, 787 02 S 1066, 787.025 S 1066,
766 115	H 1329		768 1335 S 338, <u>H 195</u> (2003-180)	H 1329, H 15-C,	
766 116	S 2-B,	S 2-C, H 1713, H 63-B, H 67-B, H 19-C,	768 16 <u>S 580</u> (2003-1), 768 17 <u>S 580</u> (2003-1), 768 18 <u>S 580</u> (2003-1), 768 21 <u>S 2-D</u> (2003-416), H 55-B, H 1-D	S 572, H 1007 H 1007 H 1007 H 1713, H 19-C,	
766 118	<u>S 2-D</u> (2003-416), H 55-B, H 65-B, H 15-C, H 1-D	H 1713, H 63-B, H 67-B, H 19-C,			790 065 H 1483, S 82, S 110, S 1388, <u>H 479</u> (2003-23)
766 1185	<u>S 2-D</u> (2003-416), H 55-B, S 2-D(2003-416), H 63-B	H 1-D H 19-C H 1-D	768 28 S 564, <u>S 1138</u> (2003-290), S 2620, H 121, H 1803, H 31-B, H 67-B, H 1-D	<u>S 686</u> (2003-159), <u>S 1712</u> (2003-261), <u>S 2-D</u> (2003-416), H 357, H 1835, H 63-B, H 15-C,	790.115 H 1747 790 1612 <u>S 1712</u> (2003-261), 790 22 S 1470, H 1933
766 201	S 2-D(2003-416), H 63-B				790 225 S 2256, <u>H 1227</u> (2003-82)
766 202	S 564, S 2-B, <u>S 2-D</u> (2003-416), H 1713, H 63-B, H 67-B, H 19-C,	S 2120, S 2-C, H 971, H 55-B, H 65-B, H 15-C, H 1-D	768 295 S 2308, 768 301 S 2684, H 1807	H 1499 H 1765,	790 225 S 2256, <u>H 1227</u> (2003-82)
766 2021	<u>S 2-D</u> (2003-416),	H 1-D			FLORIDA STATUTE CHAPTER 791
766 203	S 2620, H 1329, H 55-B, H 65-B, H 19-C, S 2120, 766 206 S 564, S 2-B, <u>S 2-D</u> (2003-416), H 55-B, H 19-C,	<u>S 2-D</u> (2003-416), H 1713, H 63-B, H 15-C, H 1-D H 971 S 2120, S 2-C, H 971, H 15-C, H 1-D	768 295 S 2308, 768 301 S 2684, H 1807	H 1499 H 1765,	791.01 <u>S 1712</u> (2003-261), 791 015 <u>S 1712</u> (2003-261),
766 205	S 2120,	H 1-D			FLORIDA STATUTE CHAPTER 794
766 206	S 564, S 2-B, <u>S 2-D</u> (2003-416), H 55-B, H 19-C,	S 2120, S 2-C, H 971, H 55-B, H 65-B, H 15-C, H 1-D	768 77 S 564, S 2-C, H 63-B, H 15-C, S 564, H 67-B, S 1202, 768 79 S 564, S 2-C, H 1713, H 63-B, H 67-B, H 19-C	H 1499 H 1765,	794.011 S 1834, H 1321 794 0115 <u>S 2172</u> (2003-115), 794 024 S 2684, 794 065 S 1806,
766 207	S 2-C, H 1713, H 63-B, H 67-B, H 19-C,	<u>S 2-D</u> (2003-416), H 55-B, H 65-B, H 15-C, H 1-D			FLORIDA STATUTE CHAPTER 796
