

Bill No. CS for SB 2-B

Amendment No. \_\_\_\_ Barcode 321656

CHAMBER ACTION

Senate

House

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Senator Pruitt moved the following amendment:

**Senate Amendment (with title amendment)**

On page 143, line 11, through page 149, line 20 delete said lines

and insert:

Section 1. Section 766.1065, Florida Statutes, is created to read:

766.1065 Mandatory presuit investigation.--

(1) Within 30 days after service of the presuit notice of intent to initiate medical malpractice litigation, each party shall provide to all other parties all medical, hospital, health care, and employment records concerning the claimant in the disclosing party's possession, custody, or control, and the disclosing party shall affirmatively certify in writing that such records constitute all records in that party's possession, custody, or control of that the party has no medical, hospital, health care, or employment records concerning the claimant.

(2) Within 60 days after service of the presuit notice

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1 of intent to initiate medical malpractice litigation, all  
2 parties must be made available for a sworn deposition. A  
3 deposition taken pursuant to this section may not be used in  
4 any civil action for any purpose by any party.

5 (3) Within 90 days after service of the presuit notice  
6 of intent to initiate medical malpractice litigation, all  
7 parties must attend in-person mandatory mediation in  
8 accordance with s. 44.102, if binding arbitration under s.  
9 766.106 or s. 766.207 has not been agreed to by the parties.  
10 The Florida Rules of Civil Procedure shall apply to such  
11 mediation.

12 (4) If the parties declare an impasse during the  
13 mandatory mediation, and if the plaintiff or the defendants so  
14 request within 10 days of the impasse, via certified mail to  
15 Office of Presuit Screening Administration for a presuit  
16 screening panel, then the Office of Presuit Screening  
17 Administration shall convene such a panel pursuant to s.  
18 766.1066. Notwithstanding any other provision of law, the  
19 parties may stipulate to waive any proceedings under this  
20 section.

21 Section 2. Section 766.1066, Florida Statutes, is  
22 created to read:

23 766.1066 Office of Presuit Screening Administration;  
24 presuit screening panels.--

25 (1)(a) There is created within the Department of  
26 Health, the Office of Presuit Screening Administration. The  
27 department shall provide administrative support and service to  
28 the office to the extent requested by the director. The office  
29 is not subject to any control, supervision, or direction by  
30 the department, including, but not limited to, personnel,  
31 purchasing, transactions involving real or personal property,

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1 and budgetary matters. The director of the office shall be  
2 appointed by the Governor and the Cabinet.

3 (b) The office shall, by September 1, 2003, develop  
4 and maintain a database of physicians, attorneys, and  
5 consumers available to serve as members of presuit screening  
6 panels.

7 (c) The Department of Health shall request the  
8 relevant regulatory boards to assist the office in developing  
9 the database. The office shall request the assistance of The  
10 Florida Bar in developing the database.

11 (d) Funding for the office's general expenses shall  
12 come from a service charge equal to 0.5 percent of the final  
13 judgment or arbitration award in each medical malpractice  
14 liability case in this state. All parties in such malpractice  
15 actions shall in equal parts pay the service charge at the  
16 time proceeds from a final judgment or an arbitration award  
17 are initially disbursed. Such charge shall be collected by the  
18 clerk of the circuit court in the county where the final  
19 judgment is entered or the arbitration award is made. The  
20 clerk shall remit the service charges to the Department of  
21 Revenue for deposit into the Presuit Screening Administration  
22 Trust Fund. The Department of Revenue shall adopt rules to  
23 administer the service charge.

24 (e)1. A person may not be required to serve on a  
25 presuit screening panel for more than 2 days.

26 2. A person on a panel shall designate in advance any  
27 time period during which he or she will not be available to  
28 serve.

29 3. When a plaintiff requests a hearing before a panel,  
30 the office shall randomly select members for a panel from  
31 available persons in the appropriate categories who have not

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1 served on a panel in the past 12 months. If there are no other  
2 potential panelists available, a panelist may be asked to  
3 serve on another panel within 12 months.

4 (4) The office shall establish a panel no later than  
5 15 days after the receipt of the request for hearing. The  
6 office shall set a hearing no later than 30 days after the  
7 receipt of the request for hearing.

8 (f) Panel members shall receive reimbursement from the  
9 office for their travel expenses.

10 (g) A physician who serves on a panel:

11 1. Shall receive credit for 20 hours of continuing  
12 medical education for such service;

13 2. Must reside and practice at least 50 miles from the  
14 location where the alleged injury occurred;

15 3. Must have had no more than two judgments for  
16 medical malpractice liability against him or her within the  
17 preceding 5 years and no more than 10 claims of medical  
18 malpractice filed against him or her within the preceding 3  
19 years.

20 4. Must hold an active license in good standing in  
21 this state and must have been in active practice within the  
22 5-year period prior to selection.

23 A physician who fails to attend the designated panel hearing  
24 on two separate occasions shall be reported to his or her  
25 regulatory board for discipline and may not receive certified  
26 medical education credit for participation on the panel.

27 (h) An attorney who serves on a panel:

28 1. Should receive credit for 20 hours of continuing  
29 legal education and credit towards pro bono requirements for  
30 such service. The Legislature requests that the Supreme Court  
31 adopt rules to implement this provision.

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1           2. Must reside and practice at least 50 miles from the  
2 location where the alleged injury occurred;

3           3. Must have had no judgments for filing a frivolous  
4 lawsuit within the preceding 5 years;

5           4. Must hold an active license to practice law in this  
6 state and have held an active license in good standing for at  
7 least 5 years; and

8           5. Must be a board-certified civil trial lawyer.

9 An attorney who fails to attend the designated panel hearing  
10 on two separate occasions shall be reported to The Florida  
11 Bar.

