

# JOURNAL OF THE FLORIDA SENATE

Thursday, May 20, 1976

The Senate was called to order by the President at 9:00 a.m. A quorum present—40:

SB 924 with 5 amendments  
SB 946 with 1 amendment

SB 1119 with 3 amendments  
CS for HB 625

Mr. President	Graham	Myers	Stolzenburg
Brantley	Hair	Peterson	Thomas, J.
Childers, D.	Henderson	Plants	Thomas, P.
Childers, W. D.	Holloway	Poston	Tobiassen
Deeb	Johnston	Renick	Trask
Dunn	Lane, D.	Saunders	Vogt
Firestone	Lane, J.	Sayler	Ware
Gallen	Lewis	Scarborough	Wilson
Glisson	MacKay	Sims	Winn
Gordon	McClain	Spicola	Zinkil

The Committee on Ways and Means recommends the following pass:

SB 153	SB 403 with 1 amendment
SB 182	SB 588
SB 193 with 1 amendment	SB 549
SB 199	SB 811
SB 271 with 2 amendments	SB 895
SB 350 with 1 amendment	SB 489 with 4 amendments

The bills contained in the foregoing reports were placed on the calendar.

The Committee on Governmental Operations recommends the following pass: SB 850 with 3 amendments

The bill was referred to the Committee on Commerce under the original reference.

The Committee on Education recommends the following pass: SB 1428

The bill was referred to the Committee on Judiciary-Civil under the original reference.

The Committee on Governmental Operations recommends the following pass: HB 584

The bill was referred to the Committee on Judiciary-Criminal under the original reference.

The Committee on Health and Rehabilitative Services recommends the following pass:

SB 1025 with 1 amendment SB 1306 with 1 amendment

The Committee on Education recommends the following pass: SB 802, SB 1170 with 8 amendments

The Committee on Governmental Operations recommends the following pass:

SB 595 with 2 amendments SB 760 with 1 amendment

The bills contained in the foregoing reports were referred to the Committee on Ways and Means under the original reference.

The Committee on Commerce recommends a Committee Substitute for the following: SB 1257

The Committee on Governmental Operations recommends a Committee Substitute as recommended by the Committee on Education for the following: SB 814 with 1 amendment

The Committee on Commerce recommends a Committee Substitute for the following: SB 1264

The Committee on Rules and Calendar recommends Committee Substitutes for the following:

SJR's 619 and 1398 SB 1384

The Committee on Ways and Means recommends a Committee Substitute as recommended by Committee on Natural Resources and Conservation for: SB 237

Prayer by the Rev. Gordon W. Holmen, pastor, Tri-Par Estates Covenant Church, Sarasota, Florida:

We thank you, our Heavenly Father, for the privilege we all enjoy of living in a democracy, where the people govern themselves, elect their officials and make their own decisions. Bless this land this bicentennial year with continued good leadership and right choices.

We thank you for the members of our Florida Senate, and pray for them. May each of them, and all of us in our land, have the wisdom to make the right decisions, and the courage to carry them out. Give guidance today to the members here and their leaders, that God may truly bless them, and the people they govern. You have blessed our state and enriched our lives in physical and spiritual ways, and we are most grateful. Help us to show our appreciation by helping to relieve the distressed and suffering in our area, and show thy love to those in need. Now we pray again for the fine members of this Senate. Watch over each of them and their loved ones. And grant to us all, and to our state and to our nation, guidance and peace. Through Christ our Lord we pray. Amen.

## REPORTS OF COMMITTEES

The Committee on Rules and Calendar recommends the following bills be placed on Special Order for Thursday, May 20, 1976, at 9:00 a.m.:

HB 2694	SB 725	HB 425	SB 397
SB 989	SB 1340	HB 1290	SB 310
SB 928	SB 588	HB 1116	SB 815
SB 501	SB 914	HB 1682	SB 220
SB 1224	SB 1000	HB 886	SB 505
SB 1145	SB 752	SB 586	SB 367
SB 796	HB 1641	SJR 825	SB 898
SB 950	SB 493	SB 332	SB 483
SB 286	SB 742	SB 333	SB 514
SB 160	SB 910	SB 335	SB 823
SB 1276	HB 2811	SB 336	SB 481
HB 1302	HB 1886	SB 341	SB 142
SB 817	SB 1278	SB 406	SB 306
SB 1206	HB 33	SB 803	
HB 1514	HB 2537	HB 505	
SB 858	HB 372	HB 3687	

Respectfully submitted,  
*Lew Brantley, Chairman*

The Committee on Rules and Calendar recommends the following pass:

SB 1426 with 6 amendments HB 3242 SB 1337

The Committee on Health and Rehabilitative Services recommends the following pass:

SB 1008 SB 1348 SB 1385

The Committee on Education recommends the following pass:

SB 1110 HB 2288 with 1 amendment

The Committee on Governmental Operations recommends the following pass:

The Committee on Commerce recommends a Committee Substitute for the following: SB 1254

The Committee on Ways and Means recommends a Committee Substitute as recommended by Committee on Governmental Operations for: SB 640

The bills with Committee Substitutes attached contained in the foregoing reports were placed on the calendar.

The Committee on Education recommends the following not pass: SB 272

The bill was laid on the table.

**MOTIONS RELATING TO COMMITTEE REFERENCE**

On motion by Senator Gallen, the rules were waived and the Committee on Judiciary-Civil was granted permission to meet from 5:30 to 6:30 p.m. this day to consider executive appointments.

On motion by Senator Gallen, the rules were waived and by two-thirds vote HB 2417 was also referred to the Committee on Judiciary-Civil.

On motion by Senator Henderson, the rules were waived and by two-thirds vote SCR 504 was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Henderson, the rules were waived and by two-thirds vote SB 771 was withdrawn from the Committee on Governmental Operations.

On motion by Senator Henderson, the rules were waived and by two-thirds vote SB 1205 was withdrawn from the Committee on Judiciary-Civil.

On motion by Senator Henderson, the rules were waived and by two-thirds vote SB 904 was withdrawn from the Committee on Natural Resources.

On motion by Senator Scarborough, the rules were waived and by two-thirds vote SB 469 was withdrawn from the Committee on Commerce.

On motions by Senator J. Lane, the rules were waived and by two-thirds vote Senate Bills 964, 130, 1303, 636, 563, 634, 1211, 1274, 249, 129, 245 and 674 were withdrawn from the Committee on Ways and Means.

On motion by Senator Spicola, the rules were waived and by two-thirds vote SJR 1216 was withdrawn from the Committee on Natural Resources and Conservation.

On motion by Senator W. D. Childers, Rule 2.6 was waived and the Committee on Commerce was granted permission to consider Senate Bills 399 and 602 at the meeting May 21.

On motions by Senator Myers, the rules were waived and by two-thirds vote SB 1364 was withdrawn from the Committees on Commerce and Governmental Operations.

On motion by Senator Dunn, the rules were waived and the Select Committee on Executive Suspensions was granted permission to meet Wednesday and Thursday evenings, May 26 and 27, to consider executive appointments and final reports, on executive suspensions.

**REQUESTS FOR EXTENSION OF TIME**

The Committee on Governmental Operations requests an extension of 15 days for consideration of the following:

- SB 830 by Senator MacKay
- SB 832 by Senator Glisson
- SB 839 by Senator Tobiassen
- SB 844 by Senator Zinkil (by request)

- SB 861 by Senator Scarborough
- SB 862 by Senator Zinkil
- SB 881 by Senator Vogt
- SB 887 by Senator Firestone
- SB 890 by Senator Firestone, et al
- SB 897 by Senator MacKay
- SB 901 by Senator Vogt
- SB 902 by Senator Dunn (by request)
- SB 903 by Senator MacKay
- SB 916 by Senator Lewis
- SB 927 by Senator Johnston
- SB 309 by Senator Trask, et al

The Committee on Commerce requests an extension of 15 days for consideration of the following:

- HB 42 by Finance and Taxation Committee
- HB 81 by Representative Lockward
- HB 249 by Representative Richard
- HB 564 by Representative Fontana
- HB 2057 by Representative Steinberg
- HB 2108 by Representative Steinberg
- HB 2109 by Representative Steinberg
- HB 2114 by Representative Steinberg
- HB 2641 by Regulated Industries and Licensing Committee
- HB 2049 by Representative Steinberg
- SB 222 by Senator Lewis
- SB 554 by Senator MacKay
- SB 560 by Senator Winn
- SB 561 by Senator Hair
- SB 572 by Senator Ware
- SB 589 by Senator Dunn
- SB 594 by Senator Holloway
- SB 597 by Senator Graham
- SB 602 by Senator P. Thomas
- SB 612 by Senator Winn
- SB 622 by Senator Winn
- SB 625 by Senator Johnston
- SB 626 by Senator Saylor
- SB 630 by Senator Winn
- SB 644 by Senator Lewis
- HB 1899 by Representative Morgan
- SB 843 by Senator Ware
- SB 930 by Senator Gallen
- HB 895 by Representative Richard

The Committee on Ways and Means requests an extension of 15 days for consideration of the following:

- SB 6 by Senator Glisson
- SB 22 by Senator Poston and others
- SB 42 by Senator McClain and others
- SB 46 by Senator Myers
- CS for SB 57 by Senator MacKay
- CS for SB 83 by Senator Deeb
- SB 84 by Senator Deeb
- CS for SB 86 by Senator D. Childers and others
- SB 94 by Senator Dunn
- SB 101 by Senator Scarborough
- SB 119 by Senator Saylor
- SB 125 by Senator Glisson and others
- SB 126 by Senator J. Lane and others
- SB 129 by Senator Gallen
- SB 133 by Senator Holloway and others
- SB 143 by Senator Deeb
- SB 152 by Governmental Operations Committee
- SB 154 by Senator Sims
- SB 183 by Senator Wilson and others
- SB 186 by Senator Deeb
- SB 194 by Senator Plante
- SB 196 by Senator Plante
- SB 198 by Judiciary-Criminal Committee
- SB 223 by Governmental Operations Committee and others
- SB 231 by Senator Myers
- SB 245 by Senator Ware and others
- SB 249 by Senator Poston
- SJR 263 by Senator Gordon
- SB 296 by Senator P. Thomas
- CS for SB 297 by Senator P. Thomas and others
- SB 316 by Senator MacKay
- SB 324 by Senator Saylor and others
- SB 326 by Senator P. Thomas
- SB 328 by Senator P. Thomas
- SB 337 by Senator Henderson
- CS for SB 338 by Senator Henderson
- SB 339 by Senator Henderson
- CS for SB 353 by Senator Poston
- CS for SB 354 by Senator Poston
- SB 363 by Senator Peterson
- SB 365 by Senator Poston
- SB 366 by Senator Dunn
- SB 368 by Senator Myers and others
- SB 371 by Senator Deeb and others
- SB 372 by Senator J. Thomas
- SB 392 by Senator Poston
- SB 408 by Senator Zinkil
- SB 423 by Senator Renick
- SB 424 by Senator Renick
- SB 452 by Senator Firestone
- SB 454 by Senator Firestone and others
- SB 456 by Senator MacKay
- CS for SJR 458 by Senator Lewis
- SB 467 by Senator Saunders
- SB 479 by Senator Gallen
- SB 496 by Senator Peterson and others
- SB 507 by Senator J. Lane
- SB 508 by Senator Sims
- SB 527 by Senator Gallen and others
- SB 530 by Senator Myers
- SB 532 by Senator J. Lane
- SB 535 by Senator Holloway and others
- SB 537 by Senator Spicola
- SB 540 by Senator MacKay