766 2075	H 971	H 15-C, H 1-D			796 07 S 34-A, H 85-A,
766 208	H 55-B,	H 19-C			H 1929, <u>H 113-A</u> (2003-402)
766 209	S 564, S 2-C, H 55-B, H 15-C, H 1-D	S 2-B, <u>S 2-D</u> (2003-416), H 67-B, H 19-C,			FLORIDA STATUTE CHAPTER 800
766 213	H 63-B, H 15-C	H 67-B,			800 05 S 1834, H 1321
766 25	H 55-B,	H 19-C			FLORIDA STATUTE CHAPTER 810
766 26	H 55-B,	H 19-C			810 02 S 158, 810.061 S 158, 810 095 H 1747 810 098 S 1480, 810 115 <u>S 1480</u> (2003-50),
766 27	H 55-B,	H 19-C			FLORIDA STATUTE CHAPTER 812
766 303	<u>S 2-D</u> (2003-416),	H 1-D			812 014 <u>S 1080</u> (2003-15), H 785, 812 0145 S 1328, 812.022 S 2008, 812 135 S 2012, 812 15 S 1078, 812 16 S 1168, H 1209,
766 304	S 2-C, H 67-B, H 1-D	<u>S 2-D</u> (2003-416), H 15-C,			S 2336, H 1931 H 1287 H 369 H 483 <u>H 79</u> (2003-186) S 1272, H 1415
766 305	S 2-C, H 67-B, H 1-D	<u>S 2-D</u> (2003-416), H 15-C,			FLORIDA STATUTE CHAPTER 815
766 309	<u>S 2-D</u> (2003-416), H 1-D	H 67-B,			815.045 S 2684, H 1807
766 31	S 2-C, H 67-B, H 1-D	<u>S 2-D</u> (2003-416), H 15-C,			FLORIDA STATUTE CHAPTER 817
766.314	<u>S 250</u> (2003-258), <u>S 1712</u> (2003-261), S 2-C, H 441,	S 400, S 1746, <u>S 2-D</u> (2003-416), H 539,			817 16 <u>S 1712</u> (2003-261), 817.234 S 1202, <u>S 1712</u> (2003-261), H 627, H 1819, 817 2341 <u>S 1712</u> (2003-261), 817 236 S 1202, <u>S 32-A</u> (2003-411), H 1819, 817 2361 S 1202, <u>S 32-A</u> (2003-411), H 1819, 817 412 S 1694
			FLORIDA STATUTE CHAPTER 775		
			775 051 S 1820, 775 082 S 1070 775.0823 S 2394, 775.083 S 1492, H 85-A, 775 084 S 82, S 110, <u>H 479</u> (2003-23)	H 1583 H 1323 S 34-A, <u>H 113-A</u> (2003-402) S 108, S 294, H 1287 S 1572, S 1734, H 285, H 1585 S 1074, H 63	
			FLORIDA STATUTE CHAPTER 777		
			777 04 <u>S 174</u> (2003-59),	H 399	
			FLORIDA STATUTE CHAPTER 782		
			782 071 S 2072, 782 09 S 2072,	H 707 H 707	
			FLORIDA STATUTE CHAPTER 784		
			784 046 S 108, S 294, 784 047 S 108, S 294 784 048 S 82, S 110, <u>H 479</u> (2003-23)	S 110, <u>H 561</u> (2003-117) S 110, S 108, S 294.	
			784 05 S 248		

