Journal of the Senate

Number 3—Special Session E **Thursday, February 4, 1988**

CALL TO ORDER

The Senate was called to order by the President at 9:26 a.m. A quorum present—38:

Mr. President	Frank	Kirkpatrick	Plummer
Barron	Girardeau	Kiser	Scott
Beard	Gordon	Langley	Stuart
Brown	Grant	Lehtinen	Thomas
Childers, D.	Grizzle	Malchon	Thurman
Childers, W. D.	Hair	Margolis	Weinstein
Crawford	Hollingsworth	McPherson	Weinstock
Crenshaw	Jenne	Meek	Woodson
Deratany	Jennings	Myers	
Dudley	Johnson	Peterson	

Excused: Senators Hill and Ros-Lehtinen

PRAYER

The following prayer was offered by Senator Brown:

Dear Father in whom we live and move and have our very being, we thank you for your merciful kindness and seek, dear Father, your forgiveness for all our shortcomings. We realize, Father, that when we have done our best, we are still thy unprofitable servants. Be with us especially today as we seek to end this Special Session that the product of our endeavors will prove a blessing; and our actions will be such as glorify thy name. Help us always to try to do our very best in our work, in our representation and to be the people that you would have us. It is in your name we pray. Amen.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote of the membership of the House and passed as amended HB 8-E and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Carlton—

HB 8-E—A bill to be entitled An act relating to driving under the influence; amending s. 316.192, F.S., providing an additional penalty for reckless driving under certain circumstances; amending s. 316.193, F.S., providing clarifying language with respect to convictions for driving under the influence with a certain blood alcohol level; providing clarifying language with respect to substance abuse education, evaluation, and treatment for a violation of law relating to driving under the influence; amending s. 316.1932, F.S., deleting reference to a prearrest breath test; authorizing the use of infrared light measuring devices approved by the Department of Health and Rehabilitative Services for breath testing of motorists to determine blood alcohol levels; amending s. 316.1933, F.S., authorizing blood testing of certain persons under certain circumstances; deleting a restriction on certified paramedics withdrawing blood for the purpose of determining alcohol content; amending s. 316.1934, F.S.; authorizing the use of infrared light measuring devices approved by the Department of Health and Rehabilitative Services for breath testing of motorists to determine blood alcohol levels; providing an effective date.

On motion by Senator Johnson, by the required constitutional two-thirds vote of the Senate, HB 8-E was admitted for introduction and referred to the Committee on Judiciary-Criminal.

On motions by Senator Johnson, by two-thirds vote HB 8-E was withdrawn from the Committee on Judiciary-Criminal and by unanimous consent taken up instanter.

On motions by Senator Johnson, by two-thirds vote HB 8-E 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—38

Mr. President	Frank	Kirkpatrick	Plummer
Barron	Girardeau	Kiser	Scott
Beard	Gordon	Langley	Stuart
Brown	Grant	Lehtinen	Thomas
Childers, D.	Grizzle	Malchon	Thurman
Childers, W. D.	Hair	Margolis	Weinstein
Crawford	Hollingsworth	McPherson	Weinstock
Crenshaw	Jenne	Meek	Woodson
Deratany	Jennings	Myers	
Dudley	Johnson	Peterson	

Nays—None

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 6-E and requests the concurrence of the Senate. In the event the Senate refuses to concur, the House requests the appointment of a Conference Committee.

John B. Phelps, Clerk

CS for SB 6-E—A bill to be entitled An act relating to medical incidents; providing legislative findings and intent regarding regulatory reform; amending s. 20.30, F.S.; creating the Division of Medical Quality Assurance within the Department of Professional Regulation and creating the Bureau of Medical Regulation within said division; providing duties of the division and bureau; requiring a report; placing the licensing boards for various health care professions within the division; amending s. 395.0115, F.S.; providing antitrust immunity through establishment of a state-mandated peer review process; requiring licensed facilities to provide for peer review of physicians who provide health care services at such facilities and providing procedures therefor; requiring report of final disciplinary actions to the Division of Medical Quality Assurance for further investigation; providing for peer review panel immunity and for confidentiality of records; amending s. 395.017, F.S.; providing maximum charge for copying records; providing access to confidential patient records for certain proceedings of the Department of Professional Regulation; limiting public access thereto; amending s. 395.041, F.S.; expanding internal risk management education and training requirements; requiring certain incident reports relating to surgical procedures; requiring report of certain incidents to the department; limiting public access; providing for department review and investigation of incidents which may involve conduct subject to discipline; providing administrative fines for violation of reporting requirements; providing for annual review of risk management programs; protecting risk managers from liability for implementation of risk management programs; requiring a report to the Legislature; amending s. 395.504, F.S., to correct a cross-reference; amending s. 455.225, F.S.; providing civil immunity and prohibition from discharge to persons reporting with respect to incompetence, impairment, or unprofessional conduct of specified health care providers; providing penalties; amending s. 455.241, F.S.; providing for reports of patient records; creating s. 455.2415, F.S.; providing for disclosure of patient communications under certain circumstances; amending s. 455.242, F.S.; providing for disposition of records of physicians who terminate practice or relocate; amending s. 455.245, F.S.; providing conditions for considering emergency suspension or restriction of a license; creating s. 455.247, F.S.; requiring physicians, osteopathic physicians, podiatrists, and dentists to report professional liability claims and actions to the department; specifying contents; creating s. 455.28, F.S.; requiring reporting of certain physicians for violation of grounds for disciplinary action; providing a penalty; requiring investigation of probable disciplinary violations; amending

s. 458.303, F.S.; revising exemption of certain commissioned medical officers from specified medical practice provisions; amending s. 458.307, F.S.; modifying membership of the Board of Medicine; specifying composition of probable cause panels; providing for a training program; providing for completion of a panel's work; amending s. 458.311, F.S.; relating to requirements for licensure of physicians by examination; providing for an investigative process; providing for restricted licenses; amending s. 458.313, F.S.; providing for an investigative process for licensure by endorsement; requiring certain active practice; providing for restricted licenses; amending s. 458.315, F.S.; prohibiting issuance of temporary certificates for practice in areas of critical need to certain persons by endorsement; amending s. 458.3165, F.S.; providing for biennial renewal of public psychiatry certificates; amending s. 458.319, F.S.; increasing the maximum fee for renewal of a license to practice medicine; requiring evidence of active practice for license renewal; providing for supervised practice; amending ss. 458.320 and 459.0085, F.S.; authorizing physicians and osteopathic physicians to use risk retention groups to meet financial responsibility requirements; amending s. 458.327, F.S.; providing a penalty for leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without a license; amending ss. 458.331 and 459.015, F.S.; providing additional grounds for disciplinary action against physicians and osteopathic physicians; providing penalties and providing priorities for application thereof; establishing the burden of proof for administrative actions against physicians; providing for injunctive relief; providing for department review and investigation of claims; amending ss. 458.3315, 459.0155, F.S.; providing that a physician or osteopathic physician who is believed to be impaired must execute a release of his medical records to a consultant retained by the Department of Professional Regulation and limiting the use which the consultant may make of such records; amending s. 458.337, F.S.; specifying requirements for reports by medical organizations and hospitals when the physician has resigned; amending s. 458.345, F.S.; establishing requirements for registration of resident physicians and interns; providing a fee; restricting renewal or extension; prohibiting registration of certain persons; increasing a penalty; amending ss. 458.347 and 459.022, F.S.; allowing extended temporary certification of physician assistants and osteopathic physician assistants; amending s. 459.0055, F.S.; providing for an investigative process for licensure of osteopathic physicians; amending s. 459.008, F.S.; requiring evidence of active practice for license renewal; providing for supervised practice; amending s. 459.0092, F.S.; increasing the maximum fee for renewal of a license to practice osteopathic medicine; amending ss. 460.413, 461.013, 464.018, 465.016, and 466.028, F.S.; providing additional grounds for disciplinary action against chiropractic physicians, podiatrists, nurses, pharmacists, and dentists; amending s. 627.912, F.S.; requiring insurers to report certain claims against dentists; providing for department review and investigation; providing for an annual report; amending s. 641.55, F.S.; providing for department review and investigation of certain incidents reported by health maintenance organization internal risk management programs; limiting public access; requiring report of certain incidents relating to surgical procedures; amending s. 768.13, F.S.; providing immunity from civil liability to physicians, hospitals, and certain hospital employees rendering medical care or treatment in response to an emergency within a hospital or trauma center; providing exceptions to such immunity; amending s. 768.45, F.S.; prescribing matters to be considered by the trier of fact in a claim of negligence for services provided in a hospital emergency room; limiting who may give expert medical testimony; amending s. 768.40, F.S.; providing for professional society review of certain physicians; providing specified immunity with respect thereto; amending s. 768.57, F.S.; expanding notice requirements prior to filing a claim for medical malpractice; stipulating informal discovery provisions with respect to presuit screening of such claims; prescribing conditions under which attorney's fees and costs may be awarded; providing for motions with respect to claims and denials; providing for notice to The Florida Bar and the Division of Medical Quality Assurance in certain circumstances; providing for award and payment of damages; prescribing a limit on noneconomic damages; creating s. 768.67, F.S.; prohibiting settlement agreements from denying parties thereto the right to discuss with or report to the Division of Medical Quality Assurance the events giving rise to the claim; providing positions for and an appropriation to the Department of Professional Regulation; authorizing the Board of Medicine and Board of Osteopathic Medical Examiners to make a fee assessment; requiring medical malpractice insurers to reflect certain savings in rate filings and schedules; providing an effective date.

On motion by Senator Barron, the rules were waived and the House amendments to CS for SB 6-E were not printed in the Journal.

On motions by Senator Jennings, the Senate refused to concur in the House amendments to CS for SB 6-E and requested the House to recede and in the event the House refused to recede, acceded to the request for a conference committee.

Conferees on CS for SB 6-E Appointed

The President appointed Senators Jennings, Barron, Hair, Kirkpatrick and Myers; and alternates, Senators Deratany, Kiser, Thomas and D. Childers as conferees on CS for SB 6-E. The action of the Senate was certified to the House.

On motion by Senator Deratany, the rules were waived and the Senate reverted to—

INTRODUCTION AND REFERENCE OF BILLS

On motion by Senator Deratany, by the required constitutional two-thirds vote of the Senate the following bill was admitted for introduction:

By Senator Deratany—

SB 12-E—A bill to be entitled An act relating to sales tax; repealing s. 212.065, F.S., relating to taxability of road construction; providing an exception; providing for application of such provisions under certain circumstances; providing an effective date.