12           (2)(a) A presuit screening panel shall be composed of  
13 five persons, including:

14           1. Two physicians who are board-certified in the same  
15 specialty as the defendant;

16           2. Two attorneys; and

17           3. One certified mediator obtained from a list  
18 provided by the Clerk of the Court in the Judicial circuit  
19 where a prospective defendant physician resides. The mediator  
20 shall serve as the presiding officer of the panel.

21           (b) If there is more than one physician defendant, the  
22 plaintiff shall designate the subject areas in which both  
23 physician members of the panel must be board-certified.

24           (c) A panel member who knowingly has a conflict of  
25 interest or potential conflict of interest must disclose it  
26 prior to the hearing. The office must replace the conflicted  
27 panel member with a panel member from the same category as the  
28 member removed because of a conflict of interest. Failure of a  
29 panel member to report a conflict of interest shall result in  
30 dismissal from the panel and from further service. A physician  
31 member who does not report a conflict of interest shall also

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1 be reported to his or her regulatory board for disciplinary  
2 action. An attorney member who does not report a conflict of  
3 interest shall be reported to the Florida Bar and the office  
4 is to request disciplinary action be taken against the  
5 attorney.

6 (d) The office shall provide administrative support to  
7 the panel.

8 (3) The plaintiff shall be allowed 8 hours to present  
9 his or her case. All defendants shall be allowed a total of 8  
10 hours collectively to present their case, and a hearing may  
11 not exceed a total of 16 hours; however, the panel may hear a  
12 case over the course of 2 calendar days.

13 (4)(a) In addition to any other information that may  
14 be disclosed under this section and no later than two weeks  
15 prior to the hearing of the screening panel, the claimant  
16 shall provide to the panel and opposing parties a detailed  
17 report, supported by one or more verified written medical  
18 expert opinion reports from medical experts as defined in this  
19 chapter, including a detailed description of the expert  
20 witness's qualifications, the precise nature of the witness's  
21 opinions regarding each instance in which each defendant is  
22 alleged to breached the prevailing professional standard of  
23 care, and a description of the factual basis for each such  
24 opinion of negligence. The report shall also include a  
25 description of all elements of damages claimed.

26 (b) In addition to any other information that may be  
27 disclosed under this section and no later than one week prior  
28 to the hearing of the screening panel, each defendant shall  
29 provide to the panel and opposing parties a detailed report,  
30 supported by one or more verified written medical expert  
31 opinion reports from medical experts as defined in this

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1 chapter, including a detailed description of the expert  
2 witness's qualifications, the precise nature of the witness's  
3 opinions and a description of the factual basis for each such  
4 opinion. If a party fails to comply with the requirements of  
5 this section without good cause, the court upon motion shall  
6 impose sanctions, including as award of attorney's fees and  
7 other costs, against the party failing to comply.

8 (5) All documentary evidence of a type commonly relied  
9 upon by reasonably prudent persons in the conduct of their  
10 affairs is admissible, whether or not such evidence would be  
11 admissible in a trial. The panel may proceed with the hearing  
12 and shall render an opinion upon the evidence produced,  
13 notwithstanding the failure of a party to appear.

14 (6) A panel shall, by a majority vote for each  
15 defendant, determine whether reasonable grounds exists to  
16 support a claim of medical negligence. The findings of the  
17 panel are not final agency action for purposes of chapter 120.

18 (7) Panel members are immune from civil liability for  
19 all communications, findings, opinions, and conclusions made  
20 in the course and scope of duties prescribed by this section  
21 to the extent provided in s. 768.28.

22 (8) Unless excluded by the judge for good cause shown,  
23 the proceedings and findings of a presuit screening panel  
24 shall be discoverable and admissible in any subsequent trial  
25 arising out of the claim, and the members of the panel may be  
26 deposed and called to testify at trial. If the panel's  
27 findings, or any testimony or evidence related to the panel's  
28 findings or proceedings, are admitted into evidence, the court  
29 shall instruct the jury that the findings are not binding and  
30 shall be considered by the jury equally with all other  
31 evidence presented at trial.

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1           (9) The statute of limitations as to all potential  
2 defendants shall be tolled from the date that any party serves  
3 upon the Office of Presuit Screening Administration the  
4 request for a medical review panel until the date that the  
5 plaintiff receives the panel's findings. These tolling  
6 provisions shall be in addition to any other tolling  
7 provision.

8           (10) Upon the plaintiff receipt of the presuit  
9 screening panel's determination, the plaintiff has 60 days or  
10 the remainder of the period of the statute of limitations,  
11 whichever period is greater, in which to file suit.

12           (11) The Administration Commission shall adopt rules  
13 to administer this section.

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16 ===== T I T L E    A M E N D M E N T =====

17 And the title is amended as follows:

18           In title, on page 15, line 29, after the semicolon,  
19  
20 insert:

21           creating s. 766.1065, F.S.; providing for  
22           mandatory presuit investigations; providing  
23           that certain records be provided to opposing  
24           parties; providing subpoena power; providing  
25           for sworn depositions of parties and medical  
26           experts; providing for mandatory in-person  
27           mediation if binding arbitration has not been  
28           agreed to; providing for a mandatory presuit  
29           screening panel hearing in the event of  
30           mediation impasse; creating s. 766.1066, F.S.;

31           creating the Office of Presuit Screening



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1 Administration; providing for a database of  
2 volunteer panel members; prescribing  
3 qualifications for panel membership; providing  
4 a funding mechanism; providing panel  
5 procedures; providing for determination and  
6 recordation of panel findings; providing for  
7 disposition of panel findings; providing  
8 immunity from liability for panel members;  
9 authorizing positions and providing an  
10 appropriation;

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