

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Homan offered the following:

Amendment (with title amendment)

Between lines 3191 and 3192, insert:

Section 63. Section 766.1061, Florida Statutes, is created to read:

766.1061 Creation of medical negligence review panels; timeframes for convening a panel; opinion of panel.--

(1) Medical negligence review panels are hereby created and are required to review proposed medical malpractice complaints against health care facilities licensed under chapter 395, physicians licensed under chapters 458 or 459, or other health care providers licensed under chapters 460, 461, 464, 466, or 467, pursuant to the presuit notice of intent to initiate medical malpractice litigation, whereupon the total damages alleged by the plaintiff are in excess of \$15,000. All such notices of intent to initiate medical malpractice

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28 litigation must be sent by certified mail to the Office of
29 Presuit Screening Administration, together with the assessment
30 payment required by s. 766.1062(4)(b).

31 (2) Except where the parties have agreed to voluntary
32 binding arbitration pursuant to s. 766.207, a medical negligence
33 review panel shall be convened on an alleged malpractice case by
34 the Office of Presuit Screening Administration within 60 days
35 after the end date of the presuit mediation process or within
36 120 days after the presuit notice of intent to initiate medical
37 malpractice litigation, whichever occurs earlier. The Office of
38 Presuit Screening Administration shall be notified as soon as
39 practicable by the plaintiff of the end date of the presuit
40 mediation process and whether the parties have agreed to binding
41 arbitration, and the date of the binding arbitration hearing, if
42 applicable.

43 (3) A medical negligence review panel has the sole duty to
44 express the panel's expert opinion as to whether or not the
45 evidence supports the conclusion that the defendant or
46 defendants acted or failed to act within the appropriate
47 standards of care as charged by the plaintiff in the notice of
48 intent to initiate medical malpractice litigation. Such opinion
49 shall be reached by a vote of the panel members. Within 30 days
50 after the end of the hearing before the panel, the panel shall
51 issue a written report, signed by all of the panelists, which
52 contains one of the following findings:

53 (a) The evidence supports the conclusion that the
54 defendant or defendants failed to meet the appropriate standard
55 of care;

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56 (b) The evidence does not support the conclusion that the
57 defendant or defendants failed to meet the appropriate standard
58 of care;

59 (c) There is a material issue of fact which is identified
60 in the opinion, that does not require expert opinion, bearing on
61 liability for consideration by a court or jury;

62 (d) The conduct complained of was or was not a factor in
63 the resultant damages, and, if so, whether the plaintiff
64 suffered:

65 1. Any disability and the extent and duration of the
66 disability; and

67 2. Any permanent impairment and the percentage of the
68 impairment; or

69 (e) The panel is unable from the evidence presented to
70 determine the appropriate standard of care to which the
71 plaintiff was entitled.

72 (4) Any opinion rendered by the medical negligence review
73 panel must state the grounds upon which it is based and must
74 further identify the persons, texts, or other authorities which
75 were consulted by the panel in reaching its conclusion, and any
76 opinion shall be admissible as prima facie evidence in any
77 subsequent court proceeding.

78 Section 64. Section 766.1062, Florida Statutes, is created
79 to read:

80 766.1062 Office of Presuit Screening Administration;
81 administration of medical negligence review panels.--

82 (1) There is created within the Department of Health the
83 Office of Presuit Screening Administration, which shall be
84 responsible for administering medical negligence review panels.

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85 (2) The Office of Presuit Screening Administration shall
86 develop and maintain a database of physicians, attorneys, and
87 consumers to serve as members of presuit screening panels as
88 described in this section.

89 (3) The Office of Presuit Screening Administration shall
90 develop an application by September 1, 2003, that shall be
91 submitted in writing and via the Internet for physicians,
92 attorneys, and consumers to volunteer for the panels.

93 (4) For the purpose of funding for the Office of Presuit
94 Screening Administration, there is assessed:

95 (a) Against the defendant, a fee equal to 0.5 percent of
96 the total of any judgment or settlement in a medical malpractice
97 liability matter to be paid to the Department of Health within
98 30 days after the judgment becomes final or the settlement is
99 finalized.

100 (b) Against the claimants in a medical malpractice matter,
101 an aggregate fee of \$50 to be paid to the Department of Health
102 at the time the notice of intent to initiate medical malpractice
103 litigation is provided as required by s. 766.1061(1).

104
105 Assessments collected by the Department of Health pursuant to
106 this subsection shall be deposited in the department's
107 Administrative Trust Fund and shall be used solely for the
108 operation of the office.

109 (5) There is hereby appropriated on a continuing basis
110 from the Administrative Trust Fund of the Department of Health
111 an amount necessary and such positions as may be determined by
112 the Department of Health to be required for the operation of the
113 Office of Presuit Screening Administration, provided that such

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114 appropriation shall not exceed the amount of funds deposited in
115 such trust fund pursuant to subsection (4).

