

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

CHAMBER ACTION

Senate

House

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11 Senator Webster moved the following amendment:

Senate Amendment

14 On page 63, line 5, through
15 page 85, line 27, delete those lines

17 and insert:

18 Section 28. Effective upon this act becoming a law and
19 applying to claims accruing on or after that date, section
20 458.320, Florida Statutes, is amended to read:

21 458.320 Financial responsibility.--

22 (1) As a condition of licensing and maintaining an
23 active license, and prior to the issuance or renewal of an
24 active license or reactivation of an inactive license for the
25 practice of medicine, an applicant must ~~shall~~ by one of the
26 following methods demonstrate to the satisfaction of the board
27 and the department financial responsibility to pay claims and
28 costs ancillary thereto arising out of the rendering of, or
29 the failure to render, medical care or services:

30 (a) Establishing and maintaining an escrow account
31 consisting of cash or assets eligible for deposit in

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 accordance with s. 625.52 in the per claim amounts specified
 2 in paragraph (b). The required escrow amount set forth in this
 3 paragraph may not be used for litigation costs or attorney's
 4 fees for the defense of any medical malpractice claim.

5 (b) Obtaining and maintaining professional liability
 6 coverage in an amount not less than ~~\$200,000~~~~\$100,000~~ per
 7 claim, with a minimum annual aggregate of not less than
 8 ~~\$600,000~~~~\$300,000~~, from an authorized insurer as defined under
 9 s. 624.09, from a surplus lines insurer as defined under s.
 10 626.914(2), from a risk retention group as defined under s.
 11 627.942, from the Joint Underwriting Association established
 12 under s. 627.351(4), or through a plan of self-insurance as
 13 provided in s. 627.357. The required coverage amount set forth
 14 in this paragraph may not be used for litigation costs or
 15 attorney's fees for the defense of any medical malpractice
 16 claim.

17 (c) Obtaining and maintaining an unexpired,
 18 irrevocable letter of credit, established pursuant to chapter
 19 675, in an amount not less than ~~\$200,000~~~~\$100,000~~ per claim,
 20 with a minimum aggregate availability of credit of not less
 21 than ~~\$600,000~~~~\$300,000~~. The letter of credit must ~~shall~~ be
 22 payable to the physician as beneficiary upon presentment of a
 23 final judgment indicating liability and awarding damages to be
 24 paid by the physician or upon presentment of a settlement
 25 agreement signed by all parties to such agreement when such
 26 final judgment or settlement is a result of a claim arising
 27 out of the rendering of, or the failure to render, medical
 28 care and services. The letter of credit may not be used for
 29 litigation costs or attorney's fees for the defense of any
 30 medical malpractice claim. The ~~Such~~ letter of credit must
 31 ~~shall~~ be nonassignable and nontransferable. Such letter of

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 credit ~~must shall~~ be issued by any bank or savings association
2 organized and existing under the laws of this state or any
3 bank or savings association organized under the laws of the
4 United States which ~~that~~ has its principal place of business
5 in this state or has a branch office that ~~which~~ is authorized
6 under the laws of this state or of the United States to
7 receive deposits in this state.

8 (2) Physicians who perform surgery in an ambulatory
9 surgical center licensed under chapter 395 and, as a
10 continuing condition of hospital staff privileges, physicians
11 who have with staff privileges must shall also be required to
12 establish financial responsibility by one of the following
13 methods:

14 (a) Establishing and maintaining an escrow account
15 consisting of cash or assets eligible for deposit in
16 accordance with s. 625.52 in the per claim amounts specified
17 in paragraph (b). The required escrow amount set forth in this
18 paragraph may not be used for litigation costs or attorney's
19 fees for the defense of any medical malpractice claim.

20 (b) Obtaining and maintaining professional liability
21 coverage in an amount not less than ~~\$500,000~~ \$250,000 per
22 claim, with a minimum annual aggregate of not less than \$1.5
23 million ~~\$750,000~~ from an authorized insurer as defined under
24 s. 624.09, from a surplus lines insurer as defined under s.
25 626.914(2), from a risk retention group as defined under s.
26 627.942, from the Joint Underwriting Association established
27 under s. 627.351(4), through a plan of self-insurance as
28 provided in s. 627.357, or through a plan of self-insurance
29 which meets the conditions specified for satisfying financial
30 responsibility in s. 766.110. The required coverage amount set
31 forth in this paragraph may not be used for litigation costs

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 or attorney's fees for the defense of any medical malpractice
2 claim.

