

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Gaetz offered the following:

4 **Amendment (with title amendment)**

5 Between lines 70 and 71, insert:

6 Section 2. Paragraph (b) of subsection (6) of section
 7 766.106, Florida Statutes, is amended to read:

8 766.106 Notice before filing action for medical
 9 negligence; presuit screening period; offers for admission of
 10 liability and for arbitration; informal discovery; review.—

11 (6) INFORMAL DISCOVERY.—

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

15 1. Unsworn statements.—Any party may require other parties
 16 to appear for the taking of an unsworn statement. Such
 17 statements may be used only for the purpose of presuit screening
 18 and are not discoverable or admissible in any civil action for
 19 any purpose by any party. A party desiring to take the unsworn

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20 statement of any party must give reasonable notice in writing to
21 all parties. The notice must state the time and place for taking
22 the statement and the name and address of the party to be
23 examined. Unless otherwise impractical, the examination of any
24 party must be done at the same time by all other parties. Any
25 party may be represented by counsel at the taking of an unsworn
26 statement. An unsworn statement may be recorded electronically,
27 stenographically, or on videotape. The taking of unsworn
28 statements is subject to the provisions of the Florida Rules of
29 Civil Procedure and may be terminated for abuses.

30 2. Documents or things.—Any party may request discovery of
31 documents or things. The documents or things must be produced,
32 at the expense of the requesting party, within 20 days after the
33 date of receipt of the request. A party is required to produce
34 discoverable documents or things within that party's possession
35 or control. Medical records shall be produced as provided in s.
36 766.204.

37 3. Physical and mental examinations.—A prospective
38 defendant may require an injured claimant to appear for
39 examination by an appropriate health care provider. The
40 prospective defendant shall give reasonable notice in writing to
41 all parties as to the time and place for examination. Unless
42 otherwise impractical, a claimant is required to submit to only
43 one examination on behalf of all potential defendants. The
44 practicality of a single examination must be determined by the
45 nature of the claimant's condition, as it relates to the
46 liability of each prospective defendant. Such examination report
47 is available to the parties and their attorneys upon payment of

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48 the reasonable cost of reproduction and may be used only for the
49 purpose of presuit screening. Otherwise, such examination report
50 is confidential and exempt from the provisions of s. 119.07(1)
51 and s. 24(a), Art. I of the State Constitution.

52 4. Written questions.—Any party may request answers to
53 written questions, the number of which may not exceed 30,
54 including subparts. A response must be made within 20 days after
55 receipt of the questions.

56 5. Ex parte interviews of treating health care providers.—
57 A prospective defendant or his or her legal representative may
58 interview the claimant's treating health care providers without
59 the presence of the claimant or the claimant's legal
60 representative. A prospective defendant or his or her legal
61 representative that intends to interview a claimant's health
62 care providers must provide the claimant with notice of such
63 intent at least 10 days prior to the interview.

64 6.5. Unsworn statements of treating health care providers
65 ~~Medical information release. The claimant must execute a medical~~
66 ~~information release that allows~~ A prospective defendant or his
67 or her legal representative may also ~~to~~ take unsworn statements
68 of the claimant's treating health care providers ~~physicians~~. The
69 statements must be limited to those areas that are potentially
70 relevant to the claim of personal injury or wrongful death.
71 Subject to the procedural requirements of subparagraph 1., a
72 prospective defendant may take unsworn statements from a
73 claimant's treating physicians. Reasonable notice and
74 opportunity to be heard must be given to the claimant or the
75 claimant's legal representative before taking unsworn

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Published On: 1/24/2012 6:37:31 PM

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76 statements. The claimant or claimant's legal representative has
77 the right to attend the taking of such unsworn statements.
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81 -----
82 **T I T L E A M E N D M E N T**

83 Remove line 3 and insert:
84 findings and intent; amending s. 766.106, F.S.; allowing a
85 prospective medical malpractice defendant to interview a
86 claimant's treating health care providers without the presence
87 of the claimant or the claimant's legal representative;
88 requiring a prospective defendant to provide 10 days' notice
89 before such interviews; authorizing a prospective defendant to
90 take unsworn statements of a claimant's health care providers;
91 amending s. 768.28, F.S.;