SB 555 by Senator Scarborough and others	SB 980 by Senator Graham and others
SB 563 by Senator Graham	SB 988 by Senator Poston
SB 567 by Senator Wilson	SB 1003 by Senator Myers
SB 579 by Senator Lewis	SB 1015 by Senator Johnston
SB 590 by Senator Hair	SB 1018 by Senator Poston
SB 623 by Senator Glisson	SB 1034 by Senator Gordon
SB 634 by Senator Graham and others	SB 1058 by Senator Graham and others
SB 636 by Senator Graham and others	SB 1063 by Senator Graham
SB 638 by Senator Graham and others	SB 1079 by Senator Holloway
SB 641 by Senator Myers	SB 1088 by Senator Graham
SB 642 by Senator Myers	SB 1099 by Senator Dunn and others
SB 660 by Senator McClain and others	SB 1122 by Senator Johnston
CS for	SB 1140 by Senator Spicola
SB 674 by Senator Graham and others	CS for
SB 675 by Senator Plante	SB 1179 by Senator Graham and others
SB 678 by Senator Hair	SB 1217 by Senator Childers, W.
SB 679 by Senator Gallen	SB 1274 by Senator Spicola and others
SB 682 by Senator Dunn	SB 1303 by Senator Sayler
SB 732 by Senator Graham	SB 1334 by Senator J. Thomas and others
SB 787 by Senator Trask	SB 1373 by Senator W. Childers
SB 801 by Senator Glisson	SB 1430 by Ways and Means Committee
SB 864 by Senator Peterson	CS for
SB 866 by Senator Wilson	HB 344 by Representative Young and others
SB 885 by Senator Graham and others	HB 1983 by Representative D. Clark and others
SB 900 by Senator Myers	HB 2797 by Representative Rish and others
SB 923 by Senator Johnston	
SB 943 by Senator Graham and others	
SB 971 by Senator Poston	

#### MESSAGES FROM THE HOUSE OF REPRESENTATIVES

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has refused to concur in Senate Amendments 1 and 2 to:

By the Committee on Appropriations—

HB 3500—A bill to be entitled An act making appropriations; providing moneys for the annual period beginning July 1, 1976 and ending June 30, 1977 to pay salaries, other expenses, capital outlay-buildings and improvements, and for other specified purposes of the various agencies of state government; suspending sections 27.34(2), 27.54(3), 215.32(2)(C), 216.262, 216.292, 216.301(2), 230.767(4)(B), 230.767(2), 216.011(1)(C), 216.181, 219.192, 216.351, 20.22, 255.25, and 402.17(3), F.S.; providing an effective date.

—and requests the Senate to recede, and in the event the Senate refuses to recede requests a Conference Committee.

*Allen Morris, Clerk*

On motions by Senator J. Lane, the Senate refused to recede from Amendments 1 and 2 to HB 3500 and acceded to the request for a conference committee.

The President appointed Senators Gordon, J. Lane, Plante, W. D. Childers, Peterson, Brantley and J. Thomas as conferees on the part of the Senate and the action of the Senate was certified to the House.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has adopted SCR 838.

*Allen Morris, Clerk*

The concurrent resolution was ordered enrolled.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has passed—

SB 1269	SB 872	SB 877
SB 585	SB 875	

*Allen Morris, Clerk*

The bills were ordered enrolled.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments and passed as amended HB 1135.

*Allen Morris, Clerk*

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has passed HB 2264 and requests the concurrence of the Senate.

*Allen Morris, Clerk*

By the Committee on Elections—

HB 2264—A bill to be entitled An act relating to the qualifications for registering to vote; amending subsection (3) of s. 97.041, Florida Statutes, 1974 Supplement, clarifying that certain persons are not entitled to register or vote; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Civil.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has passed as amended—

HB 2594	HB 1264	HB 4014
HB 4002	HB 4003	

—and requests the concurrence of the Senate.

*Allen Morris, Clerk*

By Representatives Hazouri and Moore—

HB 2594—A bill to be entitled An act relating to voter registration; amending s. 98.051(4) and (5), Florida Statutes, 1974 Supplement, providing that the closing date for registration for state and local elections shall be the same as that for national presidential elections; prohibiting any person from altering his existing registration except during a period provided for the registration of electors; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Civil.

By Representative Kershaw and others—

HB 1264—A bill to be entitled An act relating to elections; amending s. 104.45, Florida Statutes, to provide that municipalities shall adopt the state election laws; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Civil.

By the Committee on Natural Resources and Representative Tucker and others—

HB 4014—A bill to be entitled An act relating to coastal wetlands; providing a short title; providing a declaration of policy; providing definitions; providing exemptions; requiring persons who undertake a dredging or filling activity or any activity conducted in a coastal wetlands area or connected by an excavation or series of excavations to a coastal wetlands area to obtain a permit from the Department of Environmental Regulation; providing for applications for such permits; providing limitations with respect to the application and approval



HB 1507  
HB 2393

CS for HB's 2955 and 3056  
HB 1105

—and requests the concurrence of the Senate.

*Allen Morris, Clerk*

By Representative Richard and others—

**HB 1507**—A bill to be entitled An act relating to registration of electors; amending s. 97.063, Florida Statutes, 1974 Supplement, providing for registration of electors by mail; providing application procedures for such registration; providing grounds for denial; providing penalties; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Civil.

By the Committee on Elections and Representative Wilson and others—

**CS for HB's 2955 and 3056**—A bill to be entitled An act relating to the Election Code; amending s. 104.36, Florida Statutes, prohibiting any type of solicitation within 100 yards of any polling place; providing penalties; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Civil.

By Representative Melvin and others—

**HB 1105**—A bill to be entitled An act relating to retirement; amending s. 121.091(9), Florida Statutes, 1974 Supplement, eliminating certain restrictions on the employment of a person who has retired under the Florida Retirement System; authorizing such reemployment for 600 hours per year with a monetary earnings limit per year, without suspension of benefits; prohibiting reemployment after retirement within 1 month with any employer within the system; providing that a retired person holding public office is subject to the same reemployment limitations as any other member of the system and also applying these limitations to retired persons who are independent contractors; amending s. 121.046(4), Florida Statutes, to provide these same reemployment restrictions to members of the Judicial Retirement System; amending s. 122.16, Florida Statutes, to apply these same reemployment limitations to members of the State and County Retirement System; amending s. 238.181, Florida Statutes, to apply these same reemployment limitations to the retirement system for school teachers; creating subsection (11) of s. 121.091, Florida Statutes, 1974 Supplement, relating to reinstatement of membership in the Florida Retirement System after retirement; providing an effective date.

—was read the first time by title and referred to the Committees on Governmental Operations and Ways and Means.

By Representatives Melvin and Flynn—

**HB 2393**—A bill to be entitled An act relating to the Florida Highway Patrol; adding subsection (6) to s. 321.17, Florida Statutes, authorizing the purchase of prior service for certain members entitled to benefits from the Highway Patrol Pension Trust Fund; providing an effective date.

—was read the first time by title and referred to the Committees on Governmental Operations and Ways and Means.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has passed HB 3398 and requests the concurrence of the Senate.

*Allen Morris, Clerk*

By Representative Melvin—

**HB 3398**—A bill to be entitled An act relating to the Florida Retirement System; adding subsection (9) to s. 121.052, Florida Statutes, providing that, for service earned after July 1, 1974, with respect to compulsory members of the Elected State Officers' Class of the Florida Retirement System, any combination of terms of office of such an elected state officer totaling 8 years of service shall entitle such officer to be

eligible to receive 8 years of service credit; creating s. 121.053, Florida Statutes, providing for the participation of county court judges, all other state and county elected officers, and elected municipal officers, in the Elected State Officers' Class of the Florida Retirement System; providing an effective date.

—was read the first time by title and referred to the Committees on Governmental Operations and Ways and Means.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has passed as amended—

**HB 2373**      **CS for HB's 2740 & 2950**

—and requests the concurrence of the Senate.

*Allen Morris, Clerk*

By Representative Melvin—

**HB 2373**—A bill to be entitled An act relating to retirement; amending s. 121.051(1), Florida Statutes, to provide that after June 30, 1976, the compulsory participation requirements of said section shall not be construed to require participation in the Florida Retirement System by a member of an existing system who returns to employment following a break in service, provided such member leaves his contributions on deposit with the existing system; amending s. 121.051(2)(a), Florida Statutes, reopening the Florida Retirement System to members of certain existing retirement systems and extending survivor benefits for members transferring from the Teachers Retirement System of Florida to the Florida Retirement System; providing an effective date.

—was read the first time by title and referred to the Committees on Governmental Operations and Ways and Means.

By the Committee on Commerce and Representative Coolman and others—

**CS for HB's 2740 and 2950**—A bill to be entitled An act relating to drugs; amending s. 465.30, Florida Statutes; providing definitions; requiring pharmacists who receive prescriptions for brand name drugs to substitute the least expensive generically equivalent drug product listed in a formulary established by the pharmacy dispensing the drugs; providing exceptions; requiring pharmacists to notify persons presenting prescriptions of price differentials between brand name and substituted drug; requiring pharmacists to maintain certain records; requiring the Florida Board of Pharmacy and the State Board of Medical Examiners to establish a drug formulary which shall consist of drugs which may not be substituted; providing a standard of care; creating s. 465.31, Florida Statutes; authorizing licensed pharmacists to delegate certain duties to non-licensed supportive personnel; adding a new subsection (2) to s. 500.341, Florida Statutes; requiring manufacturers of drugs who sell drugs in Florida to file with the Department of Agriculture and Consumer Services a current price list of drugs; adding subsection (3) to s. 500.22, Florida Statutes; requiring the Department of Agriculture and Consumer Services to furnish pharmacies, upon request, with such list; providing an effective date.

—was read the first time by title and referred to the Committee on Commerce.

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments 4, 7 and 8 and has refused to concur in Senate Amendments 1, 2 and 5 and requests the Senate to recede and has passed HB 1445 as amended.

*Allen Morris, Clerk*

By Representative Gallagher and others—

**HB 1445**—A bill to be entitled An act relating to the Department of Professional and Occupational Regulation; adding subsection (13) to s. 20.30, Florida Statutes; providing legislative intent with regard to the role of the professional and occupational examining and licensing boards of the department; providing an effective date.

On motions by Senator Plante, the Senate recessed from Senate Amendments 1, 2 and 5.

HB 1445 passed as amended and the action of the Senate was certified to the House. The vote was:

Yeas—35

Mr. President	Henderson	Peterson	Thomas, J.
Brantley	Holloway	Plante	Thomas, P.
Childers, D.	Johnston	Poston	Tobiasen
Childers, W. D.	Lane, D.	Renick	Vogt
Firestone	Lane, J.	Saunders	Ware
Gallen	Lewis	Scarborough	Wilson
Glisson	MacKay	Sims	Winn
Graham	McClain	Spicola	Zinkil
Hair	Myers	Stolzenburg	

Nays—None

*The Honorable Dempsey J. Barron, President*

I am directed to inform the Senate that the Speaker of the House of Representatives has appointed Representatives Fortune, Andrews, Dixon, Grosse, Craig, Redman, Poole; alternates: Representatives Bloom and McPherson as Conferees on the part of the House on HB 3500.