3 (c) Obtaining and maintaining an unexpired irrevocable
4 letter of credit, established pursuant to chapter 675, in an
5 amount not less than ~~\$500,000~~ ~~\$250,000~~ per claim, with a
6 minimum aggregate availability of credit of not less than \$1.5
7 million ~~\$750,000~~. The letter of credit must ~~shall~~ be payable
8 to the physician as beneficiary upon presentment of a final
9 judgment indicating liability and awarding damages to be paid
10 by the physician or upon presentment of a settlement agreement
11 signed by all parties to such agreement when such final
12 judgment or settlement is a result of a claim arising out of
13 the rendering of, or the failure to render, medical care and
14 services. The letter of credit may not be used for litigation
15 costs or attorney's fees for the defense of any medical
16 malpractice claim. The ~~Such~~ letter of credit must ~~shall~~ be
17 nonassignable and nontransferable. The ~~Such~~ letter of credit
18 must ~~shall~~ be issued by any bank or savings association
19 organized and existing under the laws of this state or any
20 bank or savings association organized under the laws of the
21 United States which ~~that~~ has its principal place of business
22 in this state or has a branch office that ~~which~~ is authorized
23 under the laws of this state or of the United States to
24 receive deposits in this state.

25

26 This subsection shall be inclusive of the coverage in
27 subsection (1).

28 (3)(a) ~~The financial responsibility requirements of~~
29 ~~subsections (1) and (2) shall apply to claims for incidents~~
30 ~~that occur on or after January 1, 1987, or the initial date of~~
31 ~~licensure in this state, whichever is later.~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 **(b)** Meeting the financial responsibility requirements
2 of this section or the criteria for any exemption from such
3 requirements must ~~shall~~ be established at the time of issuance
4 or renewal of a license ~~on or after January 1, 1987.~~

5 **(b)(c)** Any person may, at any time, submit to the
6 department a request for an advisory opinion regarding such
7 person's qualifications for exemption.

8 (4)(a) Each insurer, self-insurer, risk retention
9 group, or Joint Underwriting Association must ~~shall~~ promptly
10 notify the department of cancellation or nonrenewal of
11 insurance required by this section. Unless the physician
12 demonstrates that he or she is otherwise in compliance with
13 the requirements of this section, the department shall suspend
14 the license of the physician pursuant to ss. 120.569 and
15 120.57 and notify all health care facilities licensed under
16 chapter 395 of such action. Any suspension under this
17 subsection remains ~~shall remain~~ in effect until the physician
18 demonstrates compliance with the requirements of this section.
19 If any judgments or settlements are pending at the time of
20 suspension, those judgments or settlements must be paid in
21 accordance with this section unless otherwise mutually agreed
22 to in writing by the parties. This paragraph does not abrogate
23 a judgment debtor's obligation to satisfy the entire amount of
24 any judgment, except that a license suspended under paragraph
25 ~~(5)(g) shall not be reinstated until the physician~~
26 ~~demonstrates compliance with the requirements of that~~
27 ~~provision.~~

28 (b) If financial responsibility requirements are met
29 by maintaining an escrow account or letter of credit as
30 provided in this section, upon the entry of an adverse final
31 judgment arising from a medical malpractice arbitration award,

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 from a claim of medical malpractice either in contract or
2 tort, or from noncompliance with the terms of a settlement
3 agreement arising from a claim of medical malpractice either
4 in contract or tort, the licensee shall pay the entire amount
5 of the judgment together with all accrued interest, or the
6 amount maintained in the escrow account or provided in the
7 letter of credit as required by this section, whichever is
8 less, within 60 days after the date such judgment became final
9 and subject to execution, unless otherwise mutually agreed to
10 in writing by the parties. If timely payment is not made by
11 the physician, the department shall suspend the license of the
12 physician pursuant to procedures set forth in subsection (8)
13 ~~subparagraphs (5)(g)3., 4., and 5.~~ Nothing in this paragraph
14 shall abrogate a judgment debtor's obligation to satisfy the
15 entire amount of any judgment.

16 (5) The requirements of subsections (1), (2), and (3)
17 ~~do shall~~ not apply to:

18 (a) Any person licensed under this chapter who
19 practices medicine exclusively as an officer, employee, or
20 agent of the Federal Government or of the state or its
21 agencies or its subdivisions. For the purposes of this
22 subsection, an agent of the state, its agencies, or its
23 subdivisions is a person who is eligible for coverage under
24 any self-insurance or insurance program authorized by the
25 provisions of s. 768.28(15).

26 (b) Any person whose license has become inactive under
27 this chapter and who is not practicing medicine in this state.
28 Any person applying for reactivation of a license must show
29 either that such licensee maintained tail insurance coverage
30 which provided liability coverage for incidents that occurred
31 on or after January 1, 1987, or the initial date of licensure

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 | in this state, whichever is later, and incidents that occurred
2 | before the date on which the license became inactive; or such
3 | licensee must submit an affidavit stating that such licensee
4 | has no unsatisfied medical malpractice judgments or
5 | settlements at the time of application for reactivation.

6 | (c) Any person holding a limited license pursuant to
7 | s. 458.317 and practicing under the scope of such limited
8 | license.