(BILLS UNDERLINED HAVE PASSED BOTH CHAMBERS)
(CITATOR INCLUDES COMMITTEE SUBS & AMENDED BILLS)

(CONTINUED ON NEXT PAGE)



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Senate 0002: Relating to Medical Incidents

S2-D 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

Am 5 3-7-03

Bill Text

Version:	Posted:	Format:
S 0002D	08/12/2003	Web Page PDF
S 0002DC1	08/12/2003	Web Page PDF
S 0002DE1	08/13/2003	Web Page PDF
S 0002DER	08/13/2003	Web Page PDF

Committee Amendments and Filed Floor Amendments:

Version:	Amendment:	Published/Filed:	Action:	Format:
S 0002DC1	052980	Filed 08/12/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	114390	Filed 08/12/2003	Adopted on 2R (08/13/2003)	Web Page PDF
S 0002DC1	120088	Filed 08/13/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	124652	Filed 08/12/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	182700	Filed 08/13/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	474972	Filed 08/13/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	531896	Filed 08/12/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	632718	Filed 08/12/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	661810	Filed 08/12/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	702218	Filed 08/13/2003	Failed on 2R (08/13/2003)	Web Page PDF
S 0002DC1	705662	Filed 08/12/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	725240	Filed 08/13/2003	Adopted on 2R (08/13/2003)	Web Page PDF
S 0002DC1	854474	Filed 08/12/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	933836	Filed 08/13/2003	Withdrawn on 2R (08/13/2003)	Web Page PDF
S 0002DC1	983282	Filed 08/13/2003	Failed on 2R (08/13/2003)	Web Page PDF

Staff Analysis:

Analysis:	Committee:	Format:
s 0002D	Health, Aging and Long-Term Care	PDF

Vote History - Committee

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

Vote History - Floor

Chamber:	Roll Call:	Date:	Format:
HOUSE	0639	08/13/03	Web Page
SENATE	0002	08/13/03	Web Page
SENATE	0003	08/13/03	Web Page
SENATE	0006	08/13/03	Web Page

Citations - Statute



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House 0001: Relating to Medical Incidents

H1-D GENERAL BILL by Goodlette; (CO-SPONSORS) Bense; Farkas; Green; Hasner Spratt (Similar CS/1ST ENG/S 0002-D)

Medical Incidents; provides that Children's Medical Services Act applies to infants receiving compensation under Fla. Birth-Related Neurological Injury Compensation Plan; provides limitations on noneconomic damages which can be awarded in causes of action involving medical negligence; provides that action for bad faith may not be brought against medical malpractice insurer if such insurer offers to pay policy limits within specified time period, etc Amends FS. APPROPRIATION: \$3,767,780 EFFECTIVE DATE: 09/15/2003 except as otherwise provided

08/12/03 HOUSE Filed; On Committee agenda-- Select Committee on Medical Liability Insurance, 08/12/03, 2:45 pm, 404-H --Workshop; Introduced, placed on Calendar -HJ 00002

08/13/03 HOUSE Read second time -HJ 00011; Amendment(s) failed -HJ 00013; Amendment(s) adopted -HJ 00014; Read third time -HJ 00015; Temporarily postponed on third reading; On Unfinished Business -HJ 00016; Died on Calendar, Link/Iden/Sim/Compare passed, refer to CS/SB 2-D (Ch. 2003-416)

Bill Text

Version: H 0001D Posted: 08/13/2003 Format: [Web Page](#) | [PDF](#)

Amendments:

HB0001DAM

Amendment:	Posted.	Format
015131	08/13/2003	Web Page PDF
020279	08/13/2003	Web Page PDF
032315	08/13/2003	Web Page PDF
056639	08/13/2003	Web Page PDF
289423	08/13/2003	Web Page PDF
325477	08/13/2003	Web Page PDF
338963	08/13/2003	Web Page PDF
355315	08/13/2003	Web Page PDF
372729	08/13/2003	Web Page PDF

Handwritten notes: H 0001, 13

Handwritten note: F.H.

416199 (9)	08/13/2003	Web Page PDF
448397	08/13/2003	Web Page PDF
454179 (7)	08/13/2003	Web Page PDF
462723 (11)	08/13/2003	Web Page PDF
463045 (10)	08/13/2003	Web Page PDF
484763 (2)	08/13/2003	Web Page PDF
491477 (5)	08/13/2003	Web Page PDF
641933 (12)	08/13/2003	Web Page PDF
923335	08/13/2003	Web Page PDF

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](#)
- [0456.039](#)
- [0456.041](#)
- [0456.042](#)
- [0456.048](#)
- [0456.049](#)
- [0456.051](#)
- [0456.057](#)
- [0456.0575](#)
- [0456.072](#)
- [0456.073](#)
- [0456.077](#)
- [0456.078](#)
- [0458.319](#)
- [0458.320](#)
- [0458.331](#)
- [0458.3311](#)
- [0459.0085](#)
- [0459.015](#)
- [0459.0151](#)

Ed Tribble

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. Phillippe 769 So 2d 961 (Fla. 2000) *OK*

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 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

(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

(7) H 55-B

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(8) H 52-B

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(9) H 55-B

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(10) H 62-B

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(11) H 72-B

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HB 1713

2003

1133 subsequent offer or demand by either party shall apply in the
 1134 determination of whether sanctions will be assessed by the court
 1135 under this section.

