

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5			
6			
7			
8			
9			
10			
11	Senator Sebesta moved the following amendment:		
12			
13	<b>Senate Amendment (with title amendment)</b>		
14	On page 87, between lines 20 and 21,		
15			
16	insert:		
17	Section 59. Effective October 1, 2000, and applicable		
18	to causes of actions accruing on or after that date, section		
19	766.102, Florida Statutes, is amended to read:		
20	766.102 Medical negligence; standards of recovery.--		
21	(1) In any action for recovery of damages based on the		
22	death or personal injury of any person in which it is alleged		
23	that such death or injury resulted from the negligence of a		
24	health care provider as defined in s. 768.50(2)(b), the		
25	claimant shall have the burden of proving by the greater		
26	weight of evidence that the alleged actions of the health care		
27	provider represented a breach of the prevailing professional		
28	standard of care for that health care provider. The		
29	prevailing professional standard of care for a given health		
30	care provider shall be that level of care, skill, and		
31	treatment which, in light of all relevant surrounding		

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No. \_\_\_\_

1 circumstances, is recognized as acceptable and appropriate by  
2 reasonably prudent similar health care providers.

3 (2) A person may not give expert testimony concerning  
4 the prevailing professional standard of care unless that  
5 person is a licensed health care provider and meets the  
6 following criteria:

7 (a) If the party against whom or on whose behalf the  
8 testimony is offered is a specialist, the expert witness must:

9 1. Specialize in the same specialty as the party  
10 against whom or on whose behalf the testimony is offered; or

11 2. Specialize in a similar specialty that includes the  
12 evaluation, diagnosis, or treatment of the medical condition  
13 that is the subject of the complaint and have prior experience  
14 treating similar patients.

15 (b) During the 3 years immediately preceding the date  
16 of the occurrence that is the basis for the action, the expert  
17 witness must have devoted professional time to:

18 1. The active clinical practice of, or consulting with  
19 respect to, the same or similar health profession as the  
20 health care provider against whom or on whose behalf the  
21 testimony is offered and, if that health care provider is a  
22 specialist, the active clinical practice of, or consulting  
23 with respect to, the same specialty or a similar specialty  
24 that includes the evaluation, diagnosis, or treatment of the  
25 medical condition that is the subject of the action and have  
26 prior experience treating similar patients;

27 2. The instruction of students in an accredited health  
28 professional school or accredited residency program in the  
29 same or similar health profession in which the health care  
30 provider against whom or on whose behalf the testimony is  
31 offered, and if that health care provider is a specialist, an

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No. \_\_\_\_

1 accredited health professional school or accredited residency  
2 or clinical research program in the same or similar specialty;  
3 or

4 3. A clinical research program that is affiliated with  
5 an accredited medical school or teaching hospital and that is  
6 in the same or similar health profession as the health care  
7 provider against whom or on whose behalf the testimony is  
8 offered and, if that health care provider is a specialist, a  
9 clinical research program that is affiliated with an  
10 accredited health professional school or accredited residency  
11 or clinical research program in the same or similar specialty.

12 (3) Notwithstanding subsection (2), if the health care  
13 provider against whom or on whose behalf the testimony is  
14 offered is a general practitioner, the expert witness, during  
15 the 3 years immediately preceding the date of the occurrence  
16 that is the basis for the action, must have devoted his or her  
17 professional time to:

18 (a) Active clinical practice or consultation as a  
19 general practitioner;

20 (b) Instruction of students in an accredited health  
21 professional school or accredited residency program in the  
22 general practice of medicine; or

23 (c) A clinical research program that is affiliated  
24 with an accredited medical school or teaching hospital and  
25 that is in the general practice of medicine.

26 (4) Notwithstanding subsection (2), a physician  
27 licensed under chapter 458 or chapter 459 who qualifies as an  
28 expert under the section and who by reason of active clinical  
29 practice or instruction of students has knowledge of the  
30 applicable standard of care for nurses, nurse practitioners,  
31 certified registered nurse anesthetists, certified registered

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No. \_\_\_\_

1 nurse midwives, physician assistants, or other medical support  
2 staff may give expert testimony in a medical malpractice  
3 action with respect to the standard of care of such medical  
4 support staff.

5 (5) In an action alleging medical malpractice, an  
6 expert witness may not testify on a contingency fee basis.

7 (6) This section does not limit the power of the trial  
8 court to disqualify an expert witness on grounds other than  
9 the qualifications in this section.

10 (7) Notwithstanding subsection (2), in a medical  
11 malpractice action against a hospital or other health care or  
12 medical facility, a person may give expert testimony on the  
13 appropriate standard of care as to administrative and other  
14 nonclinical issues if the person has substantial knowledge, by  
15 virtue of his or her training and experience, concerning the  
16 standard of care among hospitals, or health care or medical  
17 facilities of the same type as the hospital, health facility,  
18 or medical facility whose actions or inactions are the subject  
19 of this testimony and which are located in the same or similar  
20 communities at the time of the alleged act giving rise to the  
21 cause of action.