9 | (d) Any person licensed or certified under this
10 | chapter who practices only in conjunction with his or her
11 | teaching duties at an accredited medical school or in its main
12 | teaching hospitals. Such person may engage in the practice of
13 | medicine to the extent that such practice is incidental to and
14 | a necessary part of duties in connection with the teaching
15 | position in the medical school.

16 | (e) Any person holding an active license under this
17 | chapter who is not practicing medicine in this state. If such
18 | person initiates or resumes any practice of medicine in this
19 | state, he or she must notify the department of such activity
20 | and fulfill the financial responsibility requirements of this
21 | section before resuming the practice of medicine in this
22 | state.

23 | (f) Any person holding an active license under this
24 | chapter who meets all of the following criteria:

25 | 1. The licensee has held an active license to practice
26 | in this state or another state or some combination thereof for
27 | more than 15 years.

28 | 2. The licensee has either retired from the practice
29 | of medicine or maintains a part-time practice of no more than
30 | 1,000 patient contact hours per year.

31 | 3. The licensee has had no more than two claims for

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 medical malpractice resulting in an indemnity exceeding
2 \$25,000 within the previous 5-year period.

3 4. The licensee has not been convicted of, or pled
4 guilty or nolo contendere to, any criminal violation specified
5 in this chapter or the medical practice act of any other
6 state.

7 5. The licensee has not been subject within the last
8 10 years of practice to license revocation or suspension for
9 any period of time; probation for a period of 3 years or
10 longer; or a fine of \$500 or more for a violation of this
11 chapter or the medical practice act of another jurisdiction.
12 The regulatory agency's acceptance of a physician's
13 relinquishment of a license, stipulation, consent order, or
14 other settlement, offered in response to or in anticipation of
15 the filing of administrative charges against the physician's
16 license, constitutes ~~shall be construed as~~ action against the
17 physician's license for the purposes of this paragraph.

18 6. The licensee has submitted a form supplying
19 necessary information as required by the department and an
20 affidavit affirming compliance with ~~the provisions of this~~
21 paragraph.

22 7. The licensee must ~~shall~~ submit biennially to the
23 department certification stating compliance with the
24 provisions of this paragraph. The licensee must ~~shall~~, upon
25 request, demonstrate to the department information verifying
26 compliance with this paragraph.

27
28 A licensee who meets the requirements of this paragraph must
29 ~~shall be required either to~~ post notice in the form of a sign
30 prominently displayed in the reception area and clearly
31 noticeable by all patients or provide a written statement to

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 any person to whom medical services are being provided. The
2 ~~Such sign or statement must read as follows shall state~~ that:
3 "Under Florida law, physicians are generally required to carry
4 medical malpractice insurance or otherwise demonstrate
5 financial responsibility to cover potential claims for medical
6 malpractice. However, certain part-time physicians who meet
7 state requirements are exempt from the financial
8 responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND
9 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
10 notice is provided pursuant to Florida law."

11 ~~(g) Any person holding an active license under this~~
12 ~~chapter who agrees to meet all of the following criteria:~~

13 ~~1. Upon the entry of an adverse final judgment arising~~
14 ~~from a medical malpractice arbitration award, from a claim of~~
15 ~~medical malpractice either in contract or tort, or from~~
16 ~~noncompliance with the terms of a settlement agreement arising~~
17 ~~from a claim of medical malpractice either in contract or~~
18 ~~tort, the licensee shall pay the judgment creditor the lesser~~
19 ~~of the entire amount of the judgment with all accrued interest~~
20 ~~or either \$100,000, if the physician is licensed pursuant to~~
21 ~~this chapter but does not maintain hospital staff privileges,~~
22 ~~or \$250,000, if the physician is licensed pursuant to this~~
23 ~~chapter and maintains hospital staff privileges, within 60~~
24 ~~days after the date such judgment became final and subject to~~
25 ~~execution, unless otherwise mutually agreed to in writing by~~
26 ~~the parties. Such adverse final judgment shall include any~~
27 ~~cross-claim, counterclaim, or claim for indemnity or~~
28 ~~contribution arising from the claim of medical malpractice.~~
29 ~~Upon notification of the existence of an unsatisfied judgment~~
30 ~~or payment pursuant to this subparagraph, the department shall~~
31 ~~notify the licensee by certified mail that he or she shall be~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~subject to disciplinary action unless, within 30 days from the~~
2 ~~date of mailing, he or she either:~~

3 ~~a. Shows proof that the unsatisfied judgment has been~~
4 ~~paid in the amount specified in this subparagraph; or~~

5 ~~b. Furnishes the department with a copy of a timely~~
6 ~~filed notice of appeal and either:~~

7 ~~(I) A copy of a supersedeas bond properly posted in~~
8 ~~the amount required by law; or~~