*Allen Morris, Clerk*

**MATTERS ON RECONSIDERATION**

The motion to reconsider the vote by which SB 785 passed was not taken up and therefore considered abandoned. The bill was certified to the House.

The President Pro Tempore presiding

**SPECIAL ORDER**

HB 2694—A bill to be entitled An act relating to trespass; creating s. 810.12, Florida Statutes; specifying circumstances under which unauthorized entry upon land is prima facie evidence of intent to trespass or commit other acts pertaining thereto; providing an effective date.

—was taken up with pending Amendments 1 and 1A.

Amendment 1—Strike everything after the enacting clause and insert: Section 1. Subsection (4) of s. 810.011, Florida Statutes, is amended to read:

810.011 Definitions.—As used in this chapter:

(4) "Posted land" is that land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than two inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting poster on any enclosed land or place not exceeding 200 5 acres in area on which there is a dwelling house in order to obtain the benefits of ss. 810.09 and 810.12 pertaining to the statutes of this state prohibiting trespass on enclosed lands.

Section 2. Section 810.08, Florida Statutes, is amended to read:

*(Substantial rewording of section. See s. 810.08, F.S., for present text.)*

810.08 Trespass in structure or conveyance.—

(1) Whoever, without being authorized, licensed or invited, or having been authorized, licensed or invited is warned to depart and refuses to do so, willfully enters or remains in any structure or conveyance commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection trespass in a structure or conveyance is a misdemeanor of the

second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offender is armed with a firearm or other dangerous weapon, or arms himself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 810.09, Florida Statutes, is amended to read:

*(Substantial rewording of section. See s. 810.09, F.S., for present text.)*

810.09 Trespass on property other than structure or conveyance.—

(1) Whoever without being authorized, licensed, or invited willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011 commits the offense of trespass on property other than a structure or conveyance.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to him by the owner of the premises or by an authorized person or if the offender willfully opens any door, fence, or gate or does any act which exposes animals, crops, or other property to waste, destruction, or freedom, or trespasses on property other than a structure or conveyance, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

Section 4. Section 810.12, Florida Statutes, is created to read:

810.12. Unauthorized entry on land; prima facie evidence of trespass.—

(1) The unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass.

(2) The act of entry upon enclosed and posted land without permission of the owner of said land by any workman, servant, employee or agent while actually engaged in the performance of his work or his duties incident to such employment and while under the supervision, direction or through the procurement of any other person acting as supervisor, foreman, employer, principal, or in any other capacity, shall be prima facie evidence of the causing and of the procurement of such act by the supervisor, foreman, employer, principal or other person.

(3) The act committed by any person or persons of taking, transporting, operating or driving, or the act of permitting or consenting to the taking or transporting of any machine, tool, motor vehicle or draft animal into or upon any enclosed and posted land without the permission of the owner of said land by any person who is not the owner of such machine, tool, vehicle or animal, but with the knowledge or consent of the owner of such machine, tool, vehicle or animal or the person then having the right to possession thereof, shall be prima facie evidence of the intent of such owner of such machine, tool, vehicle or animal, or of the person then entitled to the possession thereof, to cause or procure an act of trespass.

(4) As used herein, the term "owner of said land" shall include the beneficial owner, lessee, occupant, or other person having any interest in said land under and by virtue of which that person is entitled to possession thereof and shall also

include the agents or authorized employees of such owner. However, this section shall not apply to any official or employee of the state or a county, municipality or other governmental agency now authorized by law to enter upon lands. The provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities, or their employees, contractors or subcontractors, when such trimming is required for the establishment or maintenance of the service furnished by any such utility.

Section 5. Sections 810.112 and 810.113, Florida Statutes, are hereby repealed.

Section 6. This act shall take effect July 1, 1976.

Amendment 1A—On page 1, line 14, strike 200 and insert: 5

Amendment 1A was adopted.

Senators Wilson and Poston offered the following amendment to Amendment 1 which was moved by Senator Wilson and adopted:

Amendment 1B—On page 4, line 25, strike the “.” and insert: nor to registered engineers and surveyors authorized to enter lands pursuant to s. 472.14.

Senator Scarborough moved the following amendment to amendment 1 which failed:

Amendment 1C—On page 3, line 19, strike “felony of the third” and insert: misdemeanor of the first

Amendment 1 as amended was adopted.

Senators Dunn, MacKay, Firestone and Wilson offered the following title amendment which was moved by Senator Wilson and adopted:

Amendment 2—Strike everything before the enacting clause and insert: A bill to be entitled An act relating to trespass; amending s. 810.011, Florida Statutes, relating to definitions; clarifying the exception to the posted land provision; amending s. 810.08, Florida Statutes, relating to trespass in a structure or conveyance; amending s. 810.09, Florida Statutes, providing penalties for convictions for trespass on property other than structures or conveyances; providing a penalty for convictions for such trespass if the offender is armed with a firearm or other dangerous weapon; creating s. 810.12, Florida Statutes, specifying circumstances under which unauthorized entry upon land is prima facie evidence of intent to trespass or commit other acts pertaining thereto; repealing s. 810.112, Florida Statutes, relating to posting certain enclosed land not necessary; repealing s. 810.113, Florida Statutes, relating to boxing timber on the land of another; providing an effective date.

On motion by Senator Wilson, by two-thirds vote HB 2694 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—31

Brantley	Hair	Myers	Spicola
Childers, W. D.	Henderson	Peterson	Thomas, J.
Deeb	Holloway	Plante	Thomas, P.
Dunn	Johnston	Poston	Trask
Firestone	Lane, J.	Renick	Ware
Gallen	Lewis	Saunders	Wilson
Glisson	MacKay	Sayler	Winn
Graham	McClain	Sims	

Nays—2

Childers, D. Scarborough

Votes after roll call:

Yeas—Lane, D., Tobiassen and Vogt

SB 989—A bill to be entitled An act relating to common law business trusts; creating s. 609.08, Florida Statutes, authorizing a common law business trust organized under the laws of the state pursuant to a declaration of trust filed in accordance with

chapter 609, Florida Statutes, to merge into a wholly-owned subsidiary corporation if permitted by the laws of the jurisdiction under which the subsidiary corporation is organized; declaring that, except as otherwise provided in the declaration of trust, no shareholders of a common law business trust shall have any dissenters' rights of appraisal; providing an effective date.

—was read the second time by title. On motion by Senator Ware, by two-thirds vote SB 989 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37

Brantley	Henderson	Plante	Thomas, P.
Childers, D.	Holloway	Poston	Trask
Childers, W. D.	Johnston	Renick	Vogt
Deeb	Lane, D.	Saunders	Ware
Dunn	Lane, J.	Sayler	Wilson
Firestone	Lewis	Scarborough	Winn
Gallen	MacKay	Sims	Zinkil
Glisson	McClain	Spicola	
Graham	Myers	Stolzenburg	
Hair	Peterson	Thomas, J.	

Nays—None

SB 928—A bill to be entitled An act relating to minors; authorizing an unwed pregnant minor to consent to medical and surgical care and services; authorizing an unwed minor mother to consent to such care and services for her child; providing an effective date.

—was read the second time by title. On motion by Senator Ware, by two-thirds vote SB 928 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35

Brantley	Holloway	Plante	Thomas, J.
Childers, W. D.	Johnston	Poston	Thomas, P.
Deeb	Lane, D.	Renick	Trask
Firestone	Lane, J.	Saunders	Vogt
Gallen	Lewis	Sayler	Ware
Glisson	MacKay	Scarborough	Wilson
Graham	McClain	Sims	Winn
Hair	Myers	Spicola	Zinkil
Henderson	Peterson	Stolzenburg	

Nays—None

Vote after roll call:

Yea—Tobiassen

SB 501—A bill to be entitled An act relating to acquisition of land by state agencies; requiring a state agency to have two appraisals of real property it seeks to purchase; prohibiting a state agency from entering an agreement to purchase real property appraised at more than \$50,000 prior to the seller's statement disclosing certain facts relating to the property; amending ss. 375.031(1) and 380.08(2), Florida Statutes; changing the agencies with which the seller's statement shall be filed and the period covered by the seller's statement; providing an effective date.

—was read the second time by title.

The Committee on Governmental Operations offered the following amendments which were moved by Senator Spicola and adopted:

Amendment 1—On page 1, line 21, after the word “agency”, insert: , including water management districts as defined in section 373.019, Florida Statutes,

Amendment 2—On page 1, strike line 22 and insert: shall purchase, dispose of or trade or enter into an agreement to purchase, dispose of or trade real

Amendment 3—On page 1, line 23, strike “prior to” and insert after the word “property”: in excess of \$50,000 without

Senator Spicola moved the following amendment which was adopted:

**Amendment 4**—On page 1, line 25, after “agency” insert: including water management districts as defined in section 373.019, Florida Statutes,

Senator Poston moved the following amendment which was adopted:

**Amendment 5**—On page 3, strike line 6 and insert: land, *except land for transportation rights-of-way*, the seller of the land shall file a statement with the

The Committee on Governmental Operations offered the following title amendments which were moved by Senator Spicola and adopted:

**Amendment 6**—On page 1, line 6, after the word “property” insert: in excess of \$50,000

**Amendment 7**—On page 1, line 7, after the word “purchase” insert: or dispose of

On motion by Senator Spicola, by two-thirds vote SB 501 as amended was read the third time by title.

Senator Zinkil moved the following amendment which was adopted:

**Amendment 8**—On page 1, line 15, after the semicolon insert: providing exceptions;

SB 501 as amended, was read by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—37

Brantley	Henderson	Plante	Thomas, P.
Childers, D.	Holloway	Poston	Trask
Childers, W. D.	Johnston	Renick	Vogt
Deeb	Lane, D.	Saunders	Ware
Dunn	Lane, J.	Sayler	Wilson
Firestone	Lewis	Scarborough	Winn
Gallen	MacKay	Sims	Zinkil
Glisson	McClain	Spicola	
Graham	Myers	Stolzenburg	
Hair	Peterson	Thomas, J.	

Nays—None

Vote after roll call:

Yea—Tobiassen

**SB 1224**—A bill to be entitled An act relating to local ordinances; prohibiting the enactment of an ordinance or rule imposing price controls; providing an effective date.

—was read the second time by title.

The Committee on Commerce offered the following amendment which was moved by Senator P. Thomas and adopted:

**Amendment 1**—On page 1, line 12, after the word “adopt” insert: or maintain in effect

Senator Graham moved the following amendment:

**Amendment 2**—On page 1, line 11, after the word “no.” insert: state agency,

Senator Gallen moved the following substitute amendment:

**Amendment 3**—On page 1, line 14, strike the period and insert: which is not franchised by such governmental agency.

Senator Graham moved the following amendment to amendment 3 which failed.

**Amendment 3A**—On page 1, strike lines 1 and 2 and insert: ; provided, this act shall not apply to the regulation of eco-

nomie activities which are determined by the appropriate legislative body to be a monopoly.

**The President presiding.**

Amendment 3 was adopted.

Senators Gallen, Glisson, Henderson, Graham and Firestone offered the following amendment which was moved by Senator Glisson and failed:

**Amendment 4**—On page 1, line 15, strike Section 2, and insert:

Section (2) This act shall not apply to mobile home rental parks. Provided, however no Mobile Home Park shall increase such rents an unreasonable amount.

Section 3. This act shall take effect upon becoming a law.