—which was referred to the Committee on Finance, Taxation and Claims.

On motions by Senator Deratany, by two-thirds vote SB 12-E was withdrawn from the Committee on Finance, Taxation and Claims and by unanimous consent taken up instanter.

On motions by Senator Deratany, by two-thirds vote SB 12-E 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—36

Mr. President	Dudley	Johnson	Myers
Barron	Frank	Kirkpatrick	Peterson
Beard	Gordon	Kiser	Plummer
Brown	Grant	Langley	Scott
Childers, D.	Grizzle	Lehtinen	Thomas
Childers, W. D.	Hair	Malchon	Thurman
Crawford	Hollingsworth	Margolis	Weinstein
Crenshaw	Jenne	McPherson	Weinstock
Deratany	Jennings	Meek	Woodson

Nays—None

Vote after roll call:

Yea—Girardeau, Stuart

Recess

On motion by Senator Barron, the Senate recessed at 9:49 a.m. to reconvene at 2:00 p.m. or upon call of the President.

AFTERNOON SESSION

The Senate was called to order by the President at 2:34 p.m. A quorum present—37:

Mr. President	Frank	Kiser	Scott
Barron	Girardeau	Langley	Stuart
Beard	Gordon	Lehtinen	Thomas
Brown	Grant	Malchon	Thurman
Childers, D.	Grizzle	Margolis	Weinstein
Childers, W. D.	Hollingsworth	McPherson	Weinstock
Crawford	Jenne	Meek	Woodson
Crenshaw	Jennings	Myers	
Deratany	Johnson	Peterson	
Dudley	Kirkpatrick	Plummer	

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator Scott, by two-thirds vote SB 4-E was withdrawn from the Committee on Appropriations.

On motion by Senator Scott, by unanimous consent—

SB 4-E—A bill to be entitled An act relating to the State Group Insurance Program; amending s. 110.123, F.S., providing definitions; providing legislative intent; repealing authorization for competitive bidding to contract with health maintenance organizations; authorizing the Department of Administration to negotiate contracts with health maintenance organizations to service members of the state group insurance program; establishing maximum premiums, a minimum benefit package, and criteria to be used in negotiating health maintenance organization contracts; entitling certain health maintenance organizations to enter into contract with the Department of Administration; requiring submission of certain data elements by health maintenance organizations contracting with the state; providing an effective date.

—was taken up instanter and read the second time by title.

Senators Thomas and Hollingsworth offered the following amendment which was moved by Senator Thomas:

Amendment 1—On page 1, line 22, strike everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. A person eligible to participate in the state group health insurance plan may be authorized by rules adopted by the Department of Administration, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization which is qualified in accordance with criteria established by said rules. The offer of optional membership in a health maintenance organization permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of federal law.

2. Effective *July 1* ~~January 1~~, 1988, the Department of Administration shall, by rule, contract with health maintenance organizations to participate in the state group health insurance plan through the competitive bid process based on cost, service area, plan benefits, and accessibility. Effective January 1, 1988, all employees participating in the state group health insurance plan, irrespective of whether or not the member participates in a health maintenance organization, shall be subject to the same total premium, regardless of the state or employee share.

Section 2. This act shall take effect upon becoming a law.

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

Amendment 1A—On page 2, between lines 4 and 5, insert:

Section 2. Nothing herein shall impair the obligation of any contract properly awarded or entered into prior to the effective date of this act.

(Renumber subsequent section.)

Amendment 1 as amended was adopted.

Senators Thomas and Hollingsworth offered the following amendment which was moved by Senator Thomas:

Amendment 2—In title, on page 1, line 1, strike everything before the enacting clause and insert:

A bill to be entitled An act relating to the State Group Insurance Program Law; amending s. 110.123, F.S.; delaying the requirement that the Department of Administration contract with health maintenance organizations on a competitive bid basis; providing an effective date.

Senator Dudley moved the following amendment to Amendment 2 which was adopted:

Amendment 2A—On page 1, line 18, following the semicolon (;) insert: prohibiting impairment of the obligations of contract;

Amendment 2 as amended was adopted.

On motion by Senator Thomas, by two-thirds vote SB 4-E as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—25

Mr. President	Girardeau	Malchon	Thomas
Beard	Gordon	Margolis	Thurman
Brown	Grant	McPherson	Weinstein
Childers, W. D.	Hollingsworth	Meek	Weinstock
Crawford	Jenne	Peterson	
Dudley	Johnson	Scott	
Frank	Kirkpatrick	Stuart	

Nays—10

Crenshaw	Jennings	Lehtinen	Woodson
Deratany	Kiser	Myers	
Grizzle	Langley	Plummer	

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote of the membership of the House and passed as amended SB 12-E and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 12-E—A bill to be entitled An act relating to sales tax; repealing s. 212.065, F.S., relating to taxability of road construction; providing an exception; providing for application of such provisions under certain circumstances; providing an effective date.

Amendment 1—On page 1, strike lines 23 and 24, and insert:

Section 2. Subsection (1) of section 212.0598, Florida Statutes, as amended by chapter 87-548, Laws of Florida, is amended, subsection (2) is added to said section and current subsections (2) through (4) are renumbered as subsections (3) through (5), to read:

212.0598 Special provisions; air carriers.—

(1) Notwithstanding other provisions of this part to the contrary, any air carrier utilizing mileage apportionment for corporate income tax purposes in this state pursuant to chapter 214 may elect, upon the conditions prescribed in subsection *(4)* ~~(3)~~, to be subject to the tax imposed by this part on tangible personal property according to the provisions of this section.

(2) The basis of the tax shall be the ratio of Florida mileage to total mileage as determined pursuant to part IV of chapter 214. The ratio shall be determined at the close of the carrier's preceding fiscal year. The ratio shall be applied each month to the carrier's total systemwide gross purchases of tangible personal property and services otherwise taxable in Florida.

Section 3. Effective upon this act becoming a law and operating retroactively to February 1, 1988, section 49 of chapter 87-548, Laws of Florida, is amended to read:

Section 49. *(1)* In the case of any *qualified* ~~written~~ contract, *as defined in subsection (2),* ~~signed prior to May 1, 1987, or any offer submitted prior to such date which was binding on the offeror and was accepted, or any contract funded by government bonds sold before May 1, 1987, or contracted prior to such date to be sold, for constructing improvements to real property~~, the ~~prime~~ contractor~~, as defined in s. 212.0594, Florida Statutes, as created by chapter 87-101, Laws of Florida,~~ responsible for performing the contract shall pay the sales or use tax on materials necessary to complete the contract at the rate provided in this act. Such contractor, within 3 years after the effective date of this section, may apply for one refund of the additional sales or use tax paid on materials necessary to complete the contract. Application for such refund shall be pursuant to Department of Revenue rule. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The Department of Revenue shall, within 30 days after approval of a complete application, certify to the Comptroller information necessary for issuance of a refund to the applicant of said additional sales or use taxes. Alternatively, for up to a 3-year period after the effective date of this section, pursuant to Department of Revenue rule, *such* a contractor may apply quarterly for a refund of taxes paid pursuant to the contract during the previous quarter. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this section, in addition to being liable for repayment of any refund

fraudulently obtained plus a penalty of 100 percent of the refund, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes. This section shall take effect February 1, 1988.

(2) As used in this section, a "qualified contract" means:

(a) A contract signed prior to December 11, 1987, or any offer submitted prior to such date which was binding on the offeror and was accepted, for constructing improvements to real property, entered into by a subcontractor, as defined in s. 212.0594, Florida Statutes, as created by chapter 87-101, Laws of Florida, a road contractor constructing or repairing a road for a governmental entity described in s. 212.08(6), Florida Statutes, or a prime contractor, as defined in s. 212.0594, Florida Statutes, as created by chapter 87-101, Laws of Florida, constructing or repairing property used primarily for public worship; or

(b) A contract signed prior to May 1, 1987, or any offer submitted prior to such date which was binding on the offeror and was accepted, or any contract funded by government bonds sold before May 1, 1987, or contracted prior to such date to be sold, for constructing improvements to real property, entered into by a prime contractor, as defined in s. 212.0594, Florida Statutes, as created by chapter 87-101, Laws of Florida.

Section 4. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Amendment 2—On page 1, strike the entire title and insert:

An act relating to tax on sales, use, and other transactions; amending s. 212.0598, F.S.; providing basis for calculating tax for certain air carriers; repealing s. 212.065, F.S., which provides application of tax to certain road construction; providing for applicability of existing contracts; amending section 49 of chapter 87-548, Laws of Florida; extending the application of provisions which authorize a refund to certain contractors of additional taxes paid; providing effective and retroactive effective dates.

On motions by Senator Deratany, the Senate refused to concur in the House amendments and the House was requested to recede. The vote was:

Yeas—22

Mr. President	Frank	Margolis	Thurman
Brown	Hollingsworth	Meek	Weinstein
Childers, W. D.	Johnson	Myers	Weinstock
Crawford	Kirkpatrick	Peterson	Woodson
Crenshaw	Langley	Plummer	
Deratany	Lehtinen	Scott	

Nays—8

Beard	Grant	Kiser	McPherson
Gordon	Jenne	Malchon	Stuart

Vote after roll call:

Yea—Dudley

The action of the Senate was certified to the House.

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has refused to recede from House Amendments 1 and 2 to CS for SB 6-E.

The Speaker has appointed Representatives Ogden, Bell, Upchurch, Lippman and Patchett; and alternates, Representatives D. L. Jones, Thomas, Burke and Simon; as Conferees on the part of the House.

John B. Phelps, Clerk

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote of the membership of the House and passed Senate Bills 7-E, 10-E and 11-E.

John B. Phelps, Clerk

The bills contained in the foregoing message were ordered enrolled.

INTRODUCTION AND REFERENCE OF BILLS

On motion by Senator Margolis, by the required constitutional two-thirds vote of the Senate the following bill was admitted for introduction:

By Senator Margolis—

SB 13-E—A bill to be entitled An act relating to educational facilities; amending s. 235.056, F.S.; providing for separately advertising for and receiving certain bids and proposals on the financing and construction of facilities; providing an effective date.

—which was referred to the Committee on Education.

On motions by Senator Margolis, by two-thirds vote SB 13-E was withdrawn from the Committee on Education and by unanimous consent taken up instanter.

On motion by Senator Margolis, by two-thirds vote SB 13-E was read the second time by title.

