

By Senator Villalobos

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A bill to be entitled
An act relating to medical malpractice presuit
investigations; amending s. 766.104, F.S.;
authorizing the release of certain records
relating to medical care and treatment of a
decedent upon the request of certain persons;
providing an effective date.

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

Section 1. Section 766.104, Florida Statutes, is
amended to read:

766.104 Pleading in medical negligence cases; claim
for punitive damages; authorization for release of records for
investigation.--

(1) No action shall be filed for personal injury or
wrongful death arising out of medical negligence, whether in
tort or in contract, unless the attorney filing the action has
made a reasonable investigation as permitted by the
circumstances to determine that there are grounds for a good
faith belief that there has been negligence in the care or
treatment of the claimant. The complaint or initial pleading
shall contain a certificate of counsel that such reasonable
investigation gave rise to a good faith belief that grounds
exist for an action against each named defendant. For
purposes of this section, good faith may be shown to exist if
the claimant or his or her counsel has received a written
opinion, which shall not be subject to discovery by an
opposing party, of an expert as defined in s. 766.102 that
there appears to be evidence of medical negligence. If the
court determines that such certificate of counsel was not made

1 in good faith and that no justiciable issue was presented
2 against a health care provider that fully cooperated in
3 providing informal discovery, the court shall award attorney's
4 fees and taxable costs against claimant's counsel, and shall
5 submit the matter to The Florida Bar for disciplinary review
6 of the attorney.

7 (2) Upon petition to the clerk of the court where the
8 suit will be filed and payment to the clerk of a filing fee,
9 not to exceed \$25, established by the chief judge, an
10 automatic 90-day extension of the statute of limitations shall
11 be granted to allow the reasonable investigation required by
12 subsection (1). This period shall be in addition to other
13 tolling periods. No court order is required for the extension
14 to be effective. The provisions of this subsection shall not
15 be deemed to revive a cause of action on which the statute of
16 limitations has run.

17 (3) For purposes of completing the investigation
18 required by this section, and notwithstanding any other
19 provision of law to the contrary, subsequent to the death of a
20 person and prior to the administration of such person's
21 estate, copies of all medical reports and records, including
22 bills, films, and any other records, relating to the care and
23 treatment of such person which are in the possession of a
24 health care practitioner as defined in s. 456.011, shall be
25 made available, upon request, to the spouse, parent, or child
26 who has reached majority; the guardian; the surrogate; the
27 proxy; the attorney in fact of the deceased; or any of the
28 foregoing persons. A health care practitioner complying in
29 good faith with the provisions of this subsection is not
30 liable for any civil damages attributable to the disclosure of

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1 such records and is not subject to any disciplinary action
2 based on such disclosure.

3 Section 2. This act shall take effect July 1, 2001.

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6 SENATE SUMMARY

7 Authorizes the release, in medical malpractice presuit
8 investigations, of certain records relating to medical
9 care and treatment of a decedent upon the request of
10 specified persons. Provides persons who comply with the
11 requirement with immunity from civil damages or
12 disciplinary action.

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