The vote was:

Yeas—14

Deeb	Gordon	Myers	Wilson
Firestone	Graham	Renick	Zinkil
Gallen	Henderson	Trask	
Glisson	Lane, D.	Vogt	

Nays—18

Mr. President	Lane, J.	Poston	Thomas, J.
Brantley	Lewis	Sayler	Thomas, P.
Childers, W. D.	McClain	Sims	Tobiassen
Dunn	Peterson	Spicola	
Hair	Plante	Stolzenburg	

Senator Gallen moved the following title amendment which was adopted:

**Amendment 5**—On page 1, line 6, before the semicolon insert: upon a business activity which is not purchased by such governmental agency.

Senator P. Thomas moved that the rules be waived and SB 1224 as amended be read the third time by title. The motion was adopted by the following vote:

Yeas—25

Mr. President	Hair	Poston	Tobiassen
Brantley	Lane, D.	Sayler	Trask
Childers, W. D.	Lane, J.	Sims	Vogt
Deeb	Lewis	Spicola	Wilson
Dunn	McClain	Stolzenburg	
Gallen	Peterson	Thomas, J.	
Glisson	Plante	Thomas, P.	

Nays—9

Childers, D.	Graham	Myers	Zinkil
Firestone	Henderson	Renick	
Gordon	Johnston		

SB 1224 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—24

Mr. President	Hair	Peterson	Thomas, J.
Brantley	Holloway	Plante	Thomas, P.
Childers, W. D.	Lane, D.	Sayler	Tobiassen
Dunn	Lane, J.	Sims	Trask
Gallen	Lewis	Spicola	Vogt
Glisson	McClain	Stolzenburg	Wilson

Nays—10

Childers, D.	Graham	Myers	Zinkil
Firestone	Henderson	Poston	
Gordon	Johnston	Renick	

Vote after roll call:

Yea to Nay—Holloway

Senator Saylor moved that the Senate reconsider the vote by which HB 2694 passed this day.

The motion was placed on the calendar for consideration May 26.

SB 1145 was taken up, together with:

By the Committee on Judiciary-Civil and Senator Dunn—

CS for SB 1145—A bill to be entitled An act relating to vacancies in public office; amending ss. 114.01-114.04, Florida Statutes; specifying cases in which offices shall be deemed vacant; requiring the Governor, in the case of certain vacancies, to file an executive order with the Secretary of State; providing that certain officers other than cabinet officers may absent themselves from the state for up to a specified period upon notification to the Governor and prescribing circumstances in which Governor may declare such offices vacant and fill such offices; providing that cabinet officers may not absent themselves from the state for in excess of a specified period without consent of the Governor and a majority of the Cabinet; providing procedure for appointment of officers to fill vacancies in state, district, or county offices; creating s. 114.05, Florida Statutes; providing procedures for Senate consideration when a vacancy in office is filled by appointment which requires confirmation by the Senate; providing procedures for the issuance by the Governor of a letter of appointment; providing procedures for the submission of appointments to the Senate for consideration for confirmation; providing procedures for the confirmation of appointees by the Senate and the issuance of a commission thereafter; providing procedures for the rejection or refusal to confirm an appointment by the Senate and the creation of a vacancy in office relating thereto; providing a limitation on the reappointment of an appointee who has been rejected for confirmation; providing procedures for the creation of a vacancy in office upon the failure of the Senate to act upon confirmation; providing for information to be furnished to the Senate or the appropriate standing or select committee or subcommittee thereof; repealing s. 112.071, Florida Statutes, which prescribes procedure for confirmation of appointment by Senate; providing an effective date.

—which was read the first time by title and SB 1145 was laid on the table.

On motion by Senator Brantley, CS for SB 1145 was deferred.

Senator Scarborough presiding

SB 796 was taken up, together with, by the Committee on Commerce and Senator Gordon, CS for SB 796 which was read the first time by title and SB 796 was laid on the table.

Pending further consideration of CS for SB 796, on motion by Senator Gordon, by two-thirds vote CS for HB's 2740 and 2950 was withdrawn from the Committee on Commerce and placed on the calendar. On motion by Senator Gordon—

CS for HB's 2740 & 2950—A bill to be entitled An act relating to drugs; amending s. 465.30, Florida Statutes; providing definitions; requiring pharmacists who receive prescriptions for brand name drugs to substitute the least expensive generically equivalent drug product listed in a formulary established by the pharmacy dispensing the drugs; providing exceptions; requiring pharmacists to notify persons presenting prescriptions of price differentials between brand name and substituted drug; requiring pharmacists to maintain certain records; requiring the Florida Board of Pharmacy and the State Board of Medical Examiners to establish a drug formulary which shall consist of drugs which may not be substituted; providing a standard of care; creating s. 465.31, Florida Statutes; authorizing licensed pharmacists to delegate certain duties to nonlicensed supportive personnel; adding a new subsection (2) to s. 500.341, Florida Statutes; requiring manufacturers of drugs who sell drugs in Florida to file with the Department of Agriculture and Consumer Services a current price list of drugs; adding subsection (3) to s. 500.22, Florida Statutes; requiring the Department of Agriculture and Consumer Services to furnish pharmacies, upon request, with such list; providing an effective date.

—a companion measure to CS for SB 796 was substituted therefor and by two-thirds vote was read the second time by title.

Senator D. Lane moved the following amendment:

Amendment 1—On page 2, strike entire lines 20-30 and insert: (2) All written prescriptions shall include the following two signature lines:

No Substitution \_\_\_\_\_  
 Substitution Allowed \_\_\_\_\_

and a prescriber shall sign each prescription on one of said lines. If a prescriber signs on the line designated Substitution Allowed or, in the case of an oral prescription, unless the prescriber expressly prohibits substitution, a pharmacist shall substitute the least expensive generically equivalent drug product listed in the formulary of generic and brand name drug products as provided in subsection (5) for the brand name drug prescribed. In those cases where it is required by Federal Law and the person for whom the drug is prescribed is a recipient under the Prescribed Medication provisions of Title XIX of the Social Security Act and the prescriber intends that no substitution be allowed, in addition to signing on the line designated No Substitution, he shall write Medically Necessary or the initials MN.

If the prescription issued by a practitioner is not signed on one of the signature lines as herein provided, or in the case of prescriptions written for persons who are recipients under the Prescribed Medication provisions of Title XIX of the Social Security Act, and if required by Federal Law, the prescriber has failed to write the words Medically Necessary or the initials MN and the prescription otherwise meets the requirements of law, a pharmacist may substitute the least expensive generically equivalent drug product listed in the formulary of generic and brand name drug products as provided in subsection (5) for the brand name drug prescribed.

Senator Plante moved the following substitute amendment which failed:

Amendment 2—On page 2, line 21, strike "shall" and insert: may

The question recurred on Amendment 1 and the amendment failed.

Senator McClain moved the following amendment which was adopted:

Amendment 3—On page 2, line 23, between words: "product" and "listed" insert: "that is distributed by a business entity doing business in the United States and is subject to suit and service of legal process in the United States and"

On motion by Senator Gordon, further consideration of CS for HB's 2740 and 2950 was deferred.

SB 950—A bill to be entitled An act relating to environmental regulation; adding subsections to s. 403.804, Florida Statutes, relating to powers and duties of the Environmental Regulation Commission; requiring studies and hearings on certain standards; requiring approval by the Governor and Cabinet; prohibiting enforcement of certain environmental standards; providing an effective date.

—having been read the second time and amended May 18, was read the third time by title.

Senator Henderson moved the following amendment which failed:

Amendment 4—On page 2, line 27, add a new section 2 and renumber: Section 2. This act shall be known and cited as "The Dirty Air Act of 1976"

The vote was:

Yeas—14

Dunn	Henderson	Myers	Wilson
Firestone	Johnston	Renick	Winn
Gordon	Lane, D.	Scarborough	
Graham	MacKay	Vogt	

Nays—22

Brantley	Holloway	Poston	Tobiassen
Childers, D.	Lane, J.	Saunders	Trask
Childers, W. D.	Lewis	Sims	Ware
Deeb	McClain	Spicola	Zinkil
Glisson	Peterson	Stolzenburg	
Hair	Plante	Thomas, J.	

The President presiding

SB 950 failed to pass. The vote was:

Yeas—17

Mr. President	Glisson	Saunders	Tobiassen
Brantley	Hair	Scarborough	Trask
Childers, D.	McClain	Sims	
Childers, W. D.	Peterson	Thomas, J.	
Deeb	Poston	Thomas, P.	

Nays—23

Dunn	Holloway	Myers	Vogt
Firestone	Johnston	Plante	Ware
Gallen	Lane, D.	Renick	Wilson
Gordon	Lane, J.	Sayler	Winn
Graham	Lewis	Spicola	Zinkil
Henderson	MacKay	Stolzenburg	

Vote after roll call:

Yea to Nay—McClain and J. Thomas

The Senate resumed consideration of—

CS for HB's 2740 & 2950—A bill to be entitled An act relating to drugs; amending s. 465.30, Florida Statutes; providing definitions; requiring pharmacists who receive prescriptions for brand name drugs to substitute the least expensive generically equivalent drug product listed in a formulary established by the pharmacy dispensing the drugs; providing exceptions; requiring pharmacists to notify persons presenting prescriptions of price differentials between brand name and substituted drug; requiring pharmacists to maintain certain records; requiring the Florida Board of Pharmacy and the State Board of Medical Examiners to establish a drug formulary which shall consist of drugs which may not be substituted; providing a standard of care; creating s. 465.31, Florida Statutes; authorizing licensed pharmacists to delegate certain duties to nonlicensed supportive personnel; adding a new subsection (2) to s. 500.341, Florida Statutes; requiring manufacturers of drugs who sell drugs in Florida to file with the Department of Agriculture and Consumer Services a current price list of drugs; adding subsection (3) to s. 500.22, Florida Statutes; requiring the Department of Agriculture and Consumer Services to furnish pharmacies, upon request, with such list; providing an effective date.

Senator McClain moved the following amendment:

Amendment 4—On page 2, line 25, between words: "writes" and "the" insert: , or has printed,

The hour of adjournment having arrived, a point of order was called and the Senate recessed at 12:03 p.m. to reconvene at 2:00 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 2:00 p.m. A quorum present—40:

Mr. President	Graham	Myers	Stolzenburg
Brantley	Hair	Peterson	Thomas, J.
Childers, D.	Henderson	Plante	Thomas, P.
Childers, W. D.	Holloway	Poston	Tobiassen
Deeb	Johnston	Renick	Trask
Dunn	Lane, D.	Saunders	Vogt
Firestone	Lane, J.	Sayler	Ware
Gallen	Lewis	Scarborough	Wilson
Glisson	MacKay	Sims	Winn
Gordon	McClain	Spicola	Zinkil

Excused: Senator Holloway at 4:30 p.m.

On motion by Senator Sayler, the rules were waived by unanimous consent and the Senate reverted to Introduction for the purpose of introducing the following bills out of order:

INTRODUCTION

By Senator Sayler—

SB 1441—A bill to be entitled An act relating to Pinellas County; making it unlawful to take certain sardine-like fish with a purse seine, purse gill net, lampara net or similar net or device for any purpose; providing a penalty; providing an effective date and referendum.

—was read the first time by title and referred to the Committee on Rules and Calendar.

On motion by Senator Sayler, by two-thirds vote SB 1441 was withdrawn from the Committee on Rules and Calendar and placed on the calendar.

