

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Clarke offered the following:

**Amendment**

Remove line(s) 1883-2188, and insert:

business in this state to make those periodic payments on its  
behalf. Upon a joint petition by the defendant and the company  
that is contractually obligated to make the periodic payments,  
the court shall discharge the defendant from any further  
obligations to the claimant for those future economic and future  
noneconomic damages that are to be paid by that company by  
periodic payments.

(c) A bond or security may not be required of any  
defendant or company that is obligated to make periodic payments  
pursuant to this section; however, if, upon petition by a  
claimant who is receiving periodic payments pursuant to this  
section, the court finds that there is substantial, competent  
evidence that the defendant that is responsible for the periodic

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28 payments cannot adequately ensure full and continuous payments  
29 thereof, and that doing so is in the best interest of the  
30 claimant, the court may require the defendant or the company  
31 that is obligated to make the periodic payments to provide such  
32 additional financial security as the court determines to be  
33 reasonable under the circumstances.

34 (d) The provision for the periodic payments must specify  
35 the recipient or recipients of the payments, the address to  
36 which the payments are to be delivered, and the amount and  
37 intervals of the payments; however, in any one year, any payment  
38 or payments may not exceed the amount intended by the trier of  
39 fact to be awarded each year, offset for collateral sources. A  
40 periodic payment may not be accelerated, deferred, increased, or  
41 decreased, except by court order based upon the mutual consent  
42 and agreement of the claimant, the defendant, whether or not  
43 discharged, and the company that is obligated to make the  
44 periodic payments, if any; nor may the claimant sell, mortgage,  
45 encumber, or anticipate the periodic payments or any part  
46 thereof, by assignment or otherwise. ~~The defendant shall be~~  
47 ~~required to post a bond or security or otherwise to assure full~~  
48 ~~payment of these damages awarded. A bond is not adequate unless~~  
49 ~~it is written by a company authorized to do business in this~~  
50 ~~state and is rated A+ by Best's. If the defendant is unable to~~  
51 ~~adequately assure full payment of the damages, all damages,~~  
52 ~~reduced to present value, shall be paid to the claimant in a~~  
53 ~~lump sum. No bond may be canceled or be subject to cancellation~~  
54 ~~unless at least 60 days' advance written notice is filed with~~  
55 ~~the court and the claimant. Upon termination of periodic~~

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56 ~~payments, the security, or so much as remains, shall be returned~~  
57 ~~to the defendant.~~

58 ~~(c) The provision for payment of future damages by~~  
59 ~~periodic payments shall specify the recipient or recipients of~~  
60 ~~the payments, the dollar amounts of the payments, the interval~~  
61 ~~between payments, and the number of payments or the period of~~  
62 ~~time over which payments shall be made.~~

63 Section 39. Subsections (2) and (3) of section 766.203,  
64 Florida Statutes, are amended to read:

65 766.203 Presuit investigation of medical negligence claims  
66 and defenses by prospective parties.--

67 (2) Prior to issuing notification of intent to initiate  
68 medical malpractice litigation pursuant to s. 766.106, the  
69 claimant shall conduct an investigation to ascertain that there  
70 are reasonable grounds to believe that:

71 (a) Any named defendant in the litigation was negligent in  
72 the care or treatment of the claimant; and

73 (b) Such negligence resulted in injury to the claimant.

74  
75 Corroboration of reasonable grounds to initiate medical  
76 negligence litigation shall be provided by the claimant's  
77 submission of a verified written medical expert opinion from a  
78 medical expert as defined in s. 766.202(5), at the time the  
79 notice of intent to initiate litigation is mailed, which  
80 statement shall corroborate reasonable grounds to support the  
81 claim of medical negligence. This opinion and statement are  
82 subject to discovery.