Senator Peterson moved the following amendments which were adopted:

Amendment 1—On page 2, line 3, after the word "*interest.*" insert:

All activities and information, including lists of individual participants, associated with agreements made pursuant to this section shall be subject to the provisions of chapter 119 and section 286.011.

Amendment 2—In title, on page 1, line 6, after the semicolon (;) insert: providing for public disclosure of information related to lease-purchase agreements;

On motion by Senator Margolis, by two-thirds vote SB 13-E as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—31

Mr. President	Frank	Johnson	Myers
Beard	Girardeau	Kirkpatrick	Peterson
Brown	Gordon	Kiser	Stuart
Childers, W. D.	Grant	Langley	Thurman
Crawford	Grizzle	Lehtinen	Weinstein
Crenshaw	Hollingsworth	Malchon	Weinstock
Deratany	Jenne	Margolis	Woodson
Dudley	Jennings	McPherson	

Nays—None

Vote after roll call:

Yea—Meek, Thomas

By direction of the President, the proclamation extending the Legislature in Special Session was read by the Secretary:

THE FLORIDA LEGISLATURE
AMENDED JOINT PROCLAMATION

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

We, John W. Vogt, President of the Florida Senate, and Jon L. Mills, Speaker of the Florida House of Representatives, by virtue of the authority vested in us by Section 3, Article III, Florida Constitution, and Section 11.011, Florida Statutes, do hereby proclaim:

1. That Paragraph 1. of our Joint Proclamation filed January 5, 1988, is hereby amended to read:

> That the Legislature of the State of Florida is convened in Special Session pursuant to Section 3(c), Article III, Florida Constitution and Section 11.011, Florida Statutes, at the Capitol in Tallahassee, Florida, at 1:00 p.m., on Tuesday the 2nd day of February, 1988, for a period of three days, ending at 9:00 p.m., on Thursday, February 4th, 1988.

2. Except as amended by this Proclamation, the Joint Proclamation filed January 5, 1988, is ratified and confirmed.

John W. Vogt
President, The Florida Senate
February 4, 1988

Jon L. Mills
Speaker, The Florida House
of Representatives
February 4, 1988

Duly filed with and received by the
Florida Department of State this 4th
day of February, 1988 by:

Jim Smith
Secretary of State

Recess

On motion by Senator Langley, the Senate recessed at 3:48 p.m. to reconvene at 6:00 p.m., or upon call of the President.

Call to Order

The Senate was called to order by the President at 9:35 p.m. A quorum present—35:

Mr. President	Dudley	Kirkpatrick	Plummer
Barron	Frank	Kiser	Scott
Beard	Girardeau	Langley	Stuart
Brown	Grant	Lehtinen	Thomas
Childers, D.	Grizzle	Malchon	Thurman
Childers, W. D.	Hair	Margolis	Weinstein
Crawford	Jenne	Meek	Weinstock
Crenshaw	Jennings	Myers	Woodson
Deratany	Johnson	Peterson	

By direction of the President, the proclamation extending the Legislature in Special Session was read by the Secretary:

THE FLORIDA LEGISLATURE
SECOND AMENDED JOINT PROCLAMATION

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND THE FLORIDA HOUSE OF REPRESENTATIVES:

We, John W. Vogt, President of the Florida Senate, and Jon L. Mills, Speaker of the Florida House of Representatives, by virtue of the authority vested in us by Section 3, Article III, Florida Constitution, and Section 11.011, Florida Statutes, do hereby proclaim:

1. That Paragraph 1. of our Joint Proclamation filed January 5, 1988, AND FIRST AMENDED ON February 4, 1988, is hereby further amended to read:

> That the Legislature of the State of Florida is convened in Special Session pursuant to Section 3(c), Article III, Florida Constitution and Section 11.011, Florida Statutes, at the Capitol in Tallahassee, Florida, at 1:00 p.m., on Tuesday the 2nd day of February, 1988, for a period of three days, ending at 11:59 p.m., on Thursday, February 4th, 1988.

2. Except as amended by this Proclamation, the Joint Proclamation filed January 5, 1988, and our Amended Proclamation filed February 4, 1988, are ratified and confirmed.

John W. Vogt
President, The Florida Senate
February 4, 1988

Jon L. Mills
Speaker, The Florida House
of Representatives
February 4, 1988

Duly filed with and received by the
Florida Department of State this 4th
day of February, 1988 by:

Jim Smith
Secretary of State

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 4-E and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 4-E—A bill to be entitled An act relating to the State Group Insurance Program Law; amending s. 110.123, F.S.; delaying the requirement that the Department of Administration contract with health maintenance organizations on a competitive bid basis; prohibiting impairment of obligations of contract; providing an effective date.

Amendment 1—On pages 1 and 2, strike everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (3) of section 110.123, Florida Statutes, is amended to read:

110.123 State group insurance program.—

(3) STATE GROUP INSURANCE PROGRAM.—

(d)1. A person eligible to participate in the state group health insurance plan may be authorized by rules adopted by the Department of Administration, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization which is qualified in accordance with criteria established by said rules. The offer of optional membership in a health maintenance organization permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of federal law.

2. Effective *July 1* ~~January 1~~, 1988, the Department of Administration shall, by rule, contract with health maintenance organizations to participate in the state group health insurance plan through the competitive bid process based on cost, service area, plan benefits, and accessibility. Effective January 1, 1988, all employees participating in the state group health insurance plan, irrespective of whether or not the member participates in a health maintenance organization, shall be subject to the same total premium, regardless of the state or employee share.

Section 2. *Except in those areas of the State where contracts have been executed pursuant to chapter 87-156, Laws of Florida, and final agency action has occurred prior to the effective date of this act, the Department of Administration shall continue to contract with health maintenance organizations to serve members of the state group insurance program in the manner it contracted for such services prior to January 1, 1988. This section shall stand repealed effective July 1, 1988.*

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

Amendment 2—In title, on page 1, strike all of lines 7 and 8 and insert: providing for continued contracting with respect to Health Maintenance Organizations under certain circumstances; providing an effective date.

On motions by Senator Thomas, the Senate concurred in the House amendments. The vote was:

Yeas—18

Mr. President	Frank	Margolis	Thurman
Barron	Girardeau	Meek	Weinstein
Brown	Jenne	Peterson	Weinstock
Childers, W. D.	Kirkpatrick	Stuart	
Crawford	Malchon	Thomas	

Nays—16

Beard	Grant	Johnson	Myers
Crenshaw	Grizzle	Kiser	Plummer
Deratany	Hair	Langley	Scott
Dudley	Jennings	Lehtinen	Woodson

Vote after roll call:

Yea—Hollingsworth

SB 4-E as amended failed to pass. The vote was:

Yeas—16

Mr. President	Crawford	Malchon	Thomas
Barron	Frank	Margolis	Thurman
Brown	Girardeau	Meek	Weinstein
Childers, W. D.	Jenne	Stuart	Weinstock

Nays—16

Beard	Grant	Johnson	Myers
Crenshaw	Grizzle	Kiser	Plummer
Deratany	Hair	Langley	Scott
Dudley	Jennings	Lehtinen	Woodson

Vote after roll call:

Yea—Hollingsworth

Motion to Reconsider

Senator Hair moved that the Senate reconsider the vote by which SB 4-E as amended failed to pass. The motion was adopted. The vote was:

Yeas—21

Mr. President	Frank	Malchon	Thurman
Barron	Girardeau	Margolis	Weinstein
Brown	Hair	Meek	Weinstock
Childers, W. D.	Hollingsworth	Peterson	
Crawford	Jenne	Stuart	
Deratany	Kirkpatrick	Thomas	

Nays—13

Beard	Grizzle	Langley	Woodson
Crenshaw	Jennings	Lehtinen	
Dudley	Johnson	Myers	
Grant	Kiser	Plummer	

The question recurred on final passage of SB 4-E as amended.

SB 4-E passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—20

Mr. President	Frank	Kirkpatrick	Stuart
Barron	Girardeau	Malchon	Thomas
Brown	Hair	Margolis	Thurman
Childers, W. D.	Hollingsworth	Meek	Weinstein
Crawford	Jenne	Peterson	Weinstock

Nays—15

Beard	Grant	Kiser	Plummer
Crenshaw	Grizzle	Langley	Scott
Deratany	Jennings	Lehtinen	Woodson
Dudley	Johnson	Myers	

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has refused to recede from House Amendments 1 and 2 to SB 12-E and again requests the Senate to concur.

John B. Phelps, Clerk

SB 12-E—A bill to be entitled An act relating to tax on sales, use, and other transactions; amending s. 212.0598, F.S.; providing basis for calculating tax for certain air carriers; repealing s. 212.065, F.S., which provides application of tax to certain road construction; providing for applicability of existing contracts; amending section 49 of chapter 87-548, Laws of Florida; extending the application of provisions which authorize a refund to certain contractors of additional taxes paid; providing effective and retroactive effective dates.

On motions by Senator Deratany, the Senate concurred in the House amendments.

SB 12-E passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—36

Mr. President	Dudley	Johnson	Peterson
Barron	Frank	Kirkpatrick	Plummer
Beard	Girardeau	Kiser	Scott
Brown	Grant	Langley	Stuart
Childers, D.	Grizzle	Lehtinen	Thomas
Childers, W. D.	Hair	Malchon	Thurman
Crawford	Hollingsworth	Margolis	Weinstein
Crenshaw	Jenne	Meek	Weinstock
Deratany	Jennings	Myers	Woodson

Nays—None

Vote after roll call:

Yea—McPherson

Recess

The Senate stood in informal recess at 9:50 p.m. awaiting the call of the President.

Call to Order

The Senate was called to order by the President at 9:59 p.m. A quorum present.

By direction of the President, the following Conference Committee Report was read:

CONFERENCE COMMITTEE REPORT ON CS for SB 6-E

February 4, 1988

The Honorable John W. Vogt
President of the Senate

The Honorable Jon Mills
Speaker, House of Representatives

Dear Sirs:

Your Conference Committee on the disagreeing votes of the two Houses on Committee Substitute Senate Bill 6E, same being:

An act relating to medical incidents; providing legislative findings and intent regarding regulatory reform;

having met, and after full and free conference, do recommend to their respective Houses as follows:

1. That the House and Senate adopt the Conference Committee Amendment, attached hereto, and by reference made a part of this report.