On motion by Senator Sayler, by two-thirds vote SB 1441 was read the second time by title and by two-thirds vote read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35

Mr. President	Graham	Myers	Stolzenburg
Brantley	Hair	Peterson	Thomas, J.
Childers, D.	Henderson	Plante	Tobiassen
Childers, W. D.	Holloway	Poston	Trask
Dunn	Johnston	Renick	Vogt
Firestone	Lane, D.	Sayler	Ware
Gallen	Lane, J.	Scarborough	Winn
Glisson	Lewis	Sims	Zinkil
Gordon	McClain	Spicola	

Nays—None

By Senator Brantley—

SCR 1446—A concurrent resolution commending the Florida Jaycees and recognizing their contribution to the people of Florida.

—was read the first time in full. On motion by Senator Brantley, by two-thirds vote SCR 1446 was read the second time by title, adopted and certified to the House. The vote on adoption was:

Yeas—40

Mr. President	Graham	Myers	Stolzenburg
Brantley	Hair	Peterson	Thomas, J.
Childers, D.	Henderson	Plante	Thomas, P.
Childers, W. D.	Holloway	Poston	Tobiassen
Deeb	Johnston	Renick	Trask
Dunn	Lane, D.	Saunders	Vogt
Firestone	Lane, J.	Sayler	Ware
Gallen	Lewis	Scarborough	Wilson
Glisson	MacKay	Sims	Winn
Gordon	McClain	Spicola	Zinkil

Nays—None

Senators Barron, D. Childers, W. D. Childers, Deeb, Dunn, Firestone, Gallen, Glisson, Gordon, Graham, Hair, Henderson, Holloway, Johnston, D. Lane, J. Lane, Lewis, MacKay, McClain, Myers, Peterson, Plante, Poston, Renick, Saunders, Sayler, Scarborough, Sims, Spicola, Stolzenburg, J. Thomas, P. Thomas, Tobiassen, Trask, Vogt, Ware, Wilson, Winn, and Zinkil were recorded as co-introducers of SCR 1446.

The President presented Charles Perrone, president of the Florida Jaycees, who addressed the Senate briefly. Senator Brantley introduced Tom Hayes, executive vice president of the Florida Jaycees.

Senator J. Lane moved that the Senate reconsider the vote by which SB 950 failed this day.

The motion was placed on the calendar for consideration May 26.

Senator Spicola moved that Rule 4.6 be waived and a bill relating to aquatic preserves and a memorial to Congress relating to beach erosion in Florida be introduced. The motion was referred to the Committee on Rules and Calendar.

#### SPECIAL ORDER, continued

The Senate resumed consideration of—

CS for HB's 2740 and 2950—A bill to be entitled An act relating to drugs; amending s. 465.30, Florida Statutes; providing definitions; requiring pharmacists who receive prescriptions for brand name drugs to substitute the least expensive generically equivalent drug product listed in a formulary established by the pharmacy dispensing the drugs; providing exceptions; requiring pharmacists to notify persons presenting prescriptions of price differentials between brand name and substituted drug; requiring pharmacists to maintain certain records; requiring the Florida Board of Pharmacy and the State Board of Medical Examiners to establish a drug formulary which shall consist of drugs which may not be substituted; providing a standard of care; creating s. 465.31, Florida Statutes; authorizing licensed pharmacists to delegate certain duties to nonlicensed supportive personnel; adding a new subsection (2) to s. 500.341, Florida Statutes; requiring manufacturers of drugs who sell drugs in Florida to file with the Department of Agriculture and Consumer Services a current price list of drugs; adding subsection (3) to s. 500.22, Florida Statutes; requiring the Department of Agriculture and Consumer Services to furnish pharmacies, upon request, with such list; providing an effective date.

—which was taken up, together with pending Amendment 4 which failed.

#### Senator Scarborough presiding.

Senators D. Lane and McClain offered the following amendment which was moved by Senator D. Lane and failed:

Amendment 5—On page 2, line 29, insert after the period (.) a new subsection (3):

(3) In the event of substitution by a pharmacist, written or verbal verification of such substitution shall be provided for the physician within a reasonable period of time. (Renumber subsequent subsections)

#### The President presiding.

Senator Vogt moved the following amendment which was adopted:

Amendment 6—On page 3, line 5, strike the period and insert: , and shall inform the person presenting the prescription that such person may refuse the substitution as provided in (2) above.

Senator D. Lane moved the following amendment which was adopted:

Amendment 7—On page 2, lines 25-26, strike "writes the word 'medically necessary' in his own handwriting" and insert: indicates "medically necessary" or the abbreviation "MN"

Senator Myers moved the following amendment which failed:

Amendment 8—On page 3, strike lines 6-8 (renumber subsequent subsection)

Senators McClain, Peterson, Plante, D. Lane and Zinkil offered the following amendment which was moved by Senator McClain and adopted:

Amendment 9—On page 3, line 6, insert: (a) to subsection (3)

(a) Any pharmacist substituting a less expensive drug product shall pass on to the consumer the full amount of the savings realized by such substitution.

#### Senator Saunders presiding.

Senator Wilson moved the following amendment which was adopted:

Amendment 10—On page 4, strike all of lines 25 and 26 and insert: read: "Florida law requires a less expensive generically equal drug be substituted for a brand name drug unless you or your physician request otherwise. Consult your physician concerning the availability of the least expensive drug for your use."

Senator Myers moved that the Senate reconsider the vote by which Amendment 9 was adopted. The motion failed.

Senator Gordon moved the following amendment which was adopted:

Amendment 11—On page 6, line 10, insert: Section 5. Wherever the word Department is used in Sections 3 and 4 of this act, the same shall be construed to mean the Department of Health and Rehabilitative Services.

(Renumber subsequent sections)

Senator Plante moved the following amendment:

Amendment 12—On page 3, line 4, insert: "wholesale" before "price difference"

Senator Gordon moved the following substitute amendment:

Amendment 13—On page 3, line 4, insert: "retail" before "price difference"

Amendment 13 was adopted by the following vote:

Yeas—17

Brantley	Graham	Myers	Winn
Deeb	Henderson	Sims	Zinkil
Dunn	Johnston	Thomas, J.	
Glisson	Lewis	Ware	
Gordon	MacKay	Wilson	

Nays—13

Childers, D.	Lane, D.	Plante	Vogt
Gallen	Lane, J.	Sayler	
Hair	McClain	Stolzenburg	
Holloway	Peterson	Trask	

Senator Vogt moved the following title amendment which was adopted:

Amendment 14—On page 1, line 14, after the semicolon insert: requiring pharmacists to inform persons that they may refuse substitution;

Senators McClain and Plante offered the following title amendment which was moved by Senator Plante and adopted:

Amendment 15—On page 1, line 14, following the semicolon (;) insert: requiring the pharmacist to pass on all savings to the consumer;

Senator Gordon moved the following title amendment which was adopted:

Amendment 16—On page 1, line 27, strike "Agriculture and Consumer Services" and insert: Health and Rehabilitative Services

On motion by Senator Gordon, by two-thirds vote CS for HB's 2740 and 2950 as amended was read the third time by title, passed, and certified to the House. The vote on passage was:

Yeas—38

Brantley	Firestone	Hair	Lane, J.
Childers, D.	Gallen	Henderson	Lewis
Childers, W. D.	Glisson	Holloway	MacKay
Deeb	Gordon	Johnston	McClain
Dunn	Graham	Lane, D.	Myers

Peterson	Saylor	Thomas, P.	Wilson
Plante	Scarborough	Tobiassen	Winn
Poston	Sims	Trask	Zinkil
Renick	Stolzenburg	Vogt	
Saunders	Thomas, J.	Ware	

Nays—None

Vote after roll call:

Yea—Spicola

Senator Plante moved that the Senate reconsider the vote by which CS for HB's 2740 and 2950 passed this day.

Senator Gordon moved that the rules be waived and the Senate immediately reconsider the vote by which CS for HB's 2740 and 2950 passed this day. The motion failed. The motion to reconsider was placed on the calendar for consideration May 26.

Senator D. Lane moved that the rules be waived and the Senate revert to the order of Motions Relating to Committee Reference and the motion failed.

On motion by Senator Brantley, the Senate proceeded to consideration of SB 586.

SB 586 was taken up, together with:

By the Committee on Commerce and Senators W. D. Childers and Brantley—

CS for SB 586—A bill to be entitled An act relating to medical practice and medical liability insurance; amending s. 627.351(8)(d), Florida Statutes, enlarging the scope of the coverage provided by the temporary joint underwriting plan and making the plan available for all health care providers; amending s. 627.351(8)(e), Florida Statutes, removing the provision requiring the Joint Underwriting Association to cancel the current policies of those who fail to pay premium contingency assessments and providing instead that the association pay no further claim on previous policies for which the policyholder fails to pay such assessments; amending s. 627.351(8)(f), Florida Statutes, removing the requirement that the temporary joint underwriting plan provide policy service through one or more insurers; amending s. 627.351(8)(h), Florida Statutes, providing that records of the JUA will not be available to the public during processing of a claim; creating s. 627.351(8)(i), Florida Statutes, defining "health care provider"; amending s. 395.18, Florida Statutes, providing that all hospitals and certain other health care facilities shall establish a risk management program; providing that two or more health care facilities may combine their risk management programs; providing for severability; providing an effective date.

—which was read the first time by title and SB 586 was laid on the table.

**The President presiding**

On motion by Senator MacKay, by two-thirds vote CS for SB 586 was read the second time by title.

Senator MacKay moved the following amendment:

**Amendment 1**—On page 6, lines 1-16, strike all of lines 1-16 and insert:

*(d) The development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents and employees of the health care facility to report injuries and adverse incidents to the hospital risk manager; and*

*(e) The development and implementation of a program designed to provide compensation to certain persons who are determined to have sustained a compensible injury pursuant to the provisions of section 4 of this act; provided that the programs required by this subsection shall be commenced in hospitals upon the effective date of this act but shall not be required in other health care facilities until one year after the effective date of this act.*

*(2) The risk-management program shall be carried out either through a person on the administrative staff of a hospital, as part of his administrative duties, by a committee of the responsibility of the governing board of the health care facility, hospital board of trustees or directors, or by the medical staff in a manner deemed appropriate; Where practical, two or more health care facilities may combine their risk management activities. Regardless of the method selected to carry out the program, one or more individuals shall be designated "risk manager" for the purposes of this chapter.*

*(3) In addition to the programs mandated by this act, other innovative approaches intended to reduce the frequency and severity of medical malpractice and patient injury claims shall be encouraged and their implementation and operation facilitated. Such additional approaches may include extending risk management programs to health care providers' offices and assuming of provider liability by a health care facility for acts or omissions occurring within the facility.*

Section 4. Medical incident committee; reports, screening, criteria, etc.—

(1) In order to implement the requirements of s. 395.18(1)(e), Florida Statutes, each health care facility shall obtain insurance coverage, shall adequately self-insure, or shall show financial responsibility by any other means set forth by rule or otherwise approved by the Department of Insurance which is in keeping with the intent of this section for purposes of compensating certain patient injuries as provided herein.

(2) The Department of Insurance shall promulgate rules and regulations to implement the requirements of this act and carry out its purposes including rules providing for an annual audit of the procedures at every hospital licensed under chapter 395. The audit shall cover both the financial aspects of the compensation system as provided in this act and the management of the medical incident reporting and risk management system. The Department of Health and Rehabilitative Services shall contract with a public or private entity to develop and operate an information system to collect, store, retrieve, and evaluate data from medical incident reports and shall consider the data from such reports in licensure and certification of health care facilities and services. The Department of Insurance and the Department of Health and Rehabilitative Services shall compile statistics on the operation of the program statewide and jointly render an annual report evaluating the program's implementation and recommendations for change, if any, to the governor and the Legislature on January 1 of each year with the first report due on January 1, 1978.

