

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Ambler, Simmons, Negron, Galvano, Murman, Seiler, Ross, Joyner, and Kottkamp offered the following:

Substitute Amendment for Amendment (311877)

Remove line(s) 1874-2162, and insert:

~~must be structured to last as long as the claimant lives The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.~~

(b) A defendant that elects to make periodic payments of either or both future economic and future noneconomic losses may contractually obligate a company that is authorized to do business in this state and rated by A.M. Best Company as "A+" or higher 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

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28 shall discharge the defendant from any further obligations to
29 the claimant for those future economic and future noneconomic
30 damages that are to be paid by that company by periodic
31 payments.

32 (c) A bond or security may not be required of any
33 defendant or company that is obligated to make periodic payments
34 pursuant to this section; however, if, upon petition by a
35 claimant who is receiving periodic payments pursuant to this
36 section, the court finds that there is substantial, competent
37 evidence that the defendant that is responsible for the periodic
38 payments cannot adequately ensure full and continuous payments
39 thereof or that the company that is obligated to make the
40 payments has been rated by A.M. Best Company as "B+" or lower,
41 and that doing so is in the best interest of the claimant, the
42 court may require the defendant or the company that is obligated
43 to make the periodic payments to provide such additional
44 financial security as the court determines to be reasonable
45 under the circumstances.

46 (d) The provision for the periodic payments must specify
47 the recipient or recipients of the payments, the address to
48 which the payments are to be delivered, and the amount and
49 intervals of the payments; however, in any one year, any payment
50 or payments may not exceed the amount intended by the trier of
51 fact to be awarded each year, offset for collateral sources. A
52 periodic payment may not be accelerated, deferred, increased, or
53 decreased, except by court order based upon the mutual consent
54 and agreement of the claimant, the defendant, whether or not
55 discharged, and the company that is obligated to make the
56 periodic payments, if any; nor may the claimant sell, mortgage,

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57 encumber, or anticipate the periodic payments or any part
58 thereof, by assignment or otherwise. ~~The defendant shall be~~
59 ~~required to post a bond or security or otherwise to assure full~~
60 ~~payment of these damages awarded. A bond is not adequate unless~~
61 ~~it is written by a company authorized to do business in this~~
62 ~~state and is rated A+ by Best's. If the defendant is unable to~~
63 ~~adequately assure full payment of the damages, all damages,~~
64 ~~reduced to present value, shall be paid to the claimant in a~~
65 ~~lump sum. No bond may be canceled or be subject to cancellation~~
66 ~~unless at least 60 days' advance written notice is filed with~~
67 ~~the court and the claimant. Upon termination of periodic~~
68 ~~payments, the security, or so much as remains, shall be returned~~
69 ~~to the defendant.~~

70 ~~(c) The provision for payment of future damages by~~
71 ~~periodic payments shall specify the recipient or recipients of~~
72 ~~the payments, the dollar amounts of the payments, the interval~~
73 ~~between payments, and the number of payments or the period of~~
74 ~~time over which payments shall be made.~~

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

77 766.203 Presuit investigation of medical negligence claims
78 and defenses by prospective parties.--

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

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

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

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87 Corroboration of reasonable grounds to initiate medical
88 negligence litigation shall be provided by the claimant's
89 submission of a verified written medical expert opinion from a
90 medical expert as defined in s. 766.202(5), at the time the
91 notice of intent to initiate litigation is mailed, which
92 statement shall corroborate reasonable grounds to support the
93 claim of medical negligence. This opinion and statement are
94 subject to discovery.

95 (3) Prior to issuing its response to the claimant's notice
96 of intent to initiate litigation, during the time period for
97 response authorized pursuant to s. 766.106, the defendant or the
98 defendant's insurer or self-insurer shall conduct an
99 investigation to ascertain whether there are reasonable grounds
100 to believe that:

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

103 (b) Such negligence resulted in injury to the claimant.
104

105 Corroboration of lack of reasonable grounds for medical
106 negligence litigation shall be provided with any response
107 rejecting the claim by the defendant's submission of a verified
108 written medical expert opinion from a medical expert as defined
109 in s. 766.202(5), at the time the response rejecting the claim
110 is mailed, which statement shall corroborate reasonable grounds
111 for lack of negligent injury sufficient to support the response
112 denying negligent injury. This opinion and statement are subject
113 to discovery.

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114 Section 40. Subsections (2), (3), and (7) of section
115 766.207, Florida Statutes, are amended to read:

116 766.207 Voluntary binding arbitration of medical
117 negligence claims.--

118 (2) Upon the completion of presuit investigation with
119 preliminary reasonable grounds for a medical negligence claim
120 intact, the parties may elect to have damages determined by an
121 arbitration panel. Such election may be initiated by either
122 party by serving a request for voluntary binding arbitration of
123 damages within 180 ~~90~~ days after service of the claimant's
124 notice of intent to initiate litigation upon the defendant. The
125 evidentiary standards for voluntary binding arbitration of
126 medical negligence claims shall be as provided in ss.
127 120.569(2)(g) and 120.57(1)(c).

128 (3) Upon receipt of a party's request for such
129 arbitration, the opposing party may accept the offer of
130 voluntary binding arbitration within 30 days. However, in no
131 event shall the defendant be required to respond to the request
132 for arbitration sooner than 180 ~~90~~ days after service of the
133 notice of intent to initiate litigation under s. 766.106. Such
134 acceptance within the time period provided by this subsection
135 shall be a binding commitment to comply with the decision of the
136 arbitration panel. The liability of any insurer shall be subject
137 to any applicable insurance policy limits.