2. That the Senate and the House pass the Committee Substitute for Senate Bill 6-E as amended by said Conference Committee Amendments.

s/Toni Jennings, Chairman	*s/Carl Odgen,* Co-Chairman
s/Dempsey J. Barron	*s/Samuel P. Bell, III*
s/Mattox Hair	*s/Fred Lippman*
s/George G. Kirkpatrick	*s/R. Dale Patchett*
s/William G. Myers	*s/Hamilton Upchurch*
Managers on the part of the Senate	Managers on the part of the House of Representatives

SUMMARY OF CONFERENCE COMMITTEE ACTION:

1. Statement of legislative findings and purpose.

2. Provides for increased efficiency to the disciplinary process for physicians by the following changes:

a) Creates a new division of Medical Quality Assurance within the Department of Professional Regulation to focus on the regulation of physicians and appropriates $1.4 million to provide staffing for same.

b) Provides mandatory standards and immunity for the hospital peer review process.

c) Provides for the cooperation of professional medical societies in the disciplinary process.

d) Provides that the Department of Professional Regulation will get more information on activity that may violate disciplinary standards. That information will come from:

— HRS concerning untoward incidents in hospitals and HMOs,

— Hospitals and HMOs concerning risk management program data on physicians,

— Hospital and HMOs records subpoenaed by DPR,

— Insurers who report claims against physicians, and uninsured physicians who report claims against themselves, and

— Patients who file medical malpractice suits.

e) Provides that a doctor, dentist, pharmacist, or nurse is immune from civil suit by another health care practitioner for reporting or providing information to a hospital committee, to an internal risk management program, to DPR, or to the appropriate regulatory board about patient care at a hospital where both of them practice. Internal risk managers are also immune from suit for investigating such reports.

f) Expands the membership of the Board of Medicine, which makes disciplinary decisions, to include a hospital risk manager and two physicians who are on the faculty of a medical school or the staff of a teaching hospital in Florida.

g) Problems with the speed of the disciplinary process and with board quorums are reduced by allowing the board to use two probable cause panels, each of which may have one past physician member of the board and by requiring each panel to complete work on cases it begins. Board members will also be required to go through a training program on discipline of physicians in Florida.

3. Creates new law on presuit investigation and voluntary, binding arbitration.

4. Provides that claimant or attorney must conduct reasonable investigation to determine negligence prior to submitting notice of intent to initiate litigation and must include written opinion of medical expert corroborating claim.

5. Provides that within 90 days of receipt of notice, defendant must conduct a reasonable investigation to determine defendant's liability. If a claim is denied, it must be accompanied by a written opinion of medical expert.

6. Provides for access to medical records prior to mailing notice of intent. Provides for informal discovery by the parties after claimant has filed notice of intent to initiate litigation. Noncompliance is grounds for dismissal of claim or defense.

7. Allows a court to dismiss a claim or defense for lack of reasonable investigation.

8. Requires attorneys and physicians to be reported to Florida Bar or DPR if they fail to comply with reasonable investigation requirements.

9. Allows either party to request arbitration of damages within 90 days of service of notice of intent to initiate litigation. The arbitration panel will be composed of one arbitrator selected by claimant, one selected by defendant, and one DOAH hearing officer.

10. Damages awarded in arbitration will consist of net economic damages including 80 percent of wage loss, offset by collateral sources, costs and reasonable attorneys fees up to 15 percent of the award reduced to present value, and noneconomic damages to a maximum of $250,000 per incident. Punitive damages may not be awarded. The liability of any insurer shall be subject to any applicable insurance policy limits.

11. Provides for a separate binding arbitration panel to determine disputes among defendants regarding apportionment of financial responsibility.

12. If plaintiff refuses to arbitrate, his noneconomic damages at trial are limited to $350,000 per incident. If defendant refuses, he must pay a successful plaintiff's reasonable attorney's fees up to 25 percent of the award reduced to present value and prejudgment interest.

13. Provides legislative findings and intent regarding the Florida Birth-Related Neurological Injury Compensation Plan.

14. Provides definitions for terms, including birth-related neurological injury.

15. Creates the Florida Birth-Related Neurological Injury Compensation Plan, which will provide compensation for birth-related neurological injury claims. The plan will apply to births occurring on or after January 1, 1989, and will be administered by the Florida Birth-Related Neurological Injury Compensation Association.

16. Provides that a deputy commissioner from the Division of Workers Compensation will hear and determine all birth-related neurological injury claims.

17. Requires the claimant seeking compensation to file a petition with the division. The division must serve the association and mail copies to other parties including the Division of Medical Quality Assurance and the Department of Health and Rehabilitative Services.

18. Provides that the filing of a claim with the division on behalf of an injured infant tolls the statute of limitations for a civil action.

19. Requires the deputy commissioner to set a hearing date within a specified time period after the filing of a petition by the claimant. The parties to the hearing will include the claimant and the association.

20. Requires every claim that is filed to be reviewed by a medical advisory panel of three physicians. The panel must file its recommendation as to whether the injury is a birth-related neurological injury with the division before the hearing.

21. Authorizes the deputy commissioner to determine whether a birth-related neurological injury occurred. The deputy commissioner will also determine whether obstetrical services were delivered by a participating physician at birth and how much compensation is awardable.

22. Authorizes the deputy commissioner to make an award for a birth-related neurological injury. The award can include compensation for reasonable medical care. Attorney's fees are payable subject to the approval of the deputy commissioner.

23. Provides that an award by a deputy commissioner may be appealed to the district court of appeal.

24. Authorizes a party to petition the circuit court for enforcement of a final award by the deputy commissioner.

25. Provides a statute of limitation of 7 years for the filing of a claim for a birth-related neurological injury.

26. Creates the Birth-Related Neurological Injury Compensation Trust Fund within the Department of Insurance. The fund will be administered by the Florida Birth-Related Neurological Injury Compensation Association. On March 1, 1988 initial assessments will be made from each participating physician, from all hospitals and from all other practicing physicians. Beginning January 1, 1990 annual assessment will be made to the same parties in the same amounts. Additionally, $20 million will be appropriated on March 1, 1988 from the Insurance Commissioner's Regulatory Trust Fund to the fund. Deficits in the fund will be offset first by an annual assessment against specified insurers and then, if needed, from an additional appropriation from the Insurance Commissioner's Regulatory Trust Fund.

27. Provides that the Florida Birth-Related Neurological Injury Compensation Plan will be governed by a board of directors. The directors will be appointed for three-year terms by the Insurance Commissioner.

28. Requires each hospital and each participating physician under the plan to provide notice to their obstetrical patients as to their participation in the plan.

29. Provides a separate standard of care for emergency health care services provided in a hospital emergency room or trauma center. To recover damages for a medical injury, the plaintiff must prove that the health care provider acted with reckless disregard for the life or health of the patient. Reckless disregard for the purposes of medical malpractice is defined as that conduct which the health care provider knew or should have known to be likely to result in injury so as to affect the life or health of another, taking into account the following to the extent they may be present:

a) The extent or serious nature of the circumstances prevailing;

b) The lack of time or ability to obtain appropriate consultation;

c) The lack of a prior patient-physician relationship;

d) The inability to obtain an appropriate medical history of the patient; and

e) The time constraints imposed by coexisting emergencies.

30. Provides that a teaching hospital will not be jointly and severally liable for damages assessed against the Board of Regents.

31. Provides that damages assessed against a teaching hospital will be several rather than joint and several.

32. Provides that insurers reflect any savings in their rate filings.

33. Provides an effective date.

Conference Committee Amendment 1—Strike everything after the enacting clause and insert:

Section 1. Legislative findings and intent.—The Legislature finds that the costs, both in terms of real dollars and access, to the public for quality health care are so high that not all Floridians can be guaranteed an acceptable level of care. The Legislature further finds that the strict regulation of health care practitioners is imperative to maintaining the quality of health care delivered in the state. It is, therefore, the intent of the Legislature to encourage health care practitioners to report possible instances of malpractice by offering them protection from civil suit. It is, further, the intent of the Legislature to facilitate the maintenance of medical practice in Florida by promptly and fairly disciplining health care practitioners whose performance is outside acceptable limits.

Section 2. Section 20.30, Florida Statutes, is amended to read:

20.30 Department of Professional Regulation.—There is created a Department of Professional Regulation.

(1) The head of the Department of Professional Regulation is the Secretary of Professional Regulation. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Professional Regulation are established:

(a) Division of Examination and Licensure.

(b) Division of Professions.

(c) Division of Medical Quality Assurance.

1. The director of the division shall be a deputy assistant secretary of professional regulation and shall be appointed by the Secretary of the Department of Professional Regulation.

2. The division shall concentrate sufficient resources and efforts on the investigation and discipline of physicians in violation of the unprofessional conduct provisions of the applicable practice acts as are necessary to meet the challenge of identifying those physicians who are not providing adequate medical care in order to take forceful corrective measures to assure quality medical care throughout the state.

3. The division shall coordinate closely with the Office of Health Planning and Regulation in the Department of Health and Rehabilitative Services to ensure that the state's regulation of health care facilities and the physicians who practice therein is consistent and offers adequate protection to the public.

4. The division shall establish and maintain a disciplinary training program for division staff and board members designed to ensure the proper and appropriate administration of medical quality assurance. The program shall provide for initial and periodic training in the grounds for disciplinary action, the actions which may be taken, changes in any relevant law, sanctions which are most appropriate for specified types of unprofessional conduct, guidelines for the conduct of hearings, and any other matters which the division shall determine may be necessary or useful.

(d)~~(c)~~ Division of Real Estate.

1. The director of the division shall be appointed by the Secretary of Professional Regulation, subject to approval by a majority of the Florida Real Estate Commission.

2. The offices of the Division of Real Estate shall be located in Orlando.

(e)~~(d)~~ Division of Regulation.

(3) There shall be a director of the Division of Examination and Licensure, a director of the Division of Professions, *a deputy assistant secretary of the Division of Medical Quality Assurance,* a director of the Division of Regulation, and a director of the Division of Real Estate. Each division director shall directly administer his division and shall be responsible to the secretary of the department.

(4) The following boards are established within the Department of Professional Regulation, Division of Professions:

(a) Board of Accountancy, created under chapter 473.

~~(b) Board of Acupuncture, created under chapter 457.~~

(b)~~(e)~~ Board of Architecture, created under part I of chapter 481.

(c)~~(d)~~ Board of Auctioneers, created under part VI of chapter 468.

(d)~~(e)~~ Barbers' Board, created under chapter 476.

~~(f) Board of Chiropractic, created under chapter 460.~~

(e)~~(g)~~ Construction Industry Licensing Board, created under part I of chapter 489.