(3) Each health care facility shall establish a medical incident committee composed of the chief of the medical staff or his representative and one additional person designated by him, the presiding member of the facility's governing board or his representative, and one additional person designated by the facility's governing board. The facility's designated risk manager as defined in s. 395.18 shall serve as staff to the medical incident committee and shall carry out any functions and exercise any powers assigned or delegated to him by the medical incident committee. In the event the committee cannot achieve a majority vote on any matter under consideration pursuant to this act, a fifth member shall be added to the committee by unanimous vote of the membership. In the event the committee is unable to agree on a fifth member within forty-eight hours of the initial determination that such fifth member is needed, the committee shall immediately apply to the chief judge of the judicial circuit in which the health care facility is located for the appointment of the fifth member. The committee shall reconvene upon the appointment of the fifth member and shall reach a decision with all deliberate speed. The committee shall be governed by the procedures set forth in chapter 682, The Florida Arbitration Code, and its decisions shall be binding on practitioners in health care facilities.

(4) Whenever it appears to a health care professional or any agent or employee of a health care facility that an injury or adverse incident to a patient may have occurred, he shall immediately report the incident to the risk manager or his designee. Any such person who knowingly fails to make such a report shall be subject to discipline by the medical incident committee and other appropriate committees or agencies of the hospital. A professional health care provider who fails to report an incident of which he has knowledge involving a patient within his responsibility shall be presumed at fault by the medical incident committee and shall be held responsible for the

full cost of compensation or damages resulting from the incident. In addition, such provider shall be subject to an uninsurable assessment not to exceed \$1,000 for the purposes of funding the facility's liability protection program.

(5) Upon receiving notice from any source that an injury or adverse incident may have occurred, the risk manager shall immediately investigate the incident. At the conclusion of his investigation, he may convene the medical incident committee for purposes of determining whether a compensable injury has occurred and, if so, what compensation, if any, is to be offered to the patient. The committee shall consider the following criteria in determining whether a compensable injury has occurred:

(a) Whether the injury was the proximate result of a breach of an accepted standard of care;

(b) Whether the injury was in excess of or different from the condition for which the patient was being treated; and

(c) Whether the injury was within the necessary or reasonably foreseeable results or consequences of medical care and treatment.

Provided, these criteria shall be considered as guidelines for the committee in reaching a decision and shall not be considered binding. The committee is vested with a broad range of discretion in determining the amount of compensation, if any which is to be offered pursuant to this section. The committee shall not be bound by formal rules of evidence, it being intended that the committee is to exercise its best reasonable judgment in order to fairly and reasonably recognize the fact of an injury and, when justified by the facts and circumstances, to provide an adequate compensatory remedy to the patient.

(6) If the committee determines that a compensable injury has occurred, it may determine the amount of compensation, if any, that is to be offered to the patient. In determining such amount, the committee shall consider the following, which may be paid in cash or through services rendered:

(a) Restorative medical, nursing and hospital services;

(b) Rehabilitative services, including prosthetic devices;

(c) Payment for wage loss and other economic loss;

(d) Payment of death benefit.

If treatment and services are provided without charge to the patient, itemized billing records shall be maintained by the facility, and the provider if applicable, showing the reasonable and customary charges which would be billed to the patient if he were paying for the treatment and services, as well as any payment or reimbursement received by the facility or the provider for the rendering of such treatment and services.

(7) If it is determined that compensation is to be offered, the risk manager or his designee shall convey this information to the patient or, if the patient is legally incompetent or is incapacitated, to his legally competent representative. In conveying such offer to the patient, the risk manager or his designee shall advise the patient or his representative, in writing, of the extent of compensation offered and the tort and contract right limitations involved should he accept compensation when tendered. The Department of Insurance shall prescribe the form to be used for election by the patient to either accept or refuse the tendered compensation, and it shall include the following information:

(a) Name of patient;

(b) Injury sustained and date;

(c) Extent of treatment and rehabilitative services offered;

(d) Extent of wage loss or other economic loss offered;

(e) Extent of any death benefits offered, if applicable;

(f) Statement of the tort limitations which the patient will incur should he decide to accept the compensation offered, including the facts that benefits received in the form of wage losses or other actual monetary payments which he would receive must be repaid as a prerequisite to filing any action for damages in tort or for breach of contract, and that the reasonable value of any medical treatment or other services pro-

vided to him without charge must be repaid from any award of damages received in a settlement or judgment;

(g) Statement of other insurance benefits available to the patient which may cover all or part of the injury, including accident and health policies, workmen's compensation, veterans benefits, social security benefits, disability benefits, and any other collateral sources of indemnity; and

(h) Patient's or his representative's signed election to accept or reject benefits.

(8) In the event the patient accepts the benefits offered by the committee, the following conditions and limitations shall apply to any subsequent claim in tort or contract arising out of the same injury:

(a) Filing of the claim must occur within 24 months from the time that compensation is offered; provided that such time limit does not exceed the period of time stated in s. 95.11(4).

(b) If the patient received compensation in the form of money actually paid to him for loss of earnings or for other loss, he must repay that amount to the party which paid him and show proof of repayment as a condition to filing suit. If the patient has received compensation in the form of medical treatment, rehabilitative services or other services free of charge, the value of such treatment and services, as evidenced by the party's or facility's billing records, exclusive of amounts paid for by any collateral source of indemnity, shall be deducted from the amount of damages awarded and shall be paid to the party or the facility which provided the treatment and services. The party or facility providing the treatment and services shall have a lien on the award in that amount, except for amounts already paid to it by collateral sources of indemnity.

(c) The amount of general damages which may be awarded to the claimant shall be limited to \$250,000.

(9) For purposes of any malpractice action in tort or contract against any health care facility offering compensation or against any physician whose alleged negligence resulted in an offer of compensation, no finding by the committee that a compensable injury has occurred and no offer or acceptance of compensation shall be construed as an admission of negligence or guilt on the part of the hospital, any employee, physician, or member of the hospital staff unless the individual against whom negligence is alleged admits to it in writing. The risk manager, members of the medical incident committee, and any person reporting a medical incident shall be immune from all liability, civil or criminal, for any action in reporting, investigating, or resolving an incident pursuant to this section, provided that they acted in good faith, reasonably, and without negligence. All reports, findings, and the actions of the committee, the department, and any appropriate licensing authority, and any documents or records relating thereto, shall not be admissible in evidence in any civil action. Furthermore, the fact that compensation was offered or provided shall not be admissible into evidence in any civil action for damages arising out of a medical incident.

Section 5. Physicians to prove financial responsibility; payments, etc.—

(1) As a prerequisite to obtaining or maintaining staff privileges in any health care facility described in s. 395.18(1) a physician must show:

Financial responsibility for any judgment against him as a result of his professional actions within the hospital. The amount of financial responsibility to be shown shall be determined by the hospital board of trustees but shall not be less than \$100,000 and shall include provisions for the advance payment of benefits for the compensation of medical injuries to patients as assessed by the medical incident committee under the procedures prescribed in this section. Such financial responsibility shall be shown by one of the following manners:

(a) By obtaining liability insurance coverage and providing the hospital with a certificate of insurance. Such liability insurance coverage shall provide that the insurer shall be bound by the findings of liability and awards of compensation made by the hospital incident committee as prescribed herein;

(b) By posting a bond in an appropriate amount which is conditioned so as to render payment upon any of the circumstances set forth herein;

(c) By rendering proof of self-insurance in a manner to be prescribed by the Department of Insurance; and

(d) By any other means set forth by rule of the Department of Insurance which is in keeping with the intent of this section.

(2)(a) The physician and health care facility shall enter an agreement that each will be bound by the findings and determinations of the facility's medical incident committee on all issues within its responsibility as provided in this act. Issues which may be decided by the committee include findings of negligence and determinations that compensation shall be paid to injured patients and the amount of such compensation. The procedures used by the committee shall be governed by the provisions of Chapter 682, Florida Arbitration Code. The physician or hospital may appeal the committee's decisions to the District Court of Appeal only on the grounds stated in Chapter 682, and in such appeals, the prevailing party shall be entitled to reasonable costs and attorney's fees;

(b) The physician and health care facility shall agree to consent to a unified defense if both are joined in any civil action for medical malpractice unless there would be a clear conflict of interest for a unified defense.

(c) The physician and health care facility shall agree not to negotiate or attempt to secure a release from liability from a patient for an injury sustained in the health care facility without the approval of the committee.

(3) Upon receiving an incident report which indicates that a compensable injury may have occurred, which may result in any allocations of liability by the medical incident committee, the risk manager shall immediately notify any persons or parties involved in such incident of their potential liability. All of such persons or parties shall be furnished with copies of the incident report and all other reports or documents relating to the incident, as well as reasonable notice and opportunity to be heard at any meetings in which payment or allocation of liability is discussed.

(4) In the event that the committee determines that the amount to be charged against a person or party will or may exceed the amount within its authority to obligate with or without the approval of such person or party, it shall proceed immediately with arbitration procedures under Chapter 682. Such procedures shall be binding, except for the right to appeal to the district court of appeals to vacate the award on the grounds stated in Chapter 682, Florida Statutes.

(5) In the event the committee determines that a compensable medical injury has occurred and that compensation is to be offered to the injured patient, it shall determine whether, and to what extent, there is a reasonable probability that such injury was proximately caused by a breach of an accepted standard of care of a physician. If the committee determines probable liability on the part of the physician, it shall determine the extent to which such liability was the proximate cause of the injury and may assess the physician for that portion of the total amount of compensation being offered which is equivalent to the physician's degree of responsibility. In any proceedings by the committee to determine if a physician was negligent and, if so, whether the physician's negligence was the proximate cause of a compensable injury, the committee shall give prompt notice to the physician's insurer, if any, and allow the insurer to participate in the deliberations and determinations of the committee. The physician's insurer shall be bound by the final determination of the committee on issues of liability for a breach of an accepted standard of care and on the amount of any compensation assessed against the physician. If the physician or his insurer refuses to make payments assessed by the committee, the committee may, with the approval of the health care facility's governing board, make payments from the health care facility's self-insurance, as authorized in this section. The health care facility's self insurance shall have a lien against the physician to the extent of the committee's assessment unless the assessment is reversed by appeal pursuant to Chapter 682. The health care facility may suspend the staff privileges of any physician who refuses payment of any assessment made by the committee for his negligence until he pays the assessment or has the assessment reversed.

(6) In the event the committee determines that a physician breached an acceptable standard of care pursuant to this act, a full report of such determination shall be made to the board of medical examiners or other appropriate licensing agency. If the board or agency receives three such reports concerning

a given physician within a twelve-month period, it shall conduct an investigation into the fitness of said physician to practice pursuant to the appropriate chapter of these Statutes.

(7) Nothing in this act except the provisions of subsection (2)(c) shall preclude a hospital or physician from obtaining a total or partial release from liability from any patient who sustained or may have sustained a medical injury, regardless of whether compensation is tendered or accepted. Any such release shall be binding on the patient unless it can be shown that it was obtained by fraud or duress or that the patient was not adequately informed as to his rights and remedies prior to executing such release.