138 (7) Arbitration pursuant to this section shall preclude
139 recourse to any other remedy by the claimant against any
140 participating defendant, and shall be undertaken with the
141 understanding that damages shall be awarded as provided by

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142 general law, including the Wrongful Death Act, subject to the
143 following limitations:

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

148 (b) Noneconomic damages shall be limited to a maximum of
149 \$250,000 per incident, and shall be calculated on a percentage
150 basis with respect to capacity to enjoy life, so that a finding
151 that the claimant's injuries resulted in a 50-percent reduction
152 in his or her capacity to enjoy life would warrant an award of
153 not more than \$125,000 noneconomic damages.

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

157 (d) Punitive damages shall not be awarded.

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

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

165 (g) The defendant shall pay all the costs of the
166 arbitration proceeding and the fees of all the arbitrators other
167 than the administrative law judge.

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

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171 (i) The defendant's obligation to pay the claimant's
172 damages shall be for the purpose of arbitration under this
173 section only. A defendant's or claimant's offer to arbitrate
174 shall not be used in evidence or in argument during any
175 subsequent litigation of the claim following the rejection
176 thereof.

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

180 (k) Any offer by a claimant to arbitrate must be made to
181 each defendant against whom the claimant has made a claim. Any
182 offer by a defendant to arbitrate must be made to each claimant
183 who has joined in the notice of intent to initiate litigation,
184 as provided in s. 766.106. A defendant who rejects a claimant's
185 offer to arbitrate shall be subject to the provisions of s.
186 766.209(3). A claimant who rejects a defendant's offer to
187 arbitrate shall be subject to the provisions of s. 766.209(4).

188 (l) The hearing shall be conducted by all of the
189 arbitrators, but a majority may determine any question of fact
190 and render a final decision. The chief arbitrator shall decide
191 all evidentiary matters.

192
193 The provisions of this subsection shall not preclude settlement
194 at any time by mutual agreement of the parties.

195 Section 41. Section 766.213, Florida Statutes, is created
196 to read:

197 766.213 Periodic payment of damages upon death of
198 claimant.--Any portion of a periodic payment made pursuant to a
199 settlement or jury award or pursuant to mediation or arbitration

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200 which is attributable to medical expenses that have not yet been
201 incurred shall terminate upon the death of the claimant. Any
202 outstanding medical expenses incurred prior to the death of the
203 claimant shall be paid from that portion of the periodic payment
204 attributable to medical expenses.

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

207 768.041 Release or covenant not to sue.--

208 (4)(a) At trial pursuant to a suit filed under chapter
209 766, or at trial pursuant to s. 766.209, if any defendant shows
210 the court that the plaintiff, or his or her legal
211 representative, has delivered a written release or covenant not
212 to sue to any person in partial satisfaction of the damages sued
213 for, the court shall set off this amount from the total amount
214 of the damages set forth in the verdict and before entry of the
215 final judgment.

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

219 Section 43. Section 768.77, Florida Statutes, is amended
220 to read:

221 768.77 Itemized verdict.--

222 (1) Except as provided in subsection (2), in any action to
223 which this part applies in which the trier of fact determines
224 that liability exists on the part of the defendant, the trier of
225 fact shall, as a part of the verdict, itemize the amounts to be
226 awarded to the claimant into the following categories of
227 damages:

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228 (a)(1) Amounts intended to compensate the claimant for
229 economic losses;

230 (b)(2) Amounts intended to compensate the claimant for
231 noneconomic losses; and

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

234 (2) In any action for damages based on personal injury or
235 wrongful death arising out of medical malpractice, whether in
236 tort or contract, to which this part applies in which the trier
237 of fact determines that liability exists on the part of the
238 defendant, the trier of fact shall, as a part of the verdict,
239 itemize the amounts to be awarded to the claimant into the
240 following categories of damages:

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

242 1. Past economic losses; and

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

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

247 1. Past noneconomic losses; and

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

250 (c) Amounts awarded to the claimant for punitive damages,
251 if applicable.

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

254 768.78 Alternative methods of payment of damage awards.--

255 (1)(a) In any action to which this part applies in which
256 the court determines that an award to compensate the claimant

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257 includes future economic losses which exceed \$250,000, payment
258 of amounts intended to compensate the claimant for these losses
259 shall be made by one of the following means, unless an
260 alternative method of payment of damages is provided in this
261 section:

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

265 2. Subject to the provisions of this subsection, the court
266 shall, at the request of either party, unless the court
267 determines that manifest injustice would result to any party,
268 enter a judgment ordering future economic damages, as itemized
269 pursuant to s. 768.77(1)(a), in excess of \$250,000 to be paid in
270 whole or in part by periodic payments rather than by a lump-sum
271 payment.

272 (2)(a) In any action for damages based on personal injury
273 or wrongful death arising out of medical malpractice, whether in
274 tort or contract, in which the trier of fact makes an award to
275 compensate the claimant for future economic or future
276 noneconomic losses, payment of amounts intended to compensate
277 the claimant for these future losses shall be made by one of the
278 following means:

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

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285 2. The defendant, if determined by the court to be
286 financially capable or adequately insured, may elect to use
287 periodic payments to satisfy in whole or in part the assessed
288 future economic and future noneconomic losses awarded by the
289 trier of fact after offset for collateral sources for so long as
290 the claimant lives or the condition for which the award was made
291 persists, whichever period may be shorter, but without regard
292 for the number of years awarded by the trier of fact. The court
293 shall review and, unless clearly unresponsive to the future
294 needs of the claimant, approve the amounts and schedule of the
295 periodic payments proposed by the defendant.
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