(f)~~(h)~~ Board of Cosmetology, created under chapter 477.

~~(i) Board of Dentistry, created under chapter 466.~~

(g)~~(j)~~ Electrical Contractors' Licensing Board, created under part II of chapter 489.

(h)~~(k)~~ Board of Professional Engineers, created under chapter 471.

(i)~~(l)~~ Board of Funeral Directors and Embalmers, created under chapter 470.

(j)~~(m)~~ Board of Professional Land Surveyors, created under chapter 472.

(k)~~(n)~~ Board of Landscape Architecture, created under part II of chapter 481.

(l)~~(o)~~ Board of Massage, created under chapter 480.

~~(p) Board of Medical Examiners, created under chapter 458.~~

~~(q) Board of Naturopathic Examiners, created under chapter 462.~~

~~(r) Board of Nursing, created under chapter 464.~~

(m)~~(s)~~ Board of Nursing Home Administrators, created under part III of chapter 468.

(n)~~(t)~~ Board of Opticianry, created under chapter 484.

~~(u) Board of Optometry, created under chapter 463.~~

~~(v) Board of Osteopathic Medical Examiners, created under chapter 459.~~

~~(w) Board of Pharmacy, created under chapter 465.~~

(o)~~(x)~~ Board of Pilot Commissioners, created under chapter 310.

~~(y) Board of Podiatry, created under chapter 461.~~

~~(z) Board of Veterinary Medicine, created under chapter 474.~~

(5) The following boards are established within the Department of Professional Regulation, Division of Medical Quality Assurance:

(a) Board of Medicine, created under chapter 458.

(b) Board of Osteopathic Medical Examiners, created under chapter 459.

(c) Board of Acupuncture, created under chapter 457.

(d) Board of Chiropractic, created under chapter 460.

(e) Board of Dentistry, created under chapter 466.

(f) Board of Naturopathic Examiners, created under chapter 462.

(g) Board of Nursing, created under chapter 464.

(h) Board of Optometry, created under chapter 463.

(i) Board of Pharmacy, created under chapter 465.

(j) Board of Podiatry, created under chapter 461.

(k) Board of Veterinary Medicine, created under chapter 474.

(6)~~(5)~~ The members of each board shall be appointed by the Governor, subject to confirmation by the Senate. Lay members on the board shall be appointed pursuant to subsection *(7)* ~~(6)~~. Members shall be appointed for 4-year terms. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member shall serve more than two consecutive terms on the board.

(7)~~(6)~~ Each board with five or more members shall have at least two lay members who are not, and have never been, members or practitioners of the profession regulated by such board or of any closely related profession. Each board with fewer than five members shall have at least one lay member who is not, and has never been, a member or practitioner of the profession regulated by such board or of any closely related profession.

(8)~~(7)~~ No board, with the exception of joint coordinatorships, shall be transferred from its location on July 1, 1979, without legislative authorization.

(9)~~(8)~~ Chapter 79-36, Laws of Florida, shall not be construed to supersede the abolition of any board within the Department of Professional Regulation, pursuant to the Regulatory Reform Act of 1976, as amended by chapter 77-457, Laws of Florida, or as subsequently amended.

Section 3. Section 395.0115, Florida Statutes, is amended to read:

395.0115 Licensed facilities; *peer review; disciplinary powers.*—

(1) It is the intent of the Legislature that good-faith participants in the process of investigating and disciplining physicians pursuant to the state-mandated peer review process shall, in addition to receiving immunity from retaliatory tort suits pursuant to s. 455.225(11), be protected from federal antitrust suits filed under the Sherman Act, 15 U.S.C.A., s. 1 et seq. Such intent is within the public policy of the state to secure the provision of quality medical services to its citizens.

(2) Each licensed facility, as a condition of licensure, shall provide for peer review of physicians who deliver health care services at the facility. Each facility shall develop written, binding procedures by which such peer review shall be conducted. Such procedures shall include:

(a) Mechanism for choosing the membership of the body or bodies that conduct peer review.

(b) Adoption of rules of order for the peer review process.

(c) Fair review of the case with the physician involved.

(d) Mechanism to identify and avoid conflict of interest on the part of the peer review panel members.

(e) Recording of agendas and minutes which do not contain confidential material, for review by the Division of Medical Quality Assurance of the Department of Professional Regulation.

(f) Mechanism for advising the Division of Medical Quality Assurance in writing of all new procedures for and changes to existing peer review procedures.

(g) Process for amending peer review procedures when the Division of Medical Quality Assurance advises the facility in writing that the procedures do not meet the requirements of the law.

(h) Review, at least annually, of the peer review procedures by the governing board of the facility.

(i) Focus of the peer review process on review of professional practices at the facility to reduce morbidity and mortality and to improve patient care.

(3)~~(1)~~ If ~~the governing board of any licensed facility has~~ reasonable belief *exists* that conduct by a staff member *or physician who delivers health care services at the facility* may constitute one or more grounds for discipline as provided in this subsection, *a peer review panel* ~~the board~~ shall investigate and determine whether grounds for discipline exist with respect to *such* ~~the~~ staff member *or physician.* The governing board of any licensed facility, after considering the recommendations of its *peer review panel* ~~medical staff~~, shall suspend, deny, revoke, or curtail the ~~staff~~ privileges, or reprimand, counsel, or require education, of any *such* staff member *or physician* after a final determination has been made that one or more of the following grounds exist:

(a) Incompetence.

(b) Being found to be a habitual user of intoxicants or drugs to the extent that he is deemed dangerous to himself or others.

(c) Mental or physical impairment which may adversely affect patient care.

(d) Being found liable by a court of competent jurisdiction for medical negligence or malpractice involving negligent conduct.

(e) One or more settlements exceeding $10,000 for medical negligence or malpractice involving negligent conduct by the staff member.

(f) Medical negligence other than as specified in paragraphs (d) or (e).

(g) Failure to comply with the policies, procedures, or directives of the risk management program or any quality assurance committees of any licensed facility.

However, the procedures for such actions shall comply with the standards outlined by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, the Accreditation Association for Ambulatory Health Care, and the "Medicare/Medicaid Conditions of Participation," as such procedures existed on January 1, 1985. The procedures shall be adopted pursuant to hospital bylaws.

(4) All final disciplinary actions taken under subsection (3) shall be reported within 10 working days to the Division of Medical Quality Assurance in writing and shall specify the disciplinary action taken and the specific grounds therefor. The division shall treat each report and determine whether it potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.255 shall apply. However, the report shall not be subject to inspection under the provisions of chapter 119 even if the division's investigation results in a finding of probable cause.

(5)~~(2)~~ There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any licensed facility, its governing body and governing body members, *peer review panel,* medical staff, or disciplinary body, or its agents, investigators, witnesses, employees, or any other person for any action taken without intentional fraud in carrying out the provisions of this section.

(6)~~(3)~~ The proceedings and records of *peer review panels,* committees, and governing bodies which relate solely to actions taken in carrying out the provisions of this section shall not under any circumstances be subject to inspection under the provisions of chapter 119; nor shall meetings held pursuant to achieving the objectives of such *panels,* committees, and governing bodies be open to the public under the provisions of chapter 286.

(7)~~(4)~~ The investigations, proceedings, and records of the board as described in this section shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such board, and no person who was in attendance at a meeting of such board shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such board or as to any findings, recommendations, evaluations, opinions, or other actions of such board or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such board; nor should any person who testifies before such board or who is a member of such board be prevented from testifying as to matters within his knowledge, but such witness cannot be asked about his testimony before such a board or opinions formed by him as a result of such board hearings.

(8)~~(5)~~(a) In the event that the defendant prevails in an action brought by a staff member *or physician who delivers health care services at the facility* against any person or entity that initiated, participated in, was a witness in, or conducted any review as authorized by this section, the court shall award reasonable attorney's fees and costs to the defendant.

(b) As a condition of any staff member *or physician* bringing any action against any person or entity that initiated, participated in, was a witness in, or conducted any review as authorized by this section and before any responsive pleading is due, the staff member *or physician* shall post a bond or other security, as set by the court having jurisdiction of the action, in an amount sufficient to pay the costs and attorney's fees.

Section 4. Section 395.0146, Florida Statutes, is created to read:

395.0146 Certificate of need for termination or reduction of emergency or trauma services.—Notwithstanding any provision of chapter 381, a hospital licensed under this chapter which operates an emergency room or trauma center may not terminate or substantially reduce the availability of emergency or trauma service without first obtaining from the Department of Health and Rehabilitative Services a certificate of need for such termination or reduction in service. An application for such a certificate of need may not be approved by the department unless the applicant shows that no need exists in the applicable service area for continuing such service.

Section 5. Subsection (1) and paragraph (e) of subsection (3) of section 395.017, Florida Statutes, are amended to read:

395.017 Patient records; copies; examination.—

(1) Any licensed facility shall, upon request, and only after discharge of the patient, furnish to any person admitted therein for care and treatment or treated thereat, or to any such person's guardian, curator, or personal representative, or to anyone designated by such person in writing, a true and correct copy of all patient records, including X rays, concerning such person, which records are in the possession of the licensed facility, except progress notes and consultation report sections of a psychiatric nature concerning the care and treatment performed by the licensed facility, provided the person requesting such records agrees to pay a *charge not to exceed the actual cost of copying the records, including reasonable staff time* ~~reasonable charge for copying the records~~. The licensed facility shall further allow any such person to examine the original records in its possession, or microfilms or other suitable reproductions of the records, upon such reasonable terms as shall be imposed to assure that the records will not be damaged, destroyed, or altered.