(8) In any case in which compensation is paid to a patient and negligence is determined by the medical incident committee to be the proximate cause of the patient's injury, the committee shall be responsible for determining the percentage of fault attributable to any of the parties involved. In the event that a claimant brings a civil action for medical malpractice allegedly occurring in a health care facility, there shall be no allocation of damages by the trier of fact among defendants, if there is more than one party defendant. If the trier of fact determines that liability exists on the part of any party, it shall only determine the fact of liability and the amount of damages to be awarded to the claimant. If more than one defendant is found liable, the medical incident committee at the health care facility where the injury occurred shall make a binding allocation of damages among the parties.

(9) The health care facility's insurance or self-insurance shall be responsible to the same extent for payments of compensation upon a finding and assessment by the committee as the physician and his insurer. The committee may assess the hospital's self-insurance or insurance for compensating any injured patient, whose injury is determined by the committee to have resulted from any cause other than the negligence of a physician. In addition the committee may require payments to be made by the hospital's insurance or self-insurance if a physician has been determined negligent and he or his insurer refuses to pay or does not pay for any other reason. If a hospital or its insurer refuses to pay compensation awarded by the committee, the Department of Insurance may levy a fine of up to \$1,000 against the hospital and take other disciplinary measures as appropriate and as prescribed by rule and regulation of the department.

#### Section 6. Collateral sources of indemnity.—

(1) In any action of tort or contract based upon medical negligence the plaintiff or his legal representative may seek to recover, in addition to other damages recoverable by law, damages for the cost of medical care, custodial care or rehabilitative services, loss of earnings, or other economic loss not paid or payable from personal injury protection benefits; provided that any defendant may introduce evidence that any such cost or expense has been or will be replaced or indemnified in whole or in part from any collateral source pursuant to the United States Social Security Act, any state or federal income disability act, any health, sickness, or income-disability insurance, accident insurance providing health benefits or income-disability coverage, or any contract or agreement with any group, organization, partnership, corporation or agency of federal, state, or local government. This section shall not apply to life insurance benefits, or any other collateral source of indemnity expressly excluded from evidence by statute. When the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount which the plaintiff has paid, contributed, or forfeited to secure his right to any insurance benefits concerning which the defendant has introduced evidence.

(2) Unless otherwise expressly provided by law, a collateral source of indemnity described in subsection (1) shall not be subrogated to the rights of the plaintiff against a defendant.

Section 7. Itemized verdict.—In any action by a patient against a health care provider in a tort or contract claim for malpractice in which the trier of fact determines that liability exists on the part of the defendant, the trier of fact shall, as a part of the verdict, itemize the amounts to be awarded to the claimant into the following categories of damages:

(1) Amounts intended to compensate the claimant for reasonable expenses which have been incurred or which will be incurred for necessary medical, surgical, x-ray, dental, and

rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services, drugs, and therapy;

(2) Amounts intended to compensate the claimant for lost wages or other income and other actual economic losses which have been incurred or which will be incurred; and

(3) Amounts intended to compensate the claimant for pain and suffering, loss of companionship, embarrassment, and other items of general damages which have been incurred or will be incurred in the future.

(4) Each category of damages shall be further itemized into amounts intended to compensate for losses which have been incurred prior to the verdict and amounts intended to compensate for losses to be incurred in the future. Future damages itemized under subsections (1) and (2) of this section shall be computed before and after reduction to present value. Future damages itemized under subsection (3) of this section shall not be reduced to present value. In itemizing amounts intended to compensate for future losses, the trier of fact shall set forth the period of years over which such amounts are intended to provide compensation.

Section 8. Alternative methods of payment of damage awards.—In any action by a patient against a health care provider in a tort or contract claim for malpractice in which the trier of fact determines that the amount necessary to compensate the claimant for future losses exceeds \$100,000 payment of amounts intended to compensate the claimant for losses to be incurred in the future shall be made by one of the following means:

(1) The defendant may make a lump sum payment for all damages so assessed, with future economic losses and expenses reduced to present value; or

(2)(a) The court shall, at the request of either party, enter a judgment ordering the damages for future losses be paid in whole or in part by periodic payments rather than by a lump sum payment. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments which will compensate the judgment creditor for such future damages. The total of such periodic payments shall be equal to the amount of all future damages before any reduction to present value. The period of time over which such periodic payments shall be made shall be the period of years determined by the trier of fact in arriving at its itemized verdict. The court may order that the amounts of the payments be equal or vary in amount depending upon the probable need of the claimant. The judgment shall provide that all economic losses and expenses incurred during any given period be paid by the defendant even though they exceed the specified payment; provided that there shall be no requirement to pay more than the original lump sum judgment before any reduction to present value and provided that, if any periodic payments exceed the amount specified by the judgment, successive payments shall be reduced accordingly until the entire judgment is paid.

(b) As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor to post security adequate to assure full payment of such damages awarded by the judgment. If the judgment debtor is unable to post the required security, the court shall order that all damages, both past and future, be paid to claimant in a lump sum and periodic payments shall not be authorized in such a case.

Upon termination of periodic payments of future damages, the court shall order the return of such security, or so much as remains, to the judgment debtor. In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the required periodic payments the court shall find the judgment debtor in contempt and, in addition to the required periodic payments, shall order the judgment debtor to pay the claimant all damages caused by the failure to make such periodic payments, including court costs and attorney's fees. If insolvency of the judgment debtor is proven to the court to be probable, the court may order that the balance of payments due be placed in trust for the benefit of the claimant.

(c) The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval

between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall only be subject to modification as specified in this section.

(d) If the claimant has been awarded damages to be discharged by periodic payments and the claimant dies prior to the termination of the period of years during which such payments are to be made, the liability of the defendant for future expenses and for general damages shall cease and the estate of the claimant shall have no claim for such amounts. In such event, the remaining balance for all amounts to be paid for loss of earnings shall be paid into the estate of the claimant in a lump sum.

(e) Claimant's attorney's fee, if payable from the judgment, shall be based upon the total judgment adding all amounts awarded for past and future damages. The attorney's fee shall be paid from past and future damages in the same proportion, and the periodic payments shall be reduced by the amount of attorney's fees paid from future damages payable. The attorney's fee may be paid in a lump sum upon entry of judgment, or at the attorney's option, periodically in conjunction with the claimant's payment. If paid periodically, the attorney's fee shall be paid as long as payments are made to the claimant with the remaining balance due paid in a lump sum if the claimant dies prior to all payments having been made.

(f) Nothing in this section shall preclude any other method of payment of awards if such method is consented to by the parties.

Section 9. Medical negligence; standards of recovery, etc.—

(1) In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider, as defined in s. 627.351(8)(i), Florida Statutes, the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the health care provider represented a breach of the accepted standard of care for that health care provider. The accepted standard of care for a given health care provider shall be that level of care, skill, and treatment which is recognized by a reasonably prudent similar health care provider as being acceptable under similar conditions and circumstances.

(2)(a) If the health care provider whose negligence is claimed to have created the cause of action is not certified by the appropriate American Board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a "similar health care provider" is one who:

1. Is licensed by the appropriate regulatory agency of this state;
2. Is trained and experienced in the same discipline or school of practice; and
3. Practices in the same or similar medical community.

(b) If the health care provider whose negligence is claimed to have created the cause of action is certified by the appropriate American Board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a "similar health care provider" is one who:

1. Is trained and experienced in the same specialty; and
2. Is certified by the appropriate American Board in the same specialty.

(c) The purpose of this subsection is to establish a relative standard of care for various categories and classifications of health care providers. Any health care provider may testify as an expert in any action if he is a "similar health care provider" pursuant to paragraph (a) or (b) or, if he is not a similar health care provider pursuant to paragraphs (a) and (b) and, in the satisfaction of the court, he possesses sufficient training, experience, and knowledge to provide such expert testimony as to the acceptable standard of care in a given cause.

(3) It is not a breach of an accepted standard of care for a health care provider to choose one of several alternative methods or means of rendering professional health care services when the particular method or means chosen is recognized to be proper by a reasonable minority of reasonably prudent similar health care providers as being acceptable under similar conditions and circumstances.

(4) If the injury is claimed to have resulted from the negligent affirmative medical intervention of the health care provider, the claimant must show the following in order to prove a breach of an accepted standard of care:

(a) The injury was not within the necessary or reasonably foreseeable results of the surgical, medicinal, or diagnostic procedure constituting the medical intervention if the intervention from which the injury is alleged to have resulted was carried out in accordance with an acceptable standard of care by a reasonably prudent similar health care provider.

(b) The provisions of this subsection shall apply only when the medical intervention was undertaken with the informed consent of the patient in compliance with the provisions of s. 768.132, Florida Statutes.

(5) The existence of a medical injury shall not create any inference or presumption of negligence against a health care provider and the claimant must maintain the burden of proving that an injury was proximately caused by a breach of the accepted standard of care by the health care provider.

Section 10. Remittitur and additur.—

(1) In any action for the recovery of damages based on personal injury or wrongful death, whether in tort or in contract, wherein the trier of fact determines that liability exists on the part of the defendant and a verdict is rendered which awards money damages to the plaintiff, it shall be the responsibility of the court, upon proper motion, to review the amount of such award to determine if such amount is excessive or inadequate in light of the facts and circumstances which were presented to the trier of fact. If the court finds that the amount awarded is excessive or inadequate it shall order a remittitur or additur as the case may be. If the party adversely affected by such remittitur or additur does not agree, the court shall order a new trial in the cause.

(2) In determining whether an award is excessive or inadequate in light of the facts and circumstances presented to the trier of fact and in determining the amount, if any, that such award exceeds a reasonable range of damages, the court shall consider the following criteria:

(a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;

(b) Whether it clearly appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;

(c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and

(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

(3) It is the intent of the Legislature to vest the trial courts of this state with the discretionary authority to review the amounts of damages awarded by a trier of fact in light of a standard of excessiveness or inadequacy. The Legislature recognizes that the reasonable actions of a jury are a fundamental precept of American jurisprudence and that such actions should be disturbed or modified with caution and discretion. However, it is further recognized that a review by the courts in accordance with the standards set forth in this section provides an additional element of soundness and logic to our judicial system and is in the best interests of the citizens of Florida.

Section 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 12. This act shall take effect July 1, 1976, except for sections 4 and 5 which shall take effect January 1, 1977.

Senator MacKay moved the following amendment to Amendment 1 which was adopted:

Amendment 1A—On page 4, line 18, insert after "knowledge": under circumstances which amount to fraudulent withholding of facts

Senator Dunn moved the following amendment to Amendment 1 which failed:

Amendment 1B—On page 6, after line 26 insert: (c) The actual or probable cause or causes of the injury or death; (Reletter successive subparagraphs)

Senator Dunn moved the following amendment to Amendment 1 which was adopted:

Amendment 1C—On page 7, strike lines 17 and 18 and insert: (h) A written endorsement to or on the form, executed by the patient or his legal representative, evidencing the acceptance or rejection of the benefits offered by or through the medical incident committee. If the patient elects to accept such benefits a written waiver of rights shall be executed and acknowledged by the patient or by his legal representative, thereby specifically waiving the patient's rights which are impaired or abrogated by or as a result of the patient's election to accept such benefits.

