

By Representative Seiler

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 exemption from liability and  
8           discipline for health care practitioners  
9           complying in good faith; providing an effective  
10          date.

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

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

16           766.104 Pleading in medical negligence cases; claim  
17 for punitive damages; authorization for release of records for  
18 investigation--

19           (1) No action shall be filed for personal injury or  
20 wrongful death arising out of medical negligence, whether in  
21 tort or in contract, unless the attorney filing the action has  
22 made a reasonable investigation as permitted by the  
23 circumstances to determine that there are grounds for a good  
24 faith belief that there has been negligence in the care or  
25 treatment of the claimant. The complaint or initial pleading  
26 shall contain a certificate of counsel that such reasonable  
27 investigation gave rise to a good faith belief that grounds  
28 exist for an action against each named defendant. For  
29 purposes of this section, good faith may be shown to exist if  
30 the claimant or his or her counsel has received a written  
31 opinion, which shall not be subject to discovery by an

1 opposing party, of an expert as defined in s. 766.102 that  
2 there appears to be evidence of medical negligence. If the  
3 court determines that such certificate of counsel was not made  
4 in good faith and that no justiciable issue was presented  
5 against a health care provider that fully cooperated in  
6 providing informal discovery, the court shall award attorney's  
7 fees and taxable costs against claimant's counsel, and shall  
8 submit the matter to The Florida Bar for disciplinary review  
9 of the attorney.

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

20 (3) For purposes of conducting the investigation  
21 required by this section, and notwithstanding any other  
22 provision of law to the contrary, subsequent to the death of a  
23 person and prior to the administration of such person's  
24 estate, copies of all medical reports and records, including  
25 bills, films, and other records relating to the care and  
26 treatment of such person that are in the possession of a  
27 health care practitioner as defined in s. 456.001 shall be  
28 made available, upon request, to the spouse, parent, child who  
29 has reached maturity, guardian, surrogate, proxy, or attorney  
30 in fact of the deceased or any of the foregoing persons. A  
31 health care practitioner complying in good faith with the

1 provisions of this subsection shall not be held liable for  
2 civil damages attributable to the disclosure of such records  
3 or be subject to any disciplinary action based on such  
4 disclosure.

5 Section 2. This act shall take effect upon becoming a  
6 law.

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9 HOUSE SUMMARY

10 Authorizes, with respect to medical malpractice presuit  
11 investigations, the release of records relating to  
12 medical care and treatment of a decedent that are in the  
13 possession of a health care practitioner to, and upon the  
14 request of, the spouse, parent, child who has reached  
15 maturity, guardian, surrogate, proxy, or attorney in fact  
16 of the deceased or any of the foregoing persons. Provides  
17 for exemption from liability and discipline for health  
18 care practitioners complying in good faith.  
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