

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Simmons offered the following:

**Amendment (with directory and title amendments)**

Remove lines 2696-2750, and insert:

(7) Informal discovery may be used by a party to obtain sworn ~~unsworn~~ statements, the production of documents or things, and physical and mental examinations, as follows:

(a) Sworn ~~Unsworn~~ statements.--Any party may require other parties to appear for the taking of a sworn ~~an unsworn~~ statement. Except as provided in subsection (15), such statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the sworn ~~unsworn~~ statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of

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28 any party must be done at the same time by all other parties.  
29 Any party may be represented by counsel at the taking of a sworn  
30 ~~an unsworn~~ statement. A sworn ~~An unsworn~~ statement may be  
31 recorded electronically, stenographically, or on videotape. The  
32 taking of sworn ~~unsworn~~ statements is subject to the provisions  
33 of the Florida Rules of Civil Procedure and may be terminated  
34 for abuses.

35 (b) *Documents or things.*--Any party may request discovery  
36 of documents or things. The documents or things must be  
37 produced, at the expense of the requesting party, within 20 days  
38 after the date of receipt of the request. A party is required to  
39 produce discoverable documents or things within that party's  
40 possession or control.

41 (c) *Physical and mental examinations.*--A prospective  
42 defendant may require an injured prospective claimant to appear  
43 for examination by an appropriate health care provider. The  
44 defendant shall give reasonable notice in writing to all parties  
45 as to the time and place for examination. Unless otherwise  
46 impractical, a prospective claimant is required to submit to  
47 only one examination on behalf of all potential defendants. The  
48 practicality of a single examination must be determined by the  
49 nature of the potential claimant's condition, as it relates to  
50 the liability of each potential defendant. Such examination  
51 report is available to the parties and their attorneys upon  
52 payment of the reasonable cost of reproduction and may be used  
53 only for the purpose of presuit screening. Otherwise, such  
54 examination report is confidential and exempt from the  
55 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
56 Constitution.

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57 (d) Written questions.--Any party may request answers to  
58 written questions, the number of which may not exceed 30,  
59 including subparts. A response must be made within 20 days after  
60 receipt of the questions.

61 (13) Failure to cooperate on the part of any party during  
62 the presuit investigation may be grounds to strike any claim  
63 made, or defense raised, by such party in suit.

64 (14) The claimant must execute a medical information  
65 release that allows a defendant or his or her legal  
66 representative to obtain sworn statements of the claimant's  
67 treating physicians, which statements must be limited to those  
68 areas that are potentially relevant to the claim of personal  
69 injury or wrongful death. A defendant must give reasonable  
70 notice to the claimant before obtaining sworn statements from a  
71 claimant's treating physician.

72 (15) Any discovery done pursuant to this section may, upon  
73 the filing of an action for medical negligence by the claimant,  
74 be used in such action. Further, any sworn statement taken or  
75 document produced pursuant to this section shall constitute a  
76 deposition or document production for purposes of s. 624.155(2).

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79 ===== D I R E C T O R Y A M E N D M E N T =====

80 Remove lines 2597 and 2598, and insert:  
81 766.106, Florida Statutes, are amended, and subsections (13),  
82 (14), and (15) are added to said section, to read:

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

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86 Remove lines 188-193, and insert:  
87 self-insurer response to a claim; providing for the taking  
88 of sworn, rather than unsworn, statements of parties  
89 during informal presuit discovery; permitting written  
90 questions during informal discovery; requiring a claimant  
91 to execute a medical release to authorize defendants in  
92 medical negligence actions to take sworn statements from a  
93 claimant's treating physicians; imposing limits on such  
94 statements; providing that discovery conducted during the  
95 presuit period may be used in an action if suit is filed;  
96 providing that sworn statements and documents produced  
97 during informal presuit discovery constitute depositions  
98 and document production for the purpose of s. 624.155(2),  
99 F.S., governing bad faith actions relating to medical  
100 malpractice insurers; creating s. 766.1065, F.S. ;  
101 requiring parties