116 (6) The Department of Health may adopt administrative
117 rules to implement the provisions of ss. 766.1061-766.1064.

118 Section 65. Section 766.1063, Florida Statutes, is created
119 to read:

120 766.1063 Qualifications and membership of medical
121 negligence review panels.--

122 (1) Medical negligence review panels shall consist of
123 qualified individuals who volunteer to assume such
124 responsibility. Physicians, attorneys, and consumers who
125 volunteer for the panels shall serve on a panel, per panel
126 selection, for no longer than 2 calendar days or the review of
127 one medical negligence case, whichever is longer.

128 (2) Every person applying to serve on a panel shall
129 designate in advance any time period during which he or she will
130 not be available to serve on a panel. The Secretary of Health,
131 or his or her designee, shall make determinations where so
132 challenged by a possible panel appointee, and issue excuses
133 whereupon an undue burden or hardship would arise from a
134 person's appointment to serve on a particular panel.

135 (3) In order to convene a medical negligence review panel,
136 the Office of Presuit Screening Administration shall randomly
137 select members for a panel as provided in subsection (8) from
138 among the available persons in the appropriate categories who
139 have not served on a panel in the past 12 months. If there are
140 no other potential panelists available, a panelist may be asked
141 to serve on another panel within 12 months.

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142 (4) If a physician, attorney, or consumer is selected to
143 serve on a panel, he or she shall not be obligated to serve for
144 a period exceeding 2 days or for a period to complete the review
145 of one medical negligence case, whichever is longer.

146 (5) All persons serving on a panel shall receive
147 reimbursement for their travel expenses.

148 (6) A physician who is selected to serve on a panel:

149 (a) Shall receive credit for 20 hours of continuing
150 medical education for his or her service.

151 (b) Must reside and practice at least 50 miles from the
152 location of the injury alleged by the plaintiff.

153 (c) Must have had no more than three judgments for medical
154 malpractice liability against him or her within the preceding 5
155 years and no more than 10 claims of medical malpractice filed
156 against him or her within the preceding 3 years.

157 (d) Must have an active license with the Department of
158 Health and be in good standing with the appropriate regulatory
159 or licensing board.

160 (7) An attorney who is selected to serve on a panel:

161 (a) Shall receive credit for continuing legal education
162 and credit towards pro bono requirements for his or her service,
163 as may be provided by rules of the Florida Supreme Court.

164 (b) Must reside and practice at least 50 miles from the
165 location of the injury alleged by the plaintiff.

166 (c) Must have had no judgments of filing a frivolous
167 lawsuit within the preceding 5 years.

168 (d) Must be a member of The Florida Bar in good standing.

169 (8)(a) A medical negligence review panel shall be composed
170 of five persons, including:

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171 1. One physician board certified in the same specialty as
172 the defendant physician.

173 2. One physician who is a general practitioner, family
174 practitioner, or an internist or serves as a full-time member of
175 the faculty of an accredited public or private medical school in
176 the state.

177 3. One attorney who has served as a plaintiff's attorney
178 with 5 years' experience in the practice of law.

179 4. One attorney who has served as a defendant's attorney
180 with 5 years' experience in the practice of law.

181 5. One consumer, who shall not have a professional or
182 financial relationship with either a health care provider or an
183 attorney.

184 (b) In cases with more than one physician defendant, the
185 plaintiff shall designate the subject areas in which both
186 physician members of the panel shall be board certified.

187 (c) Any panelist who knowingly has a conflict of interest
188 or potential conflict of interest must disclose such conflict of
189 interest prior to the hearing.

190 (d) A plaintiff or a defendant may challenge any panel
191 member for a conflict of interest and ask that the panelist be
192 replaced by the Office of Presuit Screening Administration. The
193 secretary of the Department of Health, or his or her designee,
194 shall make an expedient determination on such challenge. If the
195 challenge is upheld, a new member shall be randomly selected
196 from the same category as provided in subsection (3) within 10
197 days. In such case, the time in which a panel hearing may take
198 place shall be extended by 10 days beyond the timeframe
199 established in s. 766.1061.

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200 (9) The Office of Presuit Screening Administration shall
201 provide an administrator for the panel who shall serve as the
202 chair of the panel. The chair is a nonvoting member of the panel
203 and shall be responsible for the collection of evidence during
204 the hearing and preparation of the written opinion of the panel.

205 (10) Members of the panel shall not be subpoenaed to
206 testify as witnesses in any subsequent court proceedings if the
207 purpose of calling a panel member is to challenge or question
208 facts about the hearing conducted by or the conclusions reached
209 by the medical negligence review panel in rendering its opinion.

210 (11) Members of a medical negligence review panel shall
211 have immunity from civil liability for all communications,
212 findings, opinions, and conclusions made in the course and scope
213 of their duties required in ss. 766.1061, 766.1063, and
214 766.1064.

215 Section 66. Section 766.1064, Florida Statutes, is created
216 to read:

217 766.1064 Hearings conducted by medical negligence review
218 panels; limitations upon liability; award of costs and
219 attorney's fees in certain circumstances; attorneys must act in
220 good faith at hearing.--

221 (1) The claimant shall be allowed a total of 6 hours to
222 present his or her case. The defendants shall be allowed a total
223 of 6 hours to present their case. No hearing shall exceed a
224 total of 16 hours; however, the panel may hear the case over the
225 course of 2 calendar days.

226 (2) A medical negligence review panel shall, by a majority
227 vote for each defendant, make its findings regarding whether
228 each defendant met the appropriate standard of care, in addition

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229 to the liability of each defendant, based on the preponderance
230 of the evidence. Such vote shall be recorded in the written
231 opinion of the panel.

232 (a) If a panel finds that the evidence does not support
233 the conclusion that the defendant or defendants failed to meet
234 the appropriate standard of care and do not have any liability
235 for the injury alleged, the defendant may, within 10 days,
236 request voluntary binding arbitration pursuant to s. 766.207.

237 (b) If a panel finds that the evidence supports the
238 conclusion that the defendant or defendants failed to meet the
239 appropriate standard of care and have liability for the injury
240 alleged, the parties may elect to have damages determined by
241 voluntary binding arbitration pursuant to s. 766.207.

242 (c) If a panel finds that the evidence does not support
243 the conclusion that the defendant or defendants failed to meet
244 the appropriate standard of care alleged by the plaintiff and
245 that there is no liability for the injury alleged and the
246 defendant does not request arbitration, or if a panel finds that
247 a defendant had liability for the injury alleged and either a
248 defendant or the plaintiff does not agree to voluntary binding
249 arbitration pursuant to s. 766.207, the claim shall proceed to
250 trial or to any available legal alternative, including, but not
251 limited to, offer of or demand for judgment under s. 768.79 or
252 offer of settlement under s. 45.061.

253 (d) If a panel is unable to agree as to the appropriate
254 standard of care and either a defendant or the plaintiff does
255 not agree to voluntary binding arbitration pursuant to s.
256 766.207, the claim shall proceed to trial or to any available
257 legal alternative, including, but not limited to, offer of or

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258 demand for judgment under s. 768.79 or offer of settlement under
259 s. 45.061.

260 (3) Notwithstanding any other law to the contrary, if a
261 panel finds that the evidence does not support the conclusion
262 that the defendant or defendants failed to meet the appropriate
263 standard of care and do not have any liability for the injury
264 alleged, the plaintiff shall pay all costs and attorney's fees
265 if the plaintiff proceeds to trial and does not prevail at
266 trial.

267 (4) Attorneys who represent the plaintiff or defendant are
268 required to act in good faith relating to the hearing before the
269 medical negligence review panel. Attorneys who are not found to
270 make a good faith effort to provide all relevant evidence to the
271 panel during the hearing shall be barred in any subsequent court
272 proceedings from claiming the opinion of the panel should not be
273 considered because the panel did not consider all relevant
274 evidence.

275
276 ===== T I T L E A M E N D M E N T =====

277 Remove line 256, and insert:

278 in medical malpractice actions; creating s. 766.1061, F.S.;

279 providing for the creation of medical negligence review panels

280 to review proposed medical malpractice complaints; providing

281 that copies of notice of intent to initiate medical malpractice

282 litigation be sent to the Office of Presuit Screening

283 Administration; providing duties of the medical negligence

284 review panels; providing for alternative determinations from

285 which the panel may select; providing that the finding of the

286 panel is admissible as prima facie evidence in subsequent court

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287 proceedings; creating s. 766.1062, F.S.; creating the Office of
288 Presuit Screening Administration within the Department of
289 Health; providing powers, duties, and responsibilities of the
290 office; providing certain assessments for the funding of the
291 office; providing for the payment, collection, deposit, and
292 appropriation of the assessments; providing rule adoption
293 authority to the Department of Health; creating s. 766.1063,
294 F.S.; providing for the membership, appointment, and member
295 qualifications of medical negligence review panels; providing
296 for reimbursement of certain expenses; providing for the award
297 of continuing education and other credits to members of such
298 panels; providing for panel administrators; providing a
299 privilege against forced testimony by panel members; providing
300 immunity from civil liability for panel members; creating s.
301 766.1064, F.S.; providing procedures for hearings before medical
302 negligence review panels; providing that panel decisions shall
303 be by majority vote of the members; providing for an award of
304 costs and attorney's fees in certain cases; creating s.
305 766.1067,