

By the Committee on Judiciary and Senator Villalobos

308-1569-01

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

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 766.104, Florida Statutes, is
12 amended to read:

13 766.104 Pleading in medical negligence cases; claim
14 for punitive damages; authorization for release of records for
15 investigation.--

16 (1) No action shall be filed for personal injury or
17 wrongful death arising out of medical negligence, whether in
18 tort or in contract, unless the attorney filing the action has
19 made a reasonable investigation as permitted by the
20 circumstances to determine that there are grounds for a good
21 faith belief that there has been negligence in the care or
22 treatment of the claimant. The complaint or initial pleading
23 shall contain a certificate of counsel that such reasonable
24 investigation gave rise to a good faith belief that grounds
25 exist for an action against each named defendant. For
26 purposes of this section, good faith may be shown to exist if
27 the claimant or his or her counsel has received a written
28 opinion, which shall not be subject to discovery by an
29 opposing party, of an expert as defined in s. 766.102 that
30 there appears to be evidence of medical negligence. If the
31 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. 456.001, shall be
25 made available, upon request, to the spouse, parent, child who
26 has reached majority, guardian pursuant to chapter 744,
27 surrogate or proxy pursuant to chapter 765, or attorney in
28 fact of the deceased pursuant to chapter 709. A health care
29 practitioner complying in good faith with the provisions of
30 this subsection is not liable for any civil damages

31

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

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

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 SB 1084

8 Corrects a cross-reference for the definition of health care
9 practitioner.

10 Clarifies that guardians acting pursuant to chapter 744,
11 surrogates or proxies acting pursuant to chapter 765, or
12 attorneys in fact acting pursuant to chapter 709 may request
13 the deceased patient's medical records from the deceased
14 patient's health care practitioner.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31