1136 (5) Notwithstanding any provision of law to the contrary,
 1137 ss. 45.061 and 768.79 shall not be applicable to medical
 1138 negligence causes of action.

1139 Section 28. Section 766.118, Florida Statutes, is created
 1140 to read:

1141 766.118 Determination of noneconomic damages.--With
 1142 respect to a cause of action for personal injury or wrongful
 1143 death resulting from an occurrence of medical negligence,
 1144 including actions pursuant to s. 766.209, damages recoverable
 1145 for noneconomic losses to compensate for pain and suffering,
 1146 inconvenience, physical impairment, mental anguish,
 1147 disfigurement, loss of capacity for enjoyment of life, and all
 1148 other noneconomic damages shall not exceed \$250,000, regardless
 1149 of the number of claimants or defendants involved in the action.

1150 Section 29. Subsection (5) of section 766.202, Florida
 1151 Statutes, is amended to read:

1152 766.202 Definitions, ss. 766.201-766.212.--As used in ss.
 1153 766.201-766.212, the term.

1154 (5) "Medical expert" means a person familiar with the
 1155 evaluation, diagnosis, or treatment of the medical condition at
 1156 issue who:

1157 (a) Is duly and regularly engaged in the practice of his
 1158 or her profession, ~~who~~ holds a health care professional degree
 1159 from a university or college, and has had special professional
 1160 training and experience; or



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1206 favorable than the judgment.

1207 (3) If the judgment obtained at trial is not more favorable
1208 to a defendant than the final demand for judgment made by the
1209 claimant to the defendant during mediation, the court shall
1210 assess against the defendant the mediation costs, and reasonable
1211 costs, expenses, and attorneys fees that were incurred after the
1212 date of mediation. Prejudgment interest at the rate established
1213 in s. 55.03 from the date of the final demand shall also be
1214 assessed. The defendant and the insurer of the defendant, if
1215 any, shall be liable for the costs, fees, and interest awardable
1216 under this section.

1217 (4) The final offer and final demand made during the
1218 mediation required in this section shall be the only offer and
1219 demand considered by the court in assessing costs, expenses, and
1220 attorneys fees and prejudgment interest under this section. No
1221 subsequent offer or demand by either party shall apply in the
1222 determination of whether sanctions will be assessed by the court
1223 under this section.

1224 (5) Notwithstanding any provision of law to the contrary, s.
1225 45.061 and s. 768.79 shall not be applicable to medical
1226 negligence causes of action.

1227 Section 26. Section 766.118, Florida Statutes, is created
1228 to read:

1229 766.118 Determination of noneconomic damages.--In an action
1230 for personal injury or wrongful death due to medical negligence,
1231 including actions pursuant to s. 766.209, damages recoverable
1232 from any one defendant for noneconomic losses to compensate for
1233 pain and suffering, inconvenience, physical impairment, mental
1234 anguish, disfigurement, loss of capacity for enjoyment of life,
1235 and all other noneconomic damages shall not exceed \$250,000,
1236 regardless of the number of claimants involved in the action.