(3) Patient records shall have a privileged and confidential status and shall not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(e) The Department of Professional Regulation upon subpoena issued pursuant to s. 455.223, but the records obtained thereby shall be used solely for the purpose of the Department of Professional Regulation and the appropriate professional board in its *investigation, prosecution, and appeal of* disciplinary proceedings. *If the Department of Professional Regulation requests copies of such records, the facility shall charge no more than its actual copying costs, including reasonable staff time.* The records shall ~~otherwise~~ be sealed and shall not be available to the public pursuant to s. 119.07 or any other statute providing access to records, *nor shall they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause*; or

Section 6. The introductory paragraph and paragraph (b) of subsection (1) and subsections (5) and (6) of section 395.041, Florida Statutes, are amended, present subsection (7) is renumbered and amended, subsections (8), (9), and (10) are renumbered as subsections (12), (13), and (14), respectively, and new subsections (7), (9), (10), and (11) are added to said section, to read:

395.041 Internal risk management program.—

(1) Every facility licensed under this chapter~~, chapter 389,~~ or chapter 390 shall, as a part of its administrative functions, establish an internal risk management program which shall include the following components:

(b) The development of appropriate measures to minimize the risk of injuries and adverse incidents to patients, including ~~at least annual~~ risk management and risk prevention education and training of all nonphysician personnel *as follows:*~~;~~

1. Such education and training of all nonphysician personnel as part of their initial orientation; and

2. At least 1 hour of such education and training annually for all nonphysician personnel of the facility working in clinical areas and providing patient care;

(5)(a) Each licensed facility subject to this section shall submit an annual report to the department summarizing the incident reports that have been filed in the facility for that year. The report shall be on a form prescribed by rule of the department and shall include:

1. The total number of adverse incidents causing injury to patients.

2. A listing, by category, of the types of operations, diagnostic or treatment procedures, or other actions causing the injuries, and the number of incidents occurring within each category.

3. A listing, by category, of the types of injuries caused and the number of incidents occurring within each category.

4. A code number utilizing the health care professionals licensure number and a separate code number identifying all other individuals directly involved in adverse incidents causing injury to patients, the relationship of the individual to the facility, and the number of incidents in which each individual has been directly involved. Each facility shall maintain names of the health care professionals and individuals identified by code numbers for purposes of this *section* ~~act~~.

5. A description of all malpractice claims filed against the facility, including the total number of pending and closed claims and the nature of the incident which led to, the persons involved in, and the status and disposition of each claim. Each report shall update status and disposition for all prior reports.

6. A report of all disciplinary actions pertaining to patient care taken against any medical staff member, including the nature and cause of the action.

(b) The information reported to the department pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall also be reported to the Department of Professional Regulation on a quarterly basis. The Department of Professional Regulation shall review the information and determine whether any of the incidents potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply.

(c)~~(b)~~ The annual report shall also contain the name of the risk manager of the facility, a copy of its policy and procedures which govern the measures taken by the facility and its risk manager to reduce the risk of injuries and adverse or untoward incidents, and the results of such measures. This report shall be held confidential and shall not be available to the public pursuant to s. 119.07 or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the department, *the Department of Professional Regulation,* and the appropriate regulatory board. *This report shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department, the Department of Professional Regulation, or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause.*

(6) If an adverse or untoward incident, whether occurring in the facility or arising from health care prior to admission in the facility, results in:

(a) The death of a patient*;* ~~or in~~

(b) Severe brain or spinal damage to a patient;~~,~~

(c) A surgical procedure being performed on the wrong patient; or

(d) A surgical procedure unrelated to the patient's diagnosis or medical needs being performed on any patient,

the facility shall report this incident to the department within 3 working days of its occurrence. A more detailed follow-up report shall be submitted to the department within 10 days after the first report. The department may require an additional, final report. *Reports under this subsection shall be sent immediately by the department to the Department of Professional Regulation whenever they involve a health care provider licensed under chapter 458, chapter 459, chapter 461, or chapter 466.* These reports shall not be available to the public pursuant to s. 119.07 or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the department, *the Department of Professional Regulation,* and the appropriate regulatory board~~.~~, *nor shall they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause.* The department may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. *The Department of Professional Regulation shall review each incident and determine whether it potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply.* ~~This subsection shall take effect January 1, 1986.~~

(7) In addition to any penalty imposed pursuant to s. 395.018, the department may impose an administrative fine, not to exceed $5,000, for any violation of the reporting requirements of subsection (5) or subsection (6). This subsection shall take effect July 1, 1989.

(8)~~(7)~~ The department *and, upon subpoena issued pursuant to s. 455.223, the Department of Professional Regulation* shall have access to all facility records necessary to carry out the provisions of this section. The records obtained are not available to public access, nor shall they be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the department, *the Department of Professional Regulation,* and the appropriate regulatory board~~.~~, *nor shall records obtained pursuant to s. 455.223 be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause, except that, with respect to medical review committee records, the provisions of s. 768.40 shall control.*

(9) The department shall review, no less than annually, the risk management program at each facility regulated by this section to determine whether the program meets standards established in statutes and rules, whether the program is being conducted in a manner designed to reduce adverse incidents, and whether the program is appropriately reporting incidents under subsections (5) and (6).

(10) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any risk manager, certified under part IX of chapter 626, for the implementation and oversight of the risk management program in a facility licensed under this chapter or chapter 390 as required by this section, for any act or proceeding undertaken or performed within the scope of the functions of such risk management program if the risk manager acts without intentional fraud.

(11) By December 1, 1988, the Department of Professional Regulation, in coordination with representatives of the Florida Society of Health Care Risk Managers, shall report to the Legislature on classifications of adverse or untoward incidents, which involve results similar in nature to those in subsection (6) and potentially involve conduct by licensees that is subject to disciplinary action, and on time frames for reporting such incidents. Such additional incidents shall be related directly to the department's duties to investigate and reduce incidents of medical malpractice. The department shall propose a level of incident reporting with benefits from reduced malpractice that outweigh the costs of its implementation. The report to the Legislature shall include proposals for the content of the incident reports, the uses of the incident reports, the availability of the reports to the Department of Health and Rehabilitative Services, and the appropriate level of confidentiality of the reports.

Section 7. Subsection (8) of section 395.504, Florida Statutes, is amended to read:

395.504 Powers and duties of board.—To properly carry out its authority, the board:

(8) Shall designate executive staff members to issue preliminary findings pursuant to s. 395.509*(9)*~~(8)~~.

Section 8. Subsection (7) of section 455.225, Florida Statutes, is amended, and subsection (11) is added to said section, to read:

455.225 Disciplinary proceedings.—

(7) Any proceeding for the purpose of summary suspension *or restriction* of a license pursuant to s. 120.60(8) shall be conducted by the secretary or his designee, who shall issue the final summary order.

(11)(a) No person who reports in any capacity, whether or not required by law, information to the Division of Medical Quality Assurance with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.

(b) No facility licensed under chapter 395, health maintenance organization certificated under part II of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee's or staff member's report to the division about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.

(c) In any civil suit brought outside the protections of paragraphs (a) and (b), where intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party's reasonable attorney's fees if intentional fraud or malice is not proved.

Section 9. Section 455.241, Florida Statutes, is amended to read:

455.241 Patient records; *report or* copies of records to be furnished.—

(1) Any health care practitioner licensed pursuant to chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 474 who makes a physical or mental examination of, or administers treatment to, any person shall, upon request of such person or his legal representative, furnish copies of all reports *or records* made of such examination or treatment, including X rays~~.~~*; except that when a patient's psychiatric records are requested by him or his legal representative, the practitioner may provide a report of examination and treatment in lieu of copies of records. However, upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist.* The furnishing of such *report or* copies shall not be conditioned upon payment of a disputed fee for services rendered.

(2) Such records shall not be furnished to any person other than the patient or his legal representative, except upon written authorization of the patient. However, such records may be furnished without written authorization to any person, firm, or corporation which has procured or furnished such examination or treatment with the patient's consent or when compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical record shall be furnished to both the defendant and the plaintiff. Such records may be furnished in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or his legal representative by the party seeking such records. The Department of Professional Regulation may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed

any controlled substance specified in chapter 893 in violation of s. 458.331(1)(q), s. 459.015(1)(q), s. 461.013(1)(p), s. 462.14(1), s. 466.028(1)(q), or s. 474.214(1)(x) or (y) or that a practitioner has practiced his profession below that level of care, skill, and treatment required as defined by s. 458.331(1)(t), s. 459.015(1)(t), s. 460.413(1)(s), s. 461.013(1)(t), s. 462.14(1)(t), s. 463.016(1)(g), s. 464.018(1)(f), s. 466.028(1)(y), or s. 474.214(1)(g); but the patient record obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and board in disciplinary proceedings. The record shall otherwise be sealed and shall not be available to the public pursuant to the provisions of s. 119.07 or any other statute providing access to public records. Nothing in this section shall be construed to limit the *assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by* ~~of~~ a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. *However, the practitioner shall release records of treatment for medical conditions even if the practitioner has also treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.*

(3) All patient records obtained by the Department of Professional Regulation and any other documents identifying the patient by name shall be used solely for the purpose of the Department of Professional Regulation and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall be sealed and shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board.

(4) A health care practitioner furnishing copies of reports or records pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate regulatory board.

Section 10. Section 455.2415, Florida Statutes, is created to read:

455.2415 Communications confidential; exceptions.—Communications between a patient and a psychiatrist, as defined in s. 394.455(2)(e), shall be held confidential and shall not be disclosed except upon the request of the patient or his legal representative. Provision of psychiatric records and reports shall be governed by s. 455.241. Notwithstanding any other provisions of this section or s. 90.503, where:

(1) A patient is engaged in a treatment relationship with a psychiatrist;

(2) Such patient has made an actual threat to physically harm an identifiable victim or victims; and

(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,

the psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. No civil or criminal action shall be instituted and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.

Section 11. Section 455.242, Florida Statutes, is amended to read:

455.242 Disposition of records of deceased practitioners *or practitioners relocating or terminating practice.*—Each board created under the provisions of chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 474 shall provide by rule for the disposition, under said chapter, of the medical records of practitioners which are in existence at the time ~~of the death of~~ the practitioner *dies, terminates his practice, or relocates and is no longer available to his patients* and which pertain to the practitioner's patients. The rules shall provide ~~for disposition of such records by the estate of the practitioner and shall provide~~ that the records shall be retained for at least 1 year after the practitioner's death~~.~~*, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.*

Section 12. Subsection (3) is added to section 455.245, Florida Statutes, to read:

455.245 Health care practitioners; immediate suspension of license for certain convictions.—

(3) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(y), in regard to his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the secretary shall review the matter to determine if an emergency suspension or restriction order is warranted. Nothing in this section shall be construed so as to limit the secretary's authority to issue an emergency order.

Section 13. Section 455.247, Florida Statutes, is created to read:

455.247 Health care practitioners; reports on professional liability claims and actions.—

(1) Any practitioner of medicine licensed pursuant to the provisions of chapter 458, practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, podiatrist licensed pursuant to the provisions of chapter 461, or dentist licensed pursuant to the provisions of chapter 466 shall report to the department any claim or action for damages for personal injury claimed to have been caused by error, omission, or negligence in the performance of such licensee's professional services or based on a claimed performance of professional services without consent if the claim was not covered by an insurer required to report under s. 627.912 and the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the licensee.