Senators MacKay and Vogt offered the following amendment to Amendment 1 which was moved by Senator MacKay and adopted:

Amendment 1D—On page 6, line 14, strike "of" and insert: "or"

Senators Ware, McClain and Wilson offered the following amendment to Amendment 1 which was moved by Senator Ware and failed:

Amendment 1E—On page 7, line 5 strike everything after "offered," and all of lines 6 through 11 inclusively and insert: including the facts that benefits received in the form of wage losses, other actual monetary payments, the reasonable value of any medical treatment or other services provided to him without charge must be repaid from any award of damages received in a settlement or judgment;

The vote was:

Yeas—9

Deeb	McClain	Spicola	Wilson
Dunn	Plante	Ware	
Hair	Scarborough		

Nays—23

Mr. President	Graham	MacKay	Thomas, P.
Childers, D.	Henderson	Peterson	Trask
Childers, W. D.	Johnston	Poston	Vogt
Firestone	Lane, D.	Renick	Winn
Gallen	Lane, J.	Sims	Zinkil
Glisson	Lewis	Stolzenburg	

Senator McClain moved the following amendment to Amendment 1 which was adopted:

Amendment 1F—On page 6, line 4, strike period, insert "," and between lines 4 and 5 insert: (e) Payment of funeral expenses

On motion by Senator Dunn, the Senate reconsidered the vote by which Amendment 1B failed.

Amendment 1B was adopted.

Senator Ware moved the following amendment to Amendment 1 which was adopted:

Amendment 1G—On page 8, line 30 and page 9, line 1 strike "any appropriate licensing authority,"

On motion by Senator Brantley, the rules were waived and time of adjournment was extended until final consideration of CS for SB 586 and motions and announcements.

**Senator Scarborough presiding**

Senator Myers moved the following amendment to Amendment 1 which failed:

**Amendment 1H**—On page 8, strike lines 12 and 13

Senator McClain moved the following amendment to Amendment 1 which was adopted:

**Amendment 1I**—On page 9, line 1, strike "any documents relating thereto," and on page 8, line 30, after "Committee" insert: and

Senator P. Thomas moved the following amendment to Amendment 1 which was adopted:

**Amendment 1J**—On page 10, line 10, after the "\$100,000" add: per incident

Senators Ware and Dunn offered the following amendment to Amendment 1 which was moved by Senator Ware and failed:

**Amendment 1K**—On page 17, line 13, after "losses" insert: as set out in subsections (1) and (3) of Section 7.

**The President presiding**

Senators Ware and Dunn offered the following amendment to Amendment 1 which was moved by Senator Ware and adopted:

**Amendment 1L**—On page 23, on lines 14, 17 and 21 after "is" insert: clearly

Senator D. Lane moved the following amendment to Amendment 1 which failed:

**Amendment 1M**—On page 24 between lines 21 and 22, insert: 95.11 Limitations other than for the recovery of real property.—

**(4) WITHIN TWO YEARS.—**

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

(b) An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred ~~or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.~~ An "action for medical malpractice" is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care. The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. ~~In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury within the 1 year period, the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred.~~

(c) An action to recover wages or overtime or damages or penalties concerning payment of wages and overtime.

(d) An action for wrongful death.

Senator Myers moved the following amendments to Amendment 1 which were adopted:

**Amendment 1N**—On page 10, strike lines 22-24 and insert: (b) By presentation of a sworn financial statement in a form generally accepted and used by financial institutions in the community where the health care facility is located.

**Amendment 1O**—On page 8, line 28, strike "reasonably,"

Senator Brantley moved that the Senate reconsider the vote by which Amendment 1N was adopted. The motion failed.

Senator Myers moved that the Senate reconsider the vote by which Amendment 1N was adopted. The Senate reconsidered and by permission Senator Myers withdrew Amendment 1N.

Senator Zinkil moved the following amendment to Amendment 1 which was adopted:

**Amendment 1P**—On page 10, line 26, strike "and" and insert: or

Senator Dunn moved the following amendment to Amendment 1 which was adopted:

**Amendment 1Q**—On page 9, strike line 3 and insert after "action": arising out of a medical incident, unless the court determines, in an in camera proceeding, that the evidentiary value of the information sought to be admitted clearly outweighs the public policy on which the foregoing evidentiary exclusion is founded

Amendment 1 as amended was adopted.

Senator MacKay moved the following amendments which were adopted:

**Amendment 2**—On page 2, line 3, before the enacting clause insert: WHEREAS, despite the responsive and responsible actions of the 1975 session of the legislature, professional liability insurance premiums for Florida physicians have continued to rise and, according to the best available projections, will continue to rise at a dramatic rate, and

WHEREAS, insurance companies across America are continuing to withdraw from the medical professional liability insurance market so that such insurance, even at exorbitant rates, is becoming virtually unavailable in the voluntary private sector, and

WHEREAS, the only professional liability insurance which is available today to Florida's 12,000 physicians is offered through a legislatively mandated Joint Underwriting Association or through physician-owned self-insurance trusts, and

WHEREAS, the maximum rates for essential medical specialists such as cardio-vascular surgeons, neurosurgeons, orthopedic surgeons, and anesthesiologists range from \$8,200 in physician-owned trusts to \$24,000 through the JUA, and

WHEREAS, a certain amount of these premium costs are passed on to the consuming public through higher costs for health care services in addition to the heavy and costly burden of "defensive medicine" as physicians are forced to practice with an overabundance of caution to avoid potential litigation, and

WHEREAS, this insurance crisis threatens the quality of health care services in Florida as physicians become increasingly wary of high-risk procedures and are forced to downgrade their specialties to obtain relief from oppressive insurance rates, and

WHEREAS, this crisis also poses a dire threat to the continuing availability of health care in our state as new young physicians decide to practice elsewhere because they cannot afford high insurance premiums and as older physicians choose premature retirement in lieu of a continuing diminution of their assets by spiraling insurance rates, and

WHEREAS, our present tort law/liability insurance system for medical malpractice will eventually break down and costs will continue to rise above acceptable levels, fundamental reforms of said tort law/liability insurance system must be undertaken, and

WHEREAS, the continuing crisis proportions of this compelling social problem demand immediate and dramatic legislative action, NOW, THEREFORE,

**Amendment 3**—On page 1 in title, line 31, after the semicolon insert: requiring each health care facility to show financial responsibility for purposes of compensating certain patient injuries; directing the Department of Insurance to adopt rules to

implement this act; requiring the Department of Insurance to provide for an annual audit of the procedures of certain hospitals; directing the Department of Health and Rehabilitative Services to contract for the development and operation of an information system to collect and evaluate data from medical incident reports and to use such data in the licensing and certification of health care facilities and services; requiring the Department of Health and Rehabilitative Services and the Department of Insurance to submit annual evaluative reports to the Governor and the Legislature, beginning in 1978; providing for the establishment of a medical incident committee; prescribing the composition of said committee; requiring health care professionals, agents and employees of health care facilities, and health care providers to report injury or adverse incidents to a patient to the risk manager; providing penalties for failure to report; providing for investigation of such incidents and injuries by the risk manager; providing criteria for determining if injury has occurred and for the amount of compensation to be offered the patient; providing for conveyance of the offer to the patient by the risk manager; providing limitations on subsequent claims arising out of the same injury if the patient accepts the benefits offered; providing that the finding of the committee that a compensable injury has occurred or an offer of compensation shall not be construed as an admission of negligence or guilt; providing an exception; providing immunity for certain actions in relation to resolving an incident; excluding certain documents, reports, findings and other evidence from admission in any civil action; providing an exception; requiring a physician to show financial responsibility as a prerequisite to staff privileges; providing a minimum amount of financial responsibility; requiring physicians and health care facilities to agree to certain items; providing certain procedures and requirements for medical incident committee after receiving report of compensable injury; providing for report to appropriate licensing boards; providing for allocation of damages among parties liable; providing penalties; providing for introduction of evidence on collateral sources in actions; providing for itemized verdicts; providing for alternative methods of payment of damage awards, providing for the standard of care and breach of standard of care by health care providers; providing for remittitur or additur to damage award by court.

On motion by Senator MacKay, by two-thirds vote CS for SB 586 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—32

Mr. President	Gordon	McClain	Stolzenburg
Brantley	Graham	Myers	Thomas, J.
Childers, D.	Henderson	Peterson	Thomas, P.
Childers, W. D.	Holloway	Plante	Tobiassen
Dunn	Johnston	Poston	Trask
Firestone	Lane, D.	Renick	Vogt
Gallen	Lewis	Sayler	Winn
Glisson	MacKay	Sims	Zinkil

Nays—6

Hair	Scarborough	Ware	Wilson
Lane, J.	Spicola		

Vote after roll call:

Yea—Deeb

**Explanation of vote**

I voted against CS for SB 586 (Malpractice) because, in my opinion, it will serve to provide unequal protection of the law to our people in Florida. Further, it will prohibit access to the courts as provided under Article I, Section 21, Florida Constitution, to persons with limited economical means.

*Lori Wilson, 16th District*

Senator MacKay moved that the rules be waived and CS for SB 586 after being engrossed be immediately certified to the House.

Senator Johnston moved that the Senate reconsider the vote by which CS for SB 586 passed this day. The motion was placed on the calendar for consideration May 26.

On motion by Senator Sayler, the rules were waived and SB 1441 was ordered immediately certified to the House.

On motion by Senator Gallen, the Committee on Judiciary-Civil was granted permission to meet immediately upon adjournment until 7:00 p.m.

On motions by Senator Gordon, the rules were waived and by two-thirds vote Senate Bills 866, 760, 84, 642, 718, 1181, 1373 and 678 were withdrawn from the Committee on Ways and Means.

On motion by Senator Henderson, the rules were waived and by two-thirds vote SB 1231 was withdrawn from the Committee on Judiciary-Civil.

On motions by Senator Myers, the rules were waived and by two-thirds vote Senate Bills 602, 1093 and 1188 were withdrawn from the Committee on Governmental Operations.

On motion by Senator Stolzenburg, the rules were waived and by two-thirds vote SB 1195 was withdrawn from the Committee on Commerce.

Senator Saunders moved that the Senate reconsider the vote by which SB 501 passed this day.

The motion was placed on the calendar for consideration May 26.

On motions by Senator Ware, the rules were waived and Senate Bills 989 and 928 were immediately certified to the House.

On motions by Senator D. Lane, the rules were waived and by two-thirds vote SB 513 was withdrawn from the Committees on Judiciary-Criminal and Judiciary-Civil.

On motion by Senator Saunders, the rules were waived and by two-thirds vote HB 2749 was withdrawn from the Committee on Judiciary-Civil.

Senator W. D. Childers moved that the Senate revert to the order of Matters on Reconsideration for the purpose of taking up the motion to reconsider the vote by which SB 785 passed May 19.

Senator Glisson moved as a substitute motion that the Senate do now adjourn. The motion was adopted.

Senator W. D. Childers moved that the motion to reconsider the vote by which SB 785 passed on May 19 be taken up.

The President ruled that the motion to adjourn had been adopted and the motion to reconsider was not available, and pursuant to the rules the motion was now abandoned.

**Explanation of vote on SB 785**

I voted "Yea" on the passage of SB 785 in order to be in the position to make the motion to reconsider. I have now been precluded from reconsidering the passage of that bill so I respectfully request that the record reflect that I *was*, and *continue* to be, against the bill but voted "yea" so that I might move to reconsider.

*W. D. Childers, 1st District*

**CO-INTRODUCER**

Senator Peterson—SB 568

The Journal of May 19 was corrected and approved.

The Senate adjourned at 6:18 p.m. to reconvene at 9:00 a.m., May 26, 1976.