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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/CS/1ST ENG/S 0560, CS/CS/CS/1ST ENG/S 0562, CS/S 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; ~~217~~ 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/Sim/Compare passed, refer to CS/SB 2-D (Ch. 2003-416)

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H 1713E1	03/19/2003	Web Page PDF

Amendments:

HB1713AM

Amendment:	Posted:	Format:
000000	03/18/2003	Web Page PDF
014187	03/18/2003	Web Page PDF
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090397	03/18/2003	Web Page PDF
121143	03/18/2003	Web Page PDF
144567	03/18/2003	Web Page PDF
146765	03/18/2003	Web Page PDF
152495	03/18/2003	Web Page PDF
168765	03/18/2003	Web Page PDF
178809	03/18/2003	Web Page PDF
181131	03/18/2003	Web Page PDF
182333	03/18/2003	Web Page PDF
207609	03/18/2003	Web Page PDF
259127	03/18/2003	Web Page PDF
274567	03/28/2003	Web Page PDF
279041	03/18/2003	Web Page PDF
289067	03/18/2003	Web Page PDF
293745	03/18/2003	Web Page PDF
360065	03/18/2003	Web Page PDF
364399	03/18/2003	Web Page PDF
428563	03/18/2003	Web Page PDF
436965	03/18/2003	Web Page PDF
444653	03/18/2003	Web Page PDF
469605	03/18/2003	Web Page PDF
475585	03/18/2003	Web Page PDF
492799	03/18/2003	Web Page PDF
495635	03/18/2003	Web Page PDF
501557	03/18/2003	Web Page PDF
513325	03/18/2003	Web Page PDF
518737	03/18/2003	Web Page PDF
527415	03/18/2003	Web Page PDF
566505	03/18/2003	Web Page PDF
566755	03/18/2003	Web Page PDF
588911	03/18/2003	Web Page PDF
611709	03/18/2003	Web Page PDF
617587	03/18/2003	Web Page PDF
620723	03/18/2003	Web Page PDF
642803	03/18/2003	Web Page PDF
647169	03/18/2003	Web Page PDF
692619	03/18/2003	Web Page PDF
728017	03/18/2003	Web Page PDF
732507	03/18/2003	Web Page PDF
737013	03/18/2003	Web Page PDF
745955	03/18/2003	Web Page PDF
772781	03/18/2003	Web Page PDF
778679	03/18/2003	Web Page PDF
824209	03/18/2003	Web Page PDF
830497	03/18/2003	Web Page PDF
834711	03/18/2003	Web Page PDF
837611	03/18/2003	Web Page PDF

924247	03/18/2003	Web Page PDF
924789	03/18/2003	Web Page PDF
927749	03/18/2003	Web Page PDF
961157	03/18/2003	Web Page PDF
962703	03/18/2003	Web Page PDF
976553	03/18/2003	Web Page PDF

HB1713E1

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 h 1713 Health Care [PDF](#)

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 HOUSE 0043 03/21/03 [Web Page](#)
 HOUSE 0044 03/21/03 [Web Page](#)

Citations - Statute

- [0395.0191](#)
- [0395.1012](#)
- [0395.1051](#)
- [0456.041](#)
- [0456.042](#)
- [0456.049](#)
- [0456.057](#)
- [0456.072](#)
- [0456.073](#)
- [0456.077](#)
- [0456.078](#)
- [0456.085](#)
- [0458.331](#)
- [0458.3311](#)
- [0459.015](#)
- [0459.0151](#)
- [0461.013](#)
- [0627.062](#)
- [0627.0662](#)
- [0627.357](#)
- [0627.3575](#)
- [0627.912](#)
- [0627.9121](#)
- [0766.106](#)
- [0766.1065](#)
- [0766.1067](#)
- [0766.118](#)
- [0766.202](#)

1 766.108 Mandatory mediation and mandatory settlement
2 conference in medical malpractice actions --
3 (1) Within 120 days after suit being filed, unless
4 such period is extended by mutual agreement of all parties,
5 all parties shall attend in-person mandatory mediation in
6 accordance with s. 44.102 if binding arbitration under s.
7 766 106 or s 766.207 has not been agreed to by the parties.
8 The Florida Rules of Civil Procedure shall apply to mediation
9 held pursuant to this section.

10 (2) (a) ~~(1)~~ In any action for damages based on personal
11 injury or wrongful death arising out of medical malpractice,
12 whether in tort or contract, the court shall require a
13 settlement conference at least 3 weeks before the date set for
14 trial.