Reports shall be filed with the department no later than 60 days following the occurrence of any event listed in paragraph (a), paragraph (b), or paragraph (c).

(2) Reports shall contain:

(a) The name and address of the licensee.

(b) The date of the occurrence which created the claim.

(c) The date the claim was reported to the licensee.

(d) The name and address of the injured person. This information shall be privileged and confidential and shall not be disclosed by the department without the injured person's consent. This information may be used by the department for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(e) The date of suit, if filed.

(f) The injured person's age and sex.

(g) The total number and names of all defendants involved in the claim.

(h) The date and amount of judgment or settlement, if any, including the itemization of the verdict, together with a copy of the settlement or judgment.

(i) In the case of a settlement, such information as the department may require with regard to the injured person's incurred and anticipated medical expense, wage loss, and other expenses.

(j) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expense paid.

(k) The date and reason for final disposition, if no judgment or settlement.

(l) A summary of the occurrence which created the claim, which shall include:

1. The name of the institution, if any, and the location within such institution, at which the injury occurred.

2. The final diagnosis for which treatment was sought or rendered, including the patient's actual condition.

3. A description of the misdiagnosis made, if any, of the patient's actual condition.

4. The operation or the diagnostic or treatment procedure causing the injury.

5. A description of the principal injury giving rise to the claim.

6. The safety management steps that have been taken by the licensee to make similar occurrences or injuries less likely in the future.

(m) Any other information required by the department to analyze and evaluate the nature, causes, location, cost, and damages involved in professional liability cases.

Section 14. Section 455.28, Florida Statutes, is created to read:

455.28 Reporting of violations of grounds for disciplinary action; penalty.—

(1) Any person licensed under chapter 458 (physicians), 459 (osteopathic physicians), 460 (chiropractic physicians), 461 (podiatrists), 464 (nurses), 465 (pharmacists), or 466 (dentists), shall report to the Division of Medical Quality Assurance any physician who the licensee knows has violated the grounds for disciplinary action set out in the law under which that physician is licensed and who provides health care services in a facility licensed under chapter 395 in which the licensee also provides such services. Any licensee who fails to report a physician as required by this subsection shall be subject to the appropriate penalty under that licensee's licensing provisions.

(2) Complaints alleging probable disciplinary violations shall be investigated by the division.

Section 15. Paragraph (c) of subsection (1) of section 458.303, Florida Statutes, is amended to read:

458.303 Provisions not applicable to other practitioners; exceptions, etc.—

(1) The provisions of ss. 458.301, 458.303, 458.305, 458.307, 458.309, 458.311, 458.313, 458.315, 458.317, 458.319, 458.321, 458.327, 458.329, 458.331, 458.337, 458.339, 458.341, 458.343, 458.345, and 458.347 shall have no application to:

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty *and while acting within the scope of their military or public health responsibilities.*

Section 16. Subsection (2) of section 458.307, Florida Statutes, is amended, subsection (4) is renumbered as subsection (6), and new subsections (4) and (5) are added to said section, to read:

458.307 Board of Medicine.—

(2)*(a)* Ten members of the board must be licensed physicians in good standing in this state who are residents of the state and who have been engaged in the practice *or teaching* of medicine for at least 4 years immediately prior to their appointment. *Two of the physicians must be on the faculty of a medical school in this state or on the full-time staff of a teaching hospital in this state.* At least *one* ~~1~~ of the ~~10~~ physicians must be a graduate of a foreign medical school. The remaining three members must be residents of the state who are not, and have never been, licensed health care practitioners. *One member must be a hospital risk manager certified under part IX of chapter 626.* At least one member of the board must be 60 years of age or older.

(b) The board shall establish at least one, but not more than two, probable cause panels to meet the responsibilities set out in s. 455.225(3). Each probable cause panel shall be composed of three members, one of whom shall be a lay member. One physician member may, if provided for in administrative rule, be a past board member who is not currently appointed to the board.

(4) The board, in conjunction with the department, shall establish a disciplinary training program for board members. The program shall provide for initial and periodic training in the grounds for disciplinary action, the actions which may be taken by the board and the department, changes in relevant statutes and rules, and any relevant judicial and administrative decisions. After January 1, 1989, no member of the board shall participate on probable cause panels or in disciplinary decisions of the board unless he has completed the disciplinary training program.

(5) During the time members are appointed to a probable cause panel, they shall attempt to complete their work on every case presented to them. In the event that consideration of a case is begun but not completed during the term of those members on the panel, they may reconvene as a probable cause panel, in addition to the panels established under paragraph (2)(b), for the purpose of completing their deliberations on that case.

Section 17. Subsection (5) of section 458.311, Florida Statutes, is renumbered and amended, subsections (4) and (6) are renumbered as subsections (5) and (9), respectively, and new subsections (4), (7), and (8) are added to said section, to read:

458.311 Licensure by examination; requirements; fees.—

(4) The department and the board shall assure that applicants for licensure meet the criteria in subsection (1) through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(2), and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(2).

(6)~~(5)~~ *The board may not certify to the department for licensure* ~~Each applicant who passes the examination and meets the requirements of this chapter shall be licensed as a physician, with rights as defined by law. The department may not issue a license to~~ any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of this chapter until such investigation is completed. Upon completion of the investigation, the provisions of s. 458.331 shall apply.

(7) Each applicant who passes the examination and meets the requirements of this chapter shall be licensed as a physician, with rights as defined by law.

(8) Upon certification by the board, the department shall impose conditions, limitations, or restrictions on a license by examination if the applicant is on probation in another jurisdiction for an act which would constitute a violation of this chapter.

Section 18. Paragraph (a) of subsection (1) of section 458.313, Florida Statutes, is amended, subsections (3), (4), and (5) are renumbered as subsections (5), (6), and (8), respectively, and new subsections (3), (4), and (7) are added to said section, to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $400 set by the board, demonstrates to the board that he has met the qualifications for licensure in s. 458.311(1)(b)-(f) and:

(a) Has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or on the examination of the National Board of Medical Examiners, provided that said examination required shall have been so taken within the 10 years immediately preceding the filing of his application for licensure under this section, *and shows evidence of the active practice of medicine within the previous 4 years*; or

(3) The department and the board shall assure that applicants for licensure by endorsement meet applicable criteria in this chapter through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(2), and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(2).

(4) If the applicant has not actively practiced medicine within the previous 4 years, the board shall certify the applicant to the department for licensure by endorsement subject to the condition that the applicant work under the supervision of another physician for a period, not to exceed 1 year, as determined by the board based on its determination of the licensee's ability to practice medicine. The supervising physician shall have had no probable cause findings against him within the previous 3 years.

(7) Upon certification by the board, the department shall impose conditions, limitations, or restrictions on a license by endorsement if the applicant is on probation in another jurisdiction for an act which would constitute a violation of this chapter.

Section 19. The introductory paragraph of section 458.315, Florida Statutes, is amended, and subsection (4) is added to said section, to read:

458.315 Temporary certificate for practice in areas of critical need.—Any physician who is licensed to practice in any other state, whose license is currently valid, and who pays a fee of $100 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians and the population is less than 7,500. The Board of *Medicine* ~~Medical Examiners~~ may issue this temporary certificate with the following restrictions:

(4) The board shall not certify to the department for licensure by endorsement any physician who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 458.331 shall apply.

Section 20. Paragraph (b) of subsection (1) of section 458.3165, Florida Statutes, is amended to read:

458.3165 Public psychiatry certificate.—The board shall issue a public psychiatry certificate to an individual who remits an application fee not to exceed $100, as set by the board, who is a board certified psychiatrist, who is licensed to practice medicine without restriction in another state, and who meets the requirements in s. 458.311(1)(a)-(f) and *(6)*~~(5)~~.

(1) Such certificate shall:

(b) Be issued and renewable *biennially* ~~annually~~ if the secretary of the Department of Health and Rehabilitative Services and the chairman of the department of psychiatry at one of the public medical schools or the chairman of the department of psychiatry at the accredited medical school at the University of Miami recommend in writing that the certificate be issued or renewed.

Section 21. Subsection (1) of section 458.319, Florida Statutes, is amended to read:

458.319 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application, *evidence that the applicant has actively practiced medicine, or has been on the active teaching faculty of an accredited medical school, within the previous 4 years,* and fee not to exceed *$500* ~~$250~~. *If the licensee has not actively practiced medicine within the previous 4 years, the board shall certify the licensee to the department for renewal of the license subject to the condition that the licensee work under the supervision of another physician for a period, not to exceed 1 year, as determined by the board based on its determination of the licensee's ability to practice medicine. The supervising physician shall have had no probable cause findings against him within the previous 3 years.*

Section 22. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (a) of subsection (4) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.—

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

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914(2), *from a risk retention group as defined under s. 627.942,* from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357.

(2) As a continuing condition of hospital staff privileges, physicians with staff privileges shall also be required to establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914(2), *from a risk retention group as defined under s. 627.942,* from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357.

(4)(a) Each insurer, self-insurer, *risk retention group,* or Joint Underwriting Association shall promptly notify the Department of Professional Regulation of cancellation or nonrenewal of insurance required by this section. Unless the physician demonstrates that he is otherwise in compliance with the requirements of this section, the Department of Professional Regulation shall suspend the license of the physician pursuant to s. 120.57 and notify all health care facilities licensed under chapter 395 of such action. Any suspension under this subsection shall remain in effect until the physician demonstrates compliance with the requirements of this section, except that a license suspended under paragraph (5)(g) shall not be reinstated until the physician demonstrates compliance with the requirements of that provision.

Section 23. Paragraph (d) is added to subsection (2) of section 458.327, Florida Statutes, to read:

458.327 Penalty for violations.—

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(d) Leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid, active license.

Section 24. Section 458.3295, Florida Statutes, is created to read:

458.3295 Concerted effort to refuse emergency room treatment to patients; penalties.—

(1) A physician licensed pursuant to this chapter may not instigate or engage in a concerted effort to refuse to render services to a patient in a hospital emergency room either through such physicians' failing to report for duty, such physicians' absenting themselves from their positions, such physicians' submitting their resignations, such physicians' abstaining from the full and faithful performance of their medical duties, or such physicians' otherwise causing conduct that adversely affects the services of the hospital. For the purposes of this subsection, the term "concerted" means contrived or arranged by agreement, planned or devised together, or done or performed together in cooperation.