9 ~~(II) An order from a court of competent jurisdiction~~
10 ~~staying execution on the final judgment pending disposition of~~
11 ~~the appeal.~~

12 ~~2. The Department of Health shall issue an emergency~~
13 ~~order suspending the license of any licensee who, after 30~~
14 ~~days following receipt of a notice from the Department of~~
15 ~~Health, has failed to: satisfy a medical malpractice claim~~
16 ~~against him or her; furnish the Department of Health a copy of~~
17 ~~a timely filed notice of appeal; furnish the Department of~~
18 ~~Health a copy of a supersedeas bond properly posted in the~~
19 ~~amount required by law; or furnish the Department of Health an~~
20 ~~order from a court of competent jurisdiction staying execution~~
21 ~~on the final judgment pending disposition of the appeal.~~

22 ~~3. Upon the next meeting of the probable cause panel~~
23 ~~of the board following 30 days after the date of mailing the~~
24 ~~notice of disciplinary action to the licensee, the panel shall~~
25 ~~make a determination of whether probable cause exists to take~~
26 ~~disciplinary action against the licensee pursuant to~~
27 ~~subparagraph 1.~~

28 ~~4. If the board determines that the factual~~
29 ~~requirements of subparagraph 1. are met, it shall take~~
30 ~~disciplinary action as it deems appropriate against the~~
31 ~~licensee. Such disciplinary action shall include, at a~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~minimum, probation of the license with the restriction that~~
 2 ~~the licensee must make payments to the judgment creditor on a~~
 3 ~~schedule determined by the board to be reasonable and within~~
 4 ~~the financial capability of the physician. Notwithstanding any~~
 5 ~~other disciplinary penalty imposed, the disciplinary penalty~~
 6 ~~may include suspension of the license for a period not to~~
 7 ~~exceed 5 years. In the event that an agreement to satisfy a~~
 8 ~~judgment has been met, the board shall remove any restriction~~
 9 ~~on the license.~~

10 5. ~~The licensee has completed a form supplying~~
 11 ~~necessary information as required by the department.~~

12
 13 ~~A licensee who meets the requirements of this paragraph shall~~
 14 ~~be required either to post notice in the form of a sign~~
 15 ~~prominently displayed in the reception area and clearly~~
 16 ~~noticeable by all patients or to provide a written statement~~
 17 ~~to any person to whom medical services are being provided.~~
 18 ~~Such sign or statement shall state: "Under Florida law,~~
 19 ~~physicians are generally required to carry medical malpractice~~
 20 ~~insurance or otherwise demonstrate financial responsibility to~~
 21 ~~cover potential claims for medical malpractice. YOUR DOCTOR~~
 22 ~~HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This~~
 23 ~~is permitted under Florida law subject to certain conditions.~~
 24 ~~Florida law imposes penalties against noninsured physicians~~
 25 ~~who fail to satisfy adverse judgments arising from claims of~~
 26 ~~medical malpractice. This notice is provided pursuant to~~
 27 ~~Florida law."~~

28 (6) Any deceptive, untrue, or fraudulent
 29 representation by the licensee with respect to any provision
 30 of this section shall result in permanent disqualification
 31 from any exemption to mandated financial responsibility as

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 provided in this section and shall constitute grounds for
2 disciplinary action under s. 458.331.

3 (7) Any licensee who relies on any exemption from the
4 financial responsibility requirement shall notify the
5 department, in writing, of any change of circumstance
6 regarding his or her qualifications for such exemption and
7 shall demonstrate that he or she is in compliance with the
8 requirements of this section.

9 (8) Notwithstanding any other provision of this
10 section, the department shall suspend the license of any
11 physician against whom has been entered a final judgment,
12 arbitration award, or other order or who has entered into a
13 settlement agreement to pay damages arising out of a claim for
14 medical malpractice, if all appellate remedies have been
15 exhausted and payment up to the amounts required by this
16 section has not been made within 30 days after the entering of
17 such judgment, award, or order or agreement, until proof of
18 payment is received by the department or a payment schedule
19 has been agreed upon by the physician and the claimant and
20 presented to the department. This subsection does not apply to
21 a physician who has met the financial responsibility
22 requirements in paragraphs (1)(b) and (2)(b).

23 ~~(9)(8)~~ The board shall adopt rules to implement the
24 provisions of this section.

25 Section 29. Effective upon this act becoming a law and
26 applying to claims accruing on or after that date, section
27 459.0085, Florida Statutes, is amended to read:

28 459.0085 Financial responsibility.--

29 (1) As a condition of licensing and maintaining an
30 active license, and prior to the issuance or renewal of an
31 active license or reactivation of an inactive license for the

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 practice of osteopathic medicine, an applicant ~~must shall~~ by
 2 one of the following methods demonstrate to the satisfaction
 3 of the board and the department financial responsibility to
 4 pay claims and costs ancillary thereto arising out of the
 5 rendering of, or the failure to render, medical care or
 6 services:

7 (a) Establishing and maintaining an escrow account
 8 consisting of cash or assets eligible for deposit in
 9 accordance with s. 625.52 in the per-claim amounts specified
 10 in paragraph (b).