15 (b) ~~(2)~~ Attorneys who will conduct the trial, parties,
16 and persons with authority to settle shall attend the
17 settlement conference held before the court unless excused by
18 the court for good cause.

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

21 766 118 Determination of noneconomic damages --
22 (1) With respect to a cause of action for personal
23 injury or wrongful death resulting from an occurrence of
24 medical negligence, including actions pursuant to ss
25 766 207-766.212, damages recoverable for noneconomic losses to
26 compensate for pain and suffering, inconvenience, physical
27 impairment, mental anguish, disfigurement, loss of capacity
28 for enjoyment of life, and all other noneconomic damages shall
29 not exceed \$500,000 per defendant, regardless of the number of
30 claimants involved in the action subject to the limitations
31 set forth in subsection (2)

1 (2) Notwithstanding subsection (1), a trier of fact
2 may award noneconomic damages under this section in excess of
3 the limits described in subsection (1) in cases where medical
4 negligence results in certain catastrophic injuries, including
5 death, severe and permanent brain damage, coma, paralysis,
6 quadriplegia, paraplegia, blindness, or a permanent vegetative
7 state, except in those actions under ss 766.207-766 212

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

10 766 202 Definitions; ss 766 201-766.212.--As used in
11 ss 766.201-766 212, the term·

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

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

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



Sum in 65 + 67

HB 0063B

2003

1801 (2) Within 60 days after service of the presuit notice of
 1802 intent to initiate medical malpractice litigation, all parties
 1803 must be made available for a sworn deposition. Such deposition
 1804 may not be used in a civil suit for medical negligence.

1805 (3) Within 120 days after service of the presuit notice of
 1806 intent to initiate medical malpractice litigation, each party's
 1807 corroborating expert, who will otherwise be tendered as the
 1808 expert complying with the affidavit provisions set forth in s.
 1809 766.203, must be made available for a sworn deposition.

1810 (a) The expenses associated with the expert's time and
 1811 travel in preparing for and attending such deposition shall be
 1812 the responsibility of the party retaining such expert.

1813 (b) An expert shall be deemed available for deposition if
 1814 suitable accommodations can be made for appearance of said
 1815 expert via real-time video technology.

1816 Section 36. Section 766.1067, Florida Statutes, is created
 1817 to read:

1818 766.1067 Mandatory mediation after suit is filed.--Within
 1819 120 days after suit being filed, unless such period is extended
 1820 by mutual agreement of all parties, all parties shall attend in-
 1821 person mandatory mediation in accordance with s. 44.102 if
 1822 binding arbitration under s. 766.106 or s. 766.207 has not been
 1823 agreed to by the parties. The Florida Rules of Civil Procedure
 1824 shall apply to mediation held pursuant to this section.

1825 -- Section 37. Section 766.118, Florida Statutes, is created
 1826 to read:

1827 766.118 Determination of noneconomic damages.--With
 1828 respect to a cause of action for personal injury or wrongful
 1829 death resulting from an occurrence of medical negligence,
 1830 including actions pursuant to s. 766 209, damages recoverable



HB 0063B

2003

1831 for noneconomic losses to compensate for pain and suffering,
 1832 inconvenience, physical impairment, mental anguish,
 1833 disfigurement, loss of capacity for enjoyment of life, and all
 1834 other noneconomic damages shall not exceed \$250,000, regardless
 1835 of the number of claimants or defendants involved in the action.

1836 Section 38. Subsections (3), (5), (7), and (8) of section
 1837 766.202, Florida Statutes, are amended to read:

1838 766.202 Definitions; ss. 766.201-766.212. --As used in ss.
 1839 766.201-766.212, the term:

1840 (3) "Economic damages" means financial losses that ~~which~~
 1841 would not have occurred but for the injury giving rise to the
 1842 cause of action, including, but not limited to, past and future
 1843 medical expenses and 80 percent of wage loss and loss of earning
 1844 capacity, to the extent the claimant is entitled to recover such
 1845 damages under general law, including the Wrongful Death Act.