22 ~~(2)(a) If the health care provider whose negligence is~~  
23 ~~claimed to have created the cause of action is not certified~~  
24 ~~by the appropriate American board as being a specialist, is~~  
25 ~~not trained and experienced in a medical specialty, or does~~  
26 ~~not hold himself or herself out as a specialist, a "similar~~  
27 ~~health care provider" is one who:~~

28 ~~1. Is licensed by the appropriate regulatory agency of~~  
29 ~~this state;~~

30 ~~2. Is trained and experienced in the same discipline~~  
31 ~~or school of practice; and~~

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282

Amendment No. \_\_\_\_

1           ~~3. Practices in the same or similar medical community.~~

2           ~~(b) If the health care provider whose negligence is~~  
3 ~~claimed to have created the cause of action is certified by~~  
4 ~~the appropriate American board as a specialist, is trained and~~  
5 ~~experienced in a medical specialty, or holds himself or~~  
6 ~~herself out as a specialist, a "similar health care provider"~~  
7 ~~is one who:~~

8           ~~1. Is trained and experienced in the same specialty;~~  
9 ~~and~~

10           ~~2. Is certified by the appropriate American board in~~  
11 ~~the same specialty.~~

12

13 ~~However, if any health care provider described in this~~  
14 ~~paragraph is providing treatment or diagnosis for a condition~~  
15 ~~which is not within his or her specialty, a specialist trained~~  
16 ~~in the treatment or diagnosis for that condition shall be~~  
17 ~~considered a "similar health care provider."~~

18           ~~(c) The purpose of this subsection is to establish a~~  
19 ~~relative standard of care for various categories and~~  
20 ~~classifications of health care providers. Any health care~~  
21 ~~provider may testify as an expert in any action if he or she:~~

22           ~~1. Is a similar health care provider pursuant to~~  
23 ~~paragraph (a) or paragraph (b); or~~

24           ~~2. Is not a similar health care provider pursuant to~~  
25 ~~paragraph (a) or paragraph (b) but, to the satisfaction of the~~  
26 ~~court, possesses sufficient training, experience, and~~  
27 ~~knowledge as a result of practice or teaching in the specialty~~  
28 ~~of the defendant or practice or teaching in a related field of~~  
29 ~~medicine, so as to be able to provide such expert testimony as~~  
30 ~~to the prevailing professional standard of care in a given~~  
31 ~~field of medicine. Such training, experience, or knowledge~~

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No. \_\_\_\_

1 ~~must be as a result of the active involvement in the practice~~  
2 ~~or teaching of medicine within the 5-year period before the~~  
3 ~~incident giving rise to the claim.~~

4       (8)~~(3)~~(a) If the injury is claimed to have resulted  
5 from the negligent affirmative medical intervention of the  
6 health care provider, the claimant must, in order to prove a  
7 breach of the prevailing professional standard of care, show  
8 that the injury was not within the necessary or reasonably  
9 foreseeable results of the surgical, medicinal, or diagnostic  
10 procedure constituting the medical intervention, if the  
11 intervention from which the injury is alleged to have resulted  
12 was carried out in accordance with the prevailing professional  
13 standard of care by a reasonably prudent similar health care  
14 provider.

15       (b) The provisions of this subsection shall apply only  
16 when the medical intervention was undertaken with the informed  
17 consent of the patient in compliance with the provisions of s.  
18 766.103.

19       (9)~~(4)~~ The existence of a medical injury shall not  
20 create any inference or presumption of negligence against a  
21 health care provider, and the claimant must maintain the  
22 burden of proving that an injury was proximately caused by a  
23 breach of the prevailing professional standard of care by the  
24 health care provider. However, the discovery of the presence  
25 of a foreign body, such as a sponge, clamp, forceps, surgical  
26 needle, or other paraphernalia commonly used in surgical,  
27 examination, or diagnostic procedures, shall be prima facie  
28 evidence of negligence on the part of the health care  
29 provider.

30       (10)~~(5)~~ The Legislature is cognizant of the changing  
31 trends and techniques for the delivery of health care in this

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282

Amendment No. \_\_\_\_

1 state and the discretion that is inherent in the diagnosis,  
2 care, and treatment of patients by different health care  
3 providers. The failure of a health care provider to order,  
4 perform, or administer supplemental diagnostic tests shall not  
5 be actionable if the health care provider acted in good faith  
6 and with due regard for the prevailing professional standard  
7 of care.

8 (11)(a)~~(6)(a)~~ In any action for damages involving a  
9 claim of negligence against a physician licensed under chapter  
10 458, osteopathic physician licensed under chapter 459,  
11 podiatric physician licensed under chapter 461, or  
12 chiropractic physician licensed under chapter 460 providing  
13 emergency medical services in a hospital emergency department,  
14 the court shall admit expert medical testimony only from  
15 physicians, osteopathic physicians, podiatric physicians, and  
16 chiropractic physicians who have had substantial professional  
17 experience within the preceding 5 years while assigned to  
18 provide emergency medical services in a hospital emergency  
19 department.

20 (b) For the purposes of this subsection:

21 1. The term "emergency medical services" means those  
22 medical services required for the immediate diagnosis and  
23 treatment of medical conditions which, if not immediately  
24 diagnosed and treated, could lead to serious physical or  
25 mental disability or death.

26 2. "Substantial professional experience" shall be  
27 determined by the custom and practice of the manner in which  
28 emergency medical coverage is provided in hospital emergency  
29 departments in the same or similar localities where the  
30 alleged negligence occurred.

31 (12) However, if any health care providers described

Bill No. CS for CS for CS for SB 2154, CS for SB 1900 & SB 282  
Amendment No. \_\_\_\_

1 in subsection (2), subsection (3), or subsection (4) are  
2 providing treatment or diagnosis for a condition that is not  
3 within his or her specialty, a specialist trained in the  
4 treatment or diagnosis for that condition shall be considered  
5 a "similar health care provider."

6  
7 (Redesignate subsequent sections.)

8  
9  
10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 7, line 21, after the semicolon,

13  
14 insert:

15 amending s. 766.102, F.S.; providing  
16 requirements for expert witness testimony in  
17 actions based on medical negligence;

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31