11 (b) Obtaining and maintaining professional liability
 12 coverage for the current year and for each of the prior years
 13 that the applicant or licensee has been in the active practice
 14 of medicine, up to a maximum of 4 prior years, in an amount
 15 not less than ~~\$200,000~~~~\$100,000~~ per claim, with a minimum
 16 annual aggregate of not less than ~~\$600,000~~~~\$300,000~~, from an
 17 authorized insurer as defined under s. 624.09, from a surplus
 18 lines insurer as defined under s. 626.914(2), from a risk
 19 retention group as defined under s. 627.942, from the Joint
 20 Underwriting Association established under s. 627.351(4), or
 21 through a plan of self-insurance as provided in s. 627.357.
 22 The required coverage amount set forth in this paragraph may
 23 not be used for litigation costs or attorney's fees for the
 24 defense of any medical malpractice claim.

25 (c) Obtaining and maintaining an unexpired,
 26 irrevocable letter of credit, established pursuant to chapter
 27 675, for the current year and for each of the prior years that
 28 the applicant or licensee has been in the active practice of
 29 medicine, up to a maximum of 4 prior years, in an amount not
 30 less than ~~\$200,000~~~~\$100,000~~ per claim, with a minimum
 31 aggregate availability of credit of not less than ~~\$600,000~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~\$300,000~~. The letter of credit must ~~shall~~ be payable to the
 2 osteopathic physician as beneficiary upon presentment of a
 3 final judgment indicating liability and awarding damages to be
 4 paid by the osteopathic physician or upon presentment of a
 5 settlement agreement signed by all parties to such agreement
 6 when such final judgment or settlement is a result of a claim
 7 arising out of the rendering of, or the failure to render,
 8 medical care and services. Such letter of credit must ~~shall~~ be
 9 nonassignable and nontransferable. Such letter of credit must
 10 ~~shall~~ be issued by any bank or savings association organized
 11 and existing under the laws of this state or any bank or
 12 savings association organized under the laws of the United
 13 States which ~~that~~ has its principal place of business in this
 14 state or has a branch office that ~~which~~ is authorized under
 15 the laws of this state or of the United States to receive
 16 deposits in this state.

17 (2) Osteopathic physicians who perform surgery in an
 18 ambulatory surgical center licensed under chapter 395 and, as
 19 a continuing condition of hospital staff privileges,
 20 osteopathic physicians who have ~~with~~ staff privileges must
 21 ~~shall~~ also ~~be required to~~ establish financial responsibility
 22 by one of the following methods:

23 (a) Establishing and maintaining an escrow account
 24 consisting of cash or assets eligible for deposit in
 25 accordance with s. 625.52 in the per-claim amounts specified
 26 in paragraph (b).

27 (b) Obtaining and maintaining professional liability
 28 coverage for the current year and for each of the prior years
 29 that the applicant or licensee has been in the active practice
 30 of medicine, up to a maximum of 4 prior years, in an amount
 31 not less than \$500,000~~\$250,000~~ per claim, with a minimum

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 annual aggregate of not less than ~~\$1.5 million~~~~\$750,000~~ from
 2 an authorized insurer as defined under s. 624.09, from a
 3 surplus lines insurer as defined under s. 626.914(2), from a
 4 risk retention group as defined under s. 627.942, from the
 5 Joint Underwriting Association established under s.
 6 627.351(4), through a plan of self-insurance as provided in s.
 7 627.357, or through a plan of self-insurance ~~that~~ ~~which~~ meets
 8 the conditions specified for satisfying financial
 9 responsibility in s. 766.110.

10 (c) Obtaining and maintaining an unexpired,
 11 irrevocable letter of credit, established pursuant to chapter
 12 675, for the current year and for each of the prior years that
 13 the applicant or licensee has been in the active practice of
 14 medicine, up to a maximum of 4 prior years, in an amount not
 15 less than ~~\$500,000~~~~\$250,000~~ per claim, with a minimum
 16 aggregate availability of credit of not less than \$1.5 million
 17 ~~\$750,000~~. The letter of credit ~~must~~ ~~shall~~ be payable to the
 18 osteopathic physician as beneficiary upon presentment of a
 19 final judgment indicating liability and awarding damages to be
 20 paid by the osteopathic physician or upon presentment of a
 21 settlement agreement signed by all parties to such agreement
 22 when such final judgment or settlement is a result of a claim
 23 arising out of the rendering of, or the failure to render,
 24 medical care and services. ~~The Such~~ letter of credit ~~must~~
 25 ~~shall~~ be nonassignable and nontransferable. ~~The Such~~ letter of
 26 credit ~~must~~ ~~shall~~ be issued by any bank or savings association
 27 organized and existing under the laws of this state or any
 28 bank or savings association organized under the laws of the
 29 United States ~~which~~ ~~that~~ has its principal place of business
 30 in this state or has a branch office ~~that~~ ~~which~~ is authorized
 31 under the laws of this state or of the United States to

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 receive deposits in this state.