1846 (5) "Medical expert" means a person familiar with the
 1847 evaluation, diagnosis, or treatment of the medical condition at
 1848 issue who:

1849 (a) Is duly and regularly engaged in the practice of his
 1850 or her profession, ~~who~~ holds a health care professional degree
 1851 from a university or college, and has had special professional
 1852 training and experience; or

1853 (b) Has ~~one possessed of~~ special health care knowledge or
 1854 skill about the subject upon which he or she is called to
 1855 testify or provide an opinion.

1856
 1857 Such expert shall certify that he or she has similar credentials
 1858 and expertise in the area of the defendant's particular practice
 1859 or specialty, if the defendant is a specialist.

1860 (7) "Noneconomic damages" means nonfinancial losses which



HB 0055B

2003

3412 of each year.

3413 Section 59. Section 766 118, Florida Statutes, is created
3414 to read:

3415 766.118 Determination of noneconomic damages.-- With
3416 respect to a cause of action for personal injury or wrongful
3417 death resulting from an occurrence of medical negligence,
3418 including actions pursuant to s. 766 209, damages recoverable
3419 for noneconomic losses to compensate for pain and suffering,
3420 inconvenience, physical impairment, mental anguish,
3421 disfigurement, loss of capacity for enjoyment of life, and all
3422 other noneconomic damages shall be determined as follows:

3423 (1) The award for noneconomic damages from the jury shall
3424 be reviewed by the judge to determine the appropriateness of the
3425 award.

3426 (2) In reviewing the award, the judge shall utilize the
3427 Florida Jury Verdict Database as provided in s. 766.26.

3428 (3)(a) The judge shall examine all cases where the
3429 injuries alleged and the economic damages awarded are
3430 substantially similar

3431 (b) The judge shall adopt a presumptively reasonable range
3432 of similar awards that shall be one standard deviation above and
3433 below the mean award for similar cases. The judge shall then
3434 subtract the economic damages awarded by the jury from the valid
3435 range to find the valid range for noneconomic damages.

3436 (c) If the award for noneconomic damages is outside of the
3437 presumptively reasonable range for noneconomic damages based on
3438 similar cases, the judge may elect to change the award so that
3439 it falls within said range, which is subject to appeal based on
3440 abuse of discretion standards, or the judge may elect to leave
3441 the amount as awarded by providing findings of fact on the



HB 0055B

2003

3442 record, which shall be subject to appeal based on clear and
 3443 convincing evidence standards.

3444 (4) If a health care professional does not meet his or her
 3445 financial responsibility requirements as provided in s. 458.320
 3446 or 459.0085, as applicable, by July 1, 2004, the limits
 3447 established in this section shall not apply and awards for
 3448 economic and noneconomic damages shall not be limited.

3449 Section 60. Section 766.185, Florida Statutes, is created
 3450 to read:

3451 766.185 Apportionment of fault in medical negligence
 3452 actions.--

3453 (1) In an action for damages for personal injury or
 3454 wrongful death arising out of medical negligence, whether in
 3455 contract or tort, when a defendant asserts an affirmative
 3456 defense that one or more nonparties is liable, in whole or in
 3457 part, for damages arising out of medical negligence, such
 3458 defendant must join the nonparties into the action by means of a
 3459 third-party complaint asserting a cause of action for
 3460 comparative fault in medical negligence against the nonparties,
 3461 except with respect to a nonparty who meets one of the following
 3462 criteria:

3463 (a) The nonparty has entered into a settlement with each
 3464 of the plaintiffs;

3465 (b) The nonparty has complete immunity from suit;

3466 (c) The statute of limitations involving the nonparty
 3467 expired prior to filing of the presuit notice of intent to
 3468 initiate medical malpractice litigation; or

3469 (d) The nonparty cannot be otherwise legally joined to the
 3470 suit.

3471 (2) If the defendant has reasonable grounds to believe