

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Harrell offered the following:

Amendment (with title amendment)

Remove line(s) 1150-1167, and insert:

Section 29. Subsection (2) of section 766.102, Florida Statutes, is amended to read:

766.102 Medical negligence; standards of recovery.--

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

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

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

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28 3. Practices in the same or similar medical community; and

29 4. Has, during the 5 years immediately preceding the date
30 of the occurrence that is the basis for the action, engaged in
31 any combination of the following:

32 a. Active clinical practice;

33 b. Instruction of students in an accredited health
34 professional school or accredited residency program in the same
35 health profession as the health care provider against whom or on
36 whose behalf the testimony is offered; or

37 c. A clinical research program that is affiliated with an
38 accredited medical school or teaching hospital in the same
39 health profession as the health care provider against whom or on
40 whose behalf the testimony is offered.

41 (b) If the health care provider whose negligence is
42 claimed to have created the cause of action is certified by the
43 appropriate American board as a specialist, is trained and
44 experienced in a medical specialty, or holds himself or herself
45 out as a specialist, a "similar health care provider" is one
46 who:

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

48 2. Is certified by the appropriate American board in the
49 same specialty; and

50 3. Has, during the 5 years immediately preceding the date
51 of the occurrence that is the basis for the action, engaged in
52 any combination of the following:

53 a. Active clinical practice in the same specialty or a
54 similar specialty that includes the evaluation, diagnosis, or
55 treatment of the medical condition or procedure that is the
56 subject of the action;

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57 b. Instruction of students in an accredited health
58 professional school or accredited residency program in the same
59 health profession and the same or similar specialty as the
60 health care provider against whom or on whose behalf the
61 testimony is offered; or

62 c. A clinical research program that is affiliated with an
63 accredited medical school or teaching hospital in the same
64 health profession and the same or similar specialty as the
65 health care provider against whom or on whose behalf the
66 testimony is offered.

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68 However, if any health care provider described in this paragraph
69 is providing treatment or diagnosis for a condition which is not
70 within his or her specialty, a specialist trained in the
71 treatment or diagnosis for that condition shall be considered a
72 "similar health care provider."

73 (c) If the party against whom or on whose behalf the
74 testimony is offered is a physician licensed under chapter 458
75 or chapter 459, the expert witness must be licensed in the state
76 under chapter 458 or chapter 459 or hold an expert witness
77 certificate provided in s. 458.3175. No testimony of any nature
78 shall be admissible for any purpose unless the expert providing
79 such testimony holds a Florida license or an expert witness
80 certificate. The purpose of this subsection is to establish a
81 relative standard of care for various categories and
82 classifications of health care providers. Any health care
83 provider may testify as an expert in any action if he or she:

84 1. Is a similar health care provider pursuant to paragraph
85 (a) or paragraph (b); or

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86 ~~2. Is not a similar health care provider pursuant to~~
87 ~~paragraph (a) or paragraph (b) but, to the satisfaction of the~~
88 ~~court, possesses sufficient training, experience, and knowledge~~
89 ~~as a result of practice or teaching in the specialty of the~~
90 ~~defendant or practice or teaching in a related field of~~
91 ~~medicine, so as to be able to provide such expert testimony as~~
92 ~~to the prevailing professional standard of care in a given field~~
93 ~~of medicine. Such training, experience, or knowledge must be as~~
94 ~~a result of the active involvement in the practice or teaching~~
95 ~~of medicine within the 5-year period before the incident giving~~
96 ~~rise to the claim.~~

97 Section 30. Subsection (5) of section 766.202, Florida
98 Statutes, is amended to read:

99 766.202 Definitions; ss. 766.201-766.212.--As used in ss.
100 766.201-766.212, the term:

101 (5) "Medical expert" means a person duly and regularly
102 engaged in the practice of his or her profession who holds a
103 health care professional degree from a university or college and
104 who meets the requirements of an expert witness as set forth in
105 s. 766.102 ~~has had special professional training and experience~~
106 ~~or one possessed of special health care knowledge or skill about~~
107 ~~the subject upon which he or she is called to testify or provide~~
108 ~~an opinion.~~

109 Section 31. Section 458.3175, Florida Statutes, is created
110 to read:

111 458.3175 Expert witness certificate.--

112 (1) Any physician who holds a valid active license to
113 practice medicine in any other state, who pays an application
114 fee in an amount set by the board, and who has not had a

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115 previous expert witness certificate revoked by the board may
116 apply for a certificate to provide expert medical testimony in
117 connection with any litigation pending in the state.

118 (2) Any expert witness certificate may be denied or
119 revoked for any of the grounds enumerated in s. 458.331.

120 (3) Nothing in this section may be construed to authorize
121 a physician who is not licensed to practice medicine in this
122 state to qualify for or otherwise engage in the practice of
123 medicine in this state.

124
125 ===== T I T L E A M E N D M E N T =====

126 Remove line(s) 78-79, and insert:
127 medical negligence; amending s. 766.102, F.S.; revising
128 requirements for what constitute similar health care
129 providers in medical negligence actions; providing expert
130 witness requirements; amending s. 766.202, F.S.; revising
131 the definition of "medical expert"; creating s. 458.3175,
132 F.S.; providing for certificates to provide expert medical
133 testimony in connection with any litigation pending in the
134 state; amending s. 766.203,