2

3 This subsection shall be inclusive of the coverage in
4 subsection (1).

5 ~~(3)(a) The financial responsibility requirements of~~
6 ~~subsections (1) and (2) shall apply to claims for incidents~~
7 ~~that occur on or after January 1, 1987, or the initial date of~~
8 ~~licensure in this state, whichever is later.~~

9 (b) Meeting the financial responsibility requirements
10 of this section or the criteria for any exemption from such
11 requirements must ~~shall~~ be established at the time of issuance
12 or renewal of a license ~~on or after January 1, 1987.~~

13 ~~(b)(c)~~ Any person may, at any time, submit to the
14 department a request for an advisory opinion regarding such
15 person's qualifications for exemption.

16 (4)(a) Each insurer, self-insurer, risk retention
17 group, or joint underwriting association must ~~shall~~ promptly
18 notify the department of cancellation or nonrenewal of
19 insurance required by this section. Unless the osteopathic
20 physician demonstrates that he or she is otherwise in
21 compliance with the requirements of this section, the
22 department shall suspend the license of the osteopathic
23 physician pursuant to ss. 120.569 and 120.57 and notify all
24 health care facilities licensed under chapter 395, part IV of
25 chapter 394, or part I of chapter 641 of such action. Any
26 suspension under this subsection remains ~~shall remain~~ in
27 effect until the osteopathic physician demonstrates compliance
28 with the requirements of this section. If any judgments or
29 settlements are pending at the time of suspension, those
30 judgments or settlements must be paid in accordance with this
31 section unless otherwise mutually agreed to in writing by the

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~parties. This paragraph does not abrogate a judgment debtor's~~
2 ~~obligation to satisfy the entire amount of any judgment except~~
3 ~~that a license suspended under paragraph (5)(g) shall not be~~
4 ~~reinstated until the osteopathic physician demonstrates~~
5 ~~compliance with the requirements of that provision.~~

6 (b) If financial responsibility requirements are met
7 by maintaining an escrow account or letter of credit as
8 provided in this section, upon the entry of an adverse final
9 judgment arising from a medical malpractice arbitration award,
10 from a claim of medical malpractice either in contract or
11 tort, or from noncompliance with the terms of a settlement
12 agreement arising from a claim of medical malpractice either
13 in contract or tort, the licensee shall pay the entire amount
14 of the judgment together with all accrued interest or the
15 amount maintained in the escrow account or provided in the
16 letter of credit as required by this section, whichever is
17 less, within 60 days after the date such judgment became final
18 and subject to execution, unless otherwise mutually agreed to
19 in writing by the parties. If timely payment is not made by
20 the osteopathic physician, the department shall suspend the
21 license of the osteopathic physician pursuant to procedures
22 set forth in subsection (9) ~~subparagraphs (5)(g)3., 4., and 5.~~
23 Nothing in this paragraph shall abrogate a judgment debtor's
24 obligation to satisfy the entire amount of any judgment.

25 (5) The requirements of subsections (1), (2), and (3)
26 ~~do shall~~ not apply to:

27 (a) Any person licensed under this chapter who
28 practices medicine exclusively as an officer, employee, or
29 agent of the Federal Government or of the state or its
30 agencies or its subdivisions. For the purposes of this
31 subsection, an agent of the state, its agencies, or its

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 subdivisions is a person who is eligible for coverage under
2 any self-insurance or insurance program authorized by the
3 provisions of s. 768.28(15).

4 (b) Any person whose license has become inactive under
5 this chapter and who is not practicing medicine in this state.
6 Any person applying for reactivation of a license must show
7 either that such licensee maintained tail insurance coverage
8 that which provided liability coverage for incidents that
9 occurred on or after January 1, 1987, or the initial date of
10 licensure in this state, whichever is later, and incidents
11 that occurred before the date on which the license became
12 inactive; or such licensee must submit an affidavit stating
13 that such licensee has no unsatisfied medical malpractice
14 judgments or settlements at the time of application for
15 reactivation.

16 (c) Any person holding a limited license pursuant to
17 s. 459.0075 and practicing under the scope of such limited
18 license.

19 (d) Any person licensed or certified under this
20 chapter who practices only in conjunction with his or her
21 teaching duties at a college of osteopathic medicine. Such
22 person may engage in the practice of osteopathic medicine to
23 the extent that such practice is incidental to and a necessary
24 part of duties in connection with the teaching position in the
25 college of osteopathic medicine.