83 (3) Prior to issuing its response to the claimant's notice  
84 of intent to initiate litigation, during the time period for

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85 response authorized pursuant to s. 766.106, the defendant or the  
86 defendant's insurer or self-insurer shall conduct an  
87 investigation to ascertain whether there are reasonable grounds  
88 to believe that:

89 (a) The defendant was negligent in the care or treatment  
90 of the claimant; and

91 (b) Such negligence resulted in injury to the claimant.

92  
93 Corroboration of lack of reasonable grounds for medical  
94 negligence litigation shall be provided with any response  
95 rejecting the claim by the defendant's submission of a verified  
96 written medical expert opinion from a medical expert as defined  
97 in s. 766.202(5), at the time the response rejecting the claim  
98 is mailed, which statement shall corroborate reasonable grounds  
99 for lack of negligent injury sufficient to support the response  
100 denying negligent injury. This opinion and statement are subject  
101 to discovery.

102 Section 40. Subsections (2), (3), and (7) of section  
103 766.207, Florida Statutes, are amended to read:

104 766.207 Voluntary binding arbitration of medical  
105 negligence claims.--

106 (2) Upon the completion of presuit investigation with  
107 preliminary reasonable grounds for a medical negligence claim  
108 intact, the parties may elect to have damages determined by an  
109 arbitration panel. Such election may be initiated by either  
110 party by serving a request for voluntary binding arbitration of  
111 damages within 180 ~~90~~ days after service of the claimant's  
112 notice of intent to initiate litigation upon the defendant. The  
113 evidentiary standards for voluntary binding arbitration of

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114 medical negligence claims shall be as provided in ss.  
115 120.569(2)(g) and 120.57(1)(c).

116 (3) Upon receipt of a party's request for such  
117 arbitration, the opposing party may accept the offer of  
118 voluntary binding arbitration within 30 days. However, in no  
119 event shall the defendant be required to respond to the request  
120 for arbitration sooner than 180 ~~90~~ days after service of the  
121 notice of intent to initiate litigation under s. 766.106. Such  
122 acceptance within the time period provided by this subsection  
123 shall be a binding commitment to comply with the decision of the  
124 arbitration panel. The liability of any insurer shall be subject  
125 to any applicable insurance policy limits.

126 (7) Arbitration pursuant to this section shall preclude  
127 recourse to any other remedy by the claimant against any  
128 participating defendant, and shall be undertaken with the  
129 understanding that damages shall be awarded as provided by  
130 general law, including the Wrongful Death Act, subject to the  
131 following limitations:

132 (a) Net economic damages shall be awardable, including,  
133 but not limited to, past and future medical expenses and 80  
134 percent of wage loss and loss of earning capacity, offset by any  
135 collateral source payments.

136 (b) Noneconomic damages shall be limited to a maximum of  
137 \$250,000 per incident, and shall be calculated on a percentage  
138 basis with respect to capacity to enjoy life, so that a finding  
139 that the claimant's injuries resulted in a 50-percent reduction  
140 in his or her capacity to enjoy life would warrant an award of  
141 not more than \$125,000 noneconomic damages.

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142 (c) Damages for future economic losses shall be awarded to  
143 be paid by periodic payments pursuant to s. 766.202(8) and shall  
144 be offset by future collateral source payments.

145 (d) Punitive damages shall not be awarded.

146 (e) The defendant shall be responsible for the payment of  
147 interest on all accrued damages with respect to which interest  
148 would be awarded at trial.

149 (f) The defendant shall pay the claimant's reasonable  
150 attorney's fees and costs, as determined by the arbitration  
151 panel, but in no event more than 15 percent of the award,  
152 reduced to present value.

153 (g) The defendant shall pay all the costs of the  
154 arbitration proceeding and the fees of all the arbitrators other  
155 than the administrative law judge.

156 (h) Each defendant who submits to arbitration under this  
157 section shall be jointly and severally liable for all damages  
158 assessed pursuant to this section.