(2) If a physician or group of physicians engages in conduct in violation of subsection (1), either the department or the hospital where the conduct occurs may file suit in circuit court to enjoin such conduct.

(a) Upon such suit being filed, the court shall conduct a hearing, with notice to the department, the board, and all interested parties, at the earliest practicable time. If the plaintiff makes a showing that a violation of subsection (1) is in progress or that there is a clear, real, and present danger that such a violation is about to commence, the court shall issue a temporary injunction enjoining such violation. Upon final hearing, the court shall either make the injunction permanent or dissolve it.

(b) A physician found to be in contempt of court for violating such an injunction shall be fined an amount considered appropriate by the court, but not less than $5,000. In determining the appropriate fine, the court shall objectively consider the extent of services lost to the hospital and its patients.

(3) A violation by a physician of subsection (1) constitutes ground for disciplinary action against him by the board, including the suspension or revocation of his license, and subjects him to liability for any damages that the hospital or any patient therein sustains as a result of the violation.

Section 25. Paragraphs (b), (m), and (t) of subsection (1) and subsections (2) and (5) of section 458.331, Florida Statutes, are amended, paragraphs (hh), (ii), (jj), and (kk) are added to subsection (1), subsections (3) through (6) are renumbered as subsections (4) through (7), respectively, and new subsections (3) and (8) are added to said section, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(b) Having a license *or the authority* to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any *jurisdiction, including its agencies or subdivisions* ~~state, territory, or country~~. The licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

(m) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, ~~and~~ test results, *records of drugs prescribed, dispensed, or administered, and reports of consultations and hospitalizations.*

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of $10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross malpractice" or "the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances," shall not be construed so as to require more than one instance, event, or act. *Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.*

(hh) Misrepresenting or concealing a material fact at any time during any phase of a licensing or disciplinary process or procedure.

(ii) Improperly interfering with an investigation or with any disciplinary proceeding.

(jj) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the physician knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the physician also provides services.

(kk) Being found by any court in this state to have provided corroborating written medical expert opinion attached to any statutorily required notice of claim or intent or to any statutorily required response rejecting a claim, without reasonable investigation.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or certification with restrictions, to the department an application for licensure, certification, or registration.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another physician.

(g) Issuance of a letter of concern.

(h) Corrective action.

(i) Refund of fees billed to and collected from the patient.

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the physician. All costs associated with compliance with orders issued under this subsection are the obligation of the physician.

(3) In any administrative action against a physician which does not involve revocation or suspension of license, the division shall have the burden, by the greater weight of the evidence, to establish the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of license by clear and convincing evidence.

(6)~~(5)~~ Upon the department's receipt from *an insurer or self-insurer of a report of a closed claim against a physician pursuant to s. 627.912 or from a health care practitioner of a report pursuant to s. 455.247, or upon the receipt from a claimant of a presuit notice against a physician pursuant to s. 768.57, the department shall review each report and determine whether it potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. However, if it is reported that a physician has had* ~~the Department of Insurance of the name of a physician having~~ three or more claims with indemnities exceeding $10,000 each within the previous 5-year period, ~~including reports for the 3-year period preceding the effective date of this act,~~ the department shall investigate the occurrences upon which the claims were based and determine if action by the department against the physician is warranted.

(8) If any physician regulated by the Division of Medical Quality Assurance is guilty of such unprofessional conduct, negligence, or mental or physical incapacity or impairment that the division determines that the physician is unable to practice with reasonable skill and safety and presents a danger to patients, the division shall be authorized to maintain an action in circuit court enjoining such physician from providing medical services to the public until the physician demonstrates the ability to practice with reasonable skill and safety and without danger to patients.

Section 26. Paragraph (a) of subsection (4) of section 458.3315, Florida Statutes, is amended to read:

458.3315 Treatment programs for impaired practitioners.—

(4)(a) Whenever the consultant is notified that there is reason to believe that a practitioner licensed under this chapter is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental condition, which could affect the practitioner's ability to practice his profession, and no complaint against the practitioner other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.255 if the probable cause panel of the board under which the practitioner is licensed finds that:

1. The practitioner has acknowledged his impairment problem;

2. The practitioner has voluntarily enrolled in an appropriate, approved treatment program; ~~and~~

3. The practitioner has voluntarily withdrawn from his practice or limited the scope of his practice as determined by the panel in each case, until such time as the panel is satisfied that he has successfully completed an approved treatment program*; and*~~.~~

4. The practitioner has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the practitioner, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the practitioner's impairment and his participation in a treatment program.

Section 27. Paragraph (a) of subsection (1) of section 458.337, Florida Statutes, is amended to read:

458.337 Reports of disciplinary actions by medical organizations and hospitals.—

(1)(a) The department shall be notified when any physician:

1. Has been removed or suspended or has had any other disciplinary action taken by his peers within any professional medical association, society, body, or professional standards review organization established pursuant to s. 249F of Pub. L. No. 92-603 or similarly constituted professional organization, whether or not such association, society, body, or organization is local, regional, state, national, or international in scope; or

2. Has been disciplined~~, which includes allowing the physician to resign,~~ by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home or the medical staff of such a hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home, *including allowing the physician to resign,* for any act that constitutes a violation of this chapter. *If a physician resigns or withdraws from privileges when such facility notifies the physician that it is conducting an investigation or inquiry regarding an act which is potentially a violation of this chapter, the facility shall complete its investigation or inquiry and shall notify the department of the physician's resignation or withdrawal from privileges if the completed investigation or inquiry results in a finding that such act constitutes a violation of this chapter for which the facility would have disciplined the physician or allowed him to resign or withdraw from privileges.*

Section 28. Section 458.345, Florida Statutes, is amended to read:

458.345 Registration of resident physicians and interns; list of hospital employees; penalty.—

(1) Any person desiring to practice as a resident physician, assistant resident physician, house physician, or intern in this state who does not hold a valid, active license issued under this chapter shall apply to the department to be registered and shall remit a fee not to exceed $100 as set by the board. The department shall register any applicant the board certifies has met the following requirements:

(a) Is at least 21 years of age.

(b) Has not committed any act or offense within or without the state which would constitute the basis for refusal to certify an application for licensure pursuant to s. 458.331.

(c) Is a graduate of a medical school or college as specified in s. 458.311(1)(f).

(2) Registration under this section shall automatically expire after 2 years and shall neither be renewed nor extended, unless the registrant is in an approved postgraduate training program, as defined by the board by rule.

(3) The board shall not certify to the department for registration any applicant who is under investigation in any state or jurisdiction for an act which would constitute the basis for imposing a disciplinary penalty specified in s. 458.331(2)(b) until such time as the investigation is completed, at which time the provisions of s. 458.331 shall apply.

(4) ~~Every person practicing as a resident physician, assistant resident physician, house physician, or intern in this state shall register with the department, showing the date upon which he started to practice as aforesaid within this state.~~ Every hospital employing a resident physician, assistant resident physician, house physician, or intern shall, on January 1 and July 1 of each year, furnish the department with a list of its employees and such other information as the board may direct. ~~Unless previously authorized by the board,~~ No person *registered under this section* may be employed as a house physician or act as a resident physician, an assistant resident physician, or an intern in a hospital of this state for more than 2 years without a *valid, active* license, except that resident physicians, assistant resident physicians, and interns in approved training programs *listed by the board in rule* shall be exempt from this limitation. Any person *willfully* violating this section shall be guilty of a misdemeanor of the *first* ~~second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Persons required to reregister under this section on the effective date of this act shall complete that registration within 1 year.

Section 29. Paragraphs (a) and (e) of subsection (7) of section 458.347, Florida Statutes, are amended to read:

458.347 Physician's assistants.—

(7) PHYSICIAN'S ASSISTANT CERTIFICATION.—

(a) Any person desiring to be certified as a physician's assistant must apply to the department. The department shall *issue a certificate to any person who the board certifies has met the following requirements* ~~certify each applicant who~~:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician's Assistants.

3. Has completed the application form and remitted an application fee not to exceed $100 as set by the board. An application for certification made by a physician's assistant shall include all of the following:

a. A certificate of completion of an approved physician's assistant training program.

b. A sworn statement of any prior felony convictions.

c. A sworn statement of any previous revocation or denial of licensure or certification in any state.

d. Two letters of recommendation.

e. The full name, Florida medical license number, and address of the supervising physician.

f. The specialty of the supervising physician.

(e) Notwithstanding the provisions of paragraph (a)2., the board may grant temporary certification to a recent graduate of an approved program to expire upon receipt of scores of the proficiency examination administered by the National Commission on Certification of Physician's Assistants. An applicant who has passed the proficiency examination may be granted permanent certification. An applicant failing the proficiency examination is no longer temporarily certified, *but may reapply for a 1-year extension of temporary certification.* If an applicant fails the examination two times, he is no longer eligible for certification.

Section 30. Subsection (4) is added to section 459.0055, Florida Statutes, to read:

459.0055 General licensure requirements.—

(4) The department and the board shall assure that applicants for licensure meet applicable criteria in this chapter through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(2), and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or his designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(2).

Section 31. Subsection (1) of section 459.008, Florida Statutes, is amended to read:

459.008 Renewal of licenses and certificates.—

(1) The department shall renew a license or certificate upon receipt of the renewal application, *evidence that the applicant has actively practiced osteopathic medicine, or has been on the active teaching faculty of an accredited osteopathic medical school, within the previous 4 years,* and fee. *If the licensee has not actively practiced osteopathic medicine within the previous 4 years, the board shall certify the licensee to the department for renewal of the license subject to the condition that the licensee work under the supervision of another osteopathic physician for a period, not to exceed 1 year, as determined by the board based on its determination of the licensee's ability to practice osteopathic medicine. The supervising physician shall have had no probable cause findings against him within the previous 3 years.*

Section 32. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (a) of subsection (4) of section 459.0085, Florida Statutes, are amended to read:

459.0085 Financial responsibility.—

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

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an "authorized insurer" as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914(2), *from a risk retention group as defined under s. 627.942,* from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357.

(2) As a continuing condition of hospital staff privileges, osteopathic physicians with staff privileges shall also be required to establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914(2), *from a risk retention group as defined under s. 627.942,* from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357.

(4)(a) Each insurer, self-insurer, *risk retention group,* or Joint Underwriting Association shall promptly notify the Department of Professional Regulation of cancellation or nonrenewal of insurance required by this section. Unless the osteopathic physician demonstrates that he is otherwise in compliance with the requirements of this section, the Department of Professional