26 (e) Any person holding an active license under this
27 chapter who is not practicing osteopathic medicine in this
28 state. If such person initiates or resumes any practice of
29 osteopathic medicine in this state, he or she must notify the
30 department of such activity and fulfill the financial
31 responsibility requirements of this section before resuming

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 the practice of osteopathic medicine in this state.

2 (f) Any person holding an active license under this
3 chapter who meets all of the following criteria:

4 1. The licensee has held an active license to practice
5 in this state or another state or some combination thereof for
6 more than 15 years.

7 2. The licensee has either retired from the practice
8 of osteopathic medicine or maintains a part-time practice of
9 osteopathic medicine of no more than 1,000 patient contact
10 hours per year.

11 3. The licensee has had no more than two claims for
12 medical malpractice resulting in an indemnity exceeding
13 \$25,000 within the previous 5-year period.

14 4. The licensee has not been convicted of, or pled
15 guilty or nolo contendere to, any criminal violation specified
16 in this chapter or the practice act of any other state.

17 5. The licensee has not been subject within the last
18 10 years of practice to license revocation or suspension for
19 any period of time, probation for a period of 3 years or
20 longer, or a fine of \$500 or more for a violation of this
21 chapter or the medical practice act of another jurisdiction.
22 The regulatory agency's acceptance of an osteopathic
23 physician's relinquishment of a license, stipulation, consent
24 order, or other settlement, offered in response to or in
25 anticipation of the filing of administrative charges against
26 the osteopathic physician's license, constitutes ~~shall be~~
27 ~~construed as~~ action against the physician's license for the
28 purposes of this paragraph.

29 6. The licensee has submitted a form supplying
30 necessary information as required by the department and an
31 affidavit affirming compliance with ~~the provisions of this~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 paragraph.

2 7. The licensee must ~~shall~~ submit biennially to the
3 department a certification stating compliance with ~~the~~
4 ~~provisions of~~ this paragraph. The licensee must ~~shall~~, upon
5 request, demonstrate to the department information verifying
6 compliance with this paragraph.

7
8 A licensee who meets the requirements of this paragraph must
9 ~~shall be required either to~~ post notice in the form of a sign
10 prominently displayed in the reception area and clearly
11 noticeable by all patients or ~~to~~ provide a written statement
12 to any person to whom medical services are being provided. The
13 ~~Such~~ sign or statement must read as follows ~~shall state that:~~

14 "Under Florida law, osteopathic physicians are generally
15 required to carry medical malpractice insurance or otherwise
16 demonstrate financial responsibility to cover potential claims
17 for medical malpractice. However, certain part-time
18 osteopathic physicians who meet state requirements are exempt
19 from the financial responsibility law. YOUR OSTEOPATHIC
20 PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO
21 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided
22 pursuant to Florida law."

23 ~~(g) Any person holding an active license under this~~
24 ~~chapter who agrees to meet all of the following criteria.~~

25 ~~1. Upon the entry of an adverse final judgment arising~~
26 ~~from a medical malpractice arbitration award, from a claim of~~
27 ~~medical malpractice either in contract or tort, or from~~
28 ~~noncompliance with the terms of a settlement agreement arising~~
29 ~~from a claim of medical malpractice either in contract or~~
30 ~~tort, the licensee shall pay the judgment creditor the lesser~~
31 ~~of the entire amount of the judgment with all accrued interest~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~or either \$100,000, if the osteopathic physician is licensed~~
2 ~~pursuant to this chapter but does not maintain hospital staff~~
3 ~~privileges, or \$250,000, if the osteopathic physician is~~
4 ~~licensed pursuant to this chapter and maintains hospital staff~~
5 ~~privileges, within 60 days after the date such judgment became~~
6 ~~final and subject to execution, unless otherwise mutually~~
7 ~~agreed to in writing by the parties. Such adverse final~~
8 ~~judgment shall include any cross-claim, counterclaim, or claim~~
9 ~~for indemnity or contribution arising from the claim of~~
10 ~~medical malpractice. Upon notification of the existence of an~~
11 ~~unsatisfied judgment or payment pursuant to this subparagraph,~~
12 ~~the department shall notify the licensee by certified mail~~
13 ~~that he or she shall be subject to disciplinary action unless,~~
14 ~~within 30 days from the date of mailing, the licensee either:~~
15 ~~a. Shows proof that the unsatisfied judgment has been~~
16 ~~paid in the amount specified in this subparagraph; or~~
17 ~~b. Furnishes the department with a copy of a timely~~
18 ~~filed notice of appeal and either:~~
19 ~~(I) A copy of a supersedeas bond properly posted in~~
20 ~~the amount required by law; or~~
21 ~~(II) An order from a court of competent jurisdiction~~
22 ~~staying execution on the final judgment, pending disposition~~
23 ~~of the appeal.~~
24 ~~2. The Department of Health shall issue an emergency~~
25 ~~order suspending the license of any licensee who, after 30~~
26 ~~days following receipt of a notice from the Department of~~
27 ~~Health, has failed to: satisfy a medical malpractice claim~~
28 ~~against him or her; furnish the Department of Health a copy of~~
29 ~~a timely filed notice of appeal; furnish the Department of~~
30 ~~Health a copy of a supersedeas bond properly posted in the~~
31 ~~amount required by law; or furnish the Department of Health an~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~order from a court of competent jurisdiction staying execution~~
2 ~~on the final judgment pending disposition of the appeal.~~