159 (i) The defendant's obligation to pay the claimant's  
160 damages shall be for the purpose of arbitration under this  
161 section only. A defendant's or claimant's offer to arbitrate  
162 shall not be used in evidence or in argument during any  
163 subsequent litigation of the claim following the rejection  
164 thereof.

165 (j) The fact of making or accepting an offer to arbitrate  
166 shall not be admissible as evidence of liability in any  
167 collateral or subsequent proceeding on the claim.

168 (k) Any offer by a claimant to arbitrate must be made to  
169 each defendant against whom the claimant has made a claim. Any  
170 offer by a defendant to arbitrate must be made to each claimant

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171 who has joined in the notice of intent to initiate litigation,  
172 as provided in s. 766.106. A defendant who rejects a claimant's  
173 offer to arbitrate shall be subject to the provisions of s.  
174 766.209(3). A claimant who rejects a defendant's offer to  
175 arbitrate shall be subject to the provisions of s. 766.209(4).

176 (1) The hearing shall be conducted by all of the  
177 arbitrators, but a majority may determine any question of fact  
178 and render a final decision. The chief arbitrator shall decide  
179 all evidentiary matters.

180  
181 The provisions of this subsection shall not preclude settlement  
182 at any time by mutual agreement of the parties.

183 Section 41. Section 766.213, Florida Statutes, is created  
184 to read:

185 766.213 Periodic payment of damages upon death of  
186 claimant.--Any portion of a periodic payment made pursuant to a  
187 settlement or jury award or pursuant to mediation or arbitration  
188 which is attributable to medical expenses that have not yet been  
189 incurred shall terminate upon the death of the claimant. Any  
190 outstanding medical expenses incurred prior to the death of the  
191 claimant shall be paid from that portion of the periodic payment  
192 attributable to medical expenses.

193 Section 42. Subsection (4) is added to section 768.041,  
194 Florida Statutes, to read:

195 768.041 Release or covenant not to sue.--

196 (4)(a) At trial pursuant to a suit filed under chapter  
197 766, or at trial pursuant to s. 766.209, if any defendant shows  
198 the court that the plaintiff, or his or her legal  
199 representative, has delivered a written release or covenant not

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200 to sue to any person in partial satisfaction of the damages sued  
201 for, the court shall set off this amount from the total amount  
202 of the damages set forth in the verdict and before entry of the  
203 final judgment.

204 (b) The amount of the setoff pursuant to this subsection  
205 shall include all sums received by the plaintiff, including  
206 economic and noneconomic damages, costs, and attorney's fees.

207 Section 43. Section 768.77, Florida Statutes, is amended  
208 to read:

209 768.77 Itemized verdict.--

210 (1) Except as provided in subsection (2), in any action to  
211 which this part applies in which the trier of fact determines  
212 that liability exists on the part of the defendant, the trier of  
213 fact shall, as a part of the verdict, itemize the amounts to be  
214 awarded to the claimant into the following categories of  
215 damages:

216 (a)(1) Amounts intended to compensate the claimant for  
217 economic losses;

218 (b)(2) Amounts intended to compensate the claimant for  
219 noneconomic losses; and

220 (c)(3) Amounts awarded to the claimant for punitive  
221 damages, if applicable.

222 (2) In any action for damages based on personal injury or  
223 wrongful death arising out of medical malpractice, whether in  
224 tort or contract, to which this part applies in which the trier  
225 of fact determines that liability exists on the part of the  
226 defendant, the trier of fact shall, as a part of the verdict,  
227 itemize the amounts to be awarded to the claimant into the  
228 following categories of damages:

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229 (a) Amounts intended to compensate the claimant for:

230 1. Past economic losses; and

231 2. Future economic losses, not reduced to present value,  
232 and the number of years or part thereof which the award is  
233 intended to cover;

234 (b) Amounts intended to compensate the claimant for:

235 1. Past noneconomic losses; and

236 2. Future noneconomic losses and the number of years or  
237 part thereof which the award is intended to cover; and

238 (c) Amounts awarded to the claimant for punitive damages,  
239 if applicable.