3 ~~3. Upon the next meeting of the probable cause panel~~
4 ~~of the board following 30 days after the date of mailing the~~
5 ~~notice of disciplinary action to the licensee, the panel shall~~
6 ~~make a determination of whether probable cause exists to take~~
7 ~~disciplinary action against the licensee pursuant to~~
8 ~~subparagraph 1.~~

9 ~~4. If the board determines that the factual~~
10 ~~requirements of subparagraph 1. are met, it shall take~~
11 ~~disciplinary action as it deems appropriate against the~~
12 ~~licensee. Such disciplinary action shall include, at a~~
13 ~~minimum, probation of the license with the restriction that~~
14 ~~the licensee must make payments to the judgment creditor on a~~
15 ~~schedule determined by the board to be reasonable and within~~
16 ~~the financial capability of the osteopathic physician.~~
17 ~~Notwithstanding any other disciplinary penalty imposed, the~~
18 ~~disciplinary penalty may include suspension of the license for~~
19 ~~a period not to exceed 5 years. In the event that an~~
20 ~~agreement to satisfy a judgment has been met, the board shall~~
21 ~~remove any restriction on the license.~~

22 ~~5. The licensee has completed a form supplying~~
23 ~~necessary information as required by the department.~~

24
25 ~~A licensee who meets the requirements of this paragraph shall~~
26 ~~be required either to post notice in the form of a sign~~
27 ~~prominently displayed in the reception area and clearly~~
28 ~~noticeable by all patients or to provide a written statement~~
29 ~~to any person to whom medical services are being provided.~~

30 ~~Such sign or statement shall state: "Under Florida law,~~
31 ~~osteopathic physicians are generally required to carry medical~~

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 ~~malpractice insurance or otherwise demonstrate financial~~
2 ~~responsibility to cover potential claims for medical~~
3 ~~malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO~~
4 ~~CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under~~
5 ~~Florida law subject to certain conditions. Florida law~~
6 ~~imposes strict penalties against noninsured osteopathic~~
7 ~~physicians who fail to satisfy adverse judgments arising from~~
8 ~~claims of medical malpractice. This notice is provided~~
9 ~~pursuant to Florida law."~~

10 (6) Any deceptive, untrue, or fraudulent
11 representation by the licensee with respect to any provision
12 of this section shall result in permanent disqualification
13 from any exemption to mandated financial responsibility as
14 provided in this section and shall constitute grounds for
15 disciplinary action under s. 459.015.

16 (7) Any licensee who relies on any exemption from the
17 financial responsibility requirement shall notify the
18 department in writing of any change of circumstance regarding
19 his or her qualifications for such exemption and shall
20 demonstrate that he or she is in compliance with the
21 requirements of this section.

22 (8) If a physician is either a resident physician,
23 assistant resident physician, or intern in an approved
24 postgraduate training program, as defined by the board's
25 rules, and is supervised by a physician who is participating
26 in the Florida Birth-Related Neurological Injury Compensation
27 Plan, such resident physician, assistant resident physician,
28 or intern is deemed to be a participating physician without
29 the payment of the assessment set forth in s. 766.314(4).

30 (9) Notwithstanding any other provision of this
31 section, the department shall suspend the license of any

Bill No. CS for SB 2-C

Amendment No. ____ Barcode 853064

1 osteopathic physician against whom has been entered a final
2 judgment, arbitration award, or other order or who has entered
3 into a settlement agreement to pay damages arising out of a
4 claim for medical malpractice, if all appellate remedies have
5 been exhausted and payment up to the amounts required by this
6 section has not been made within 30 days after the entering of
7 such judgment, award, or order or agreement, until proof of
8 payment is received by the department or a payment schedule
9 has been agreed upon by the osteopathic physician and the
10 claimant and presented to the department. This subsection does
11 not apply to an osteopathic physician who has met the
12 financial responsibility requirements in paragraphs (1)(b) and
13 (2)(b).

14 ~~(10)(9)~~ The board shall adopt rules to implement the
15 provisions of this section.

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