240 Section 44. Subsection (2) and paragraph (a) of subsection  
241 (1) of section 768.78, Florida Statutes, is amended to read:

242 768.78 Alternative methods of payment of damage awards.--

243 (1)(a) In any action to which this part applies in which  
244 the court determines that an award to compensate the claimant  
245 includes future economic losses which exceed \$250,000, payment  
246 of amounts intended to compensate the claimant for these losses  
247 shall be made by one of the following means, unless an  
248 alternative method of payment of damages is provided in this  
249 section:

250 1. The defendant may make a lump-sum payment for all  
251 damages so assessed, with future economic losses and expenses  
252 reduced to present value; or

253 2. Subject to the provisions of this subsection, the court  
254 shall, at the request of either party, unless the court  
255 determines that manifest injustice would result to any party,  
256 enter a judgment ordering future economic damages, as itemized  
257 pursuant to s. 768.77(1)(a), in excess of \$250,000 to be paid in

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258 whole or in part by periodic payments rather than by a lump-sum  
259 payment.

260 (2)(a) In any action for damages based on personal injury  
261 or wrongful death arising out of medical malpractice, whether in  
262 tort or contract, in which the trier of fact makes an award to  
263 compensate the claimant for future economic or future  
264 noneconomic losses, payment of amounts intended to compensate  
265 the claimant for these future losses shall be made by one of the  
266 following means:

267 1. The defendant may elect to make a lump-sum payment for  
268 either or both the all damages so assessed, with future economic  
269 and future noneconomic losses after offset for collateral  
270 sources and after having been and expenses reduced to present  
271 value by the court based upon competent, substantial evidence  
272 presented to it by the parties; or

273 2. The defendant, if determined by the court to be  
274 financially capable or adequately insured, may elect to use  
275 periodic payments to satisfy in whole or in part the assessed  
276 future economic and future noneconomic losses awarded by the  
277 trier of fact after offset for collateral sources for so long as  
278 the claimant lives or the condition for which the award was made  
279 persists, whichever period may be shorter, but without regard  
280 for the number of years awarded by the trier of fact. The court  
281 shall review and, unless clearly unresponsive to the future  
282 needs of the claimant, approve the amounts and schedule of the  
283 periodic payments proposed by the defendant. Upon motion of the  
284 defendant, whether or not discharged from any obligation to make  
285 the payments pursuant to paragraph (b), and the establishment by  
286 substantial, competent evidence of either the death of the

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287 claimant or that the condition for which the award was made no  
288 longer persists, the court shall enter an order terminating the  
289 periodic payments effective as of the date of the death of the  
290 claimant or the date the condition for which the award was made  
291 no longer persisted.

292 (b) A defendant that elects to make periodic payments of  
293 either or both future economic and future noneconomic losses may  
294 contractually obligate a company that is authorized to do  
295 business in this state to make those periodic payments on its  
296 behalf. Upon a joint petition by the defendant and the company  
297 that is contractually obligated to make the periodic payments,  
298 the court shall discharge the defendant from any further  
299 obligations to the claimant for those future economic and future  
300 noneconomic damages that are to be paid by that company by  
301 periodic payments.

302 (c) Upon notice of a defendant's election to make periodic  
303 payments pursuant hereto, the claimant may request that the  
304 court modify the periodic payments to reasonably provide for  
305 attorney's fees; however, a court may not make any such  
306 modification that would increase the amount the defendant would  
307 have been obligated to pay had no such adjustment been made.

308 (d) A bond or security may not be required of any  
309 defendant or company that is obligated to make periodic payments  
310 pursuant to this section; however, if, upon petition by a  
311 claimant who is receiving periodic payments pursuant to this  
312 section, the court finds that there is substantial, competent  
313 evidence that the defendant that is responsible for the periodic  
314 payments cannot adequately ensure full and continuous payments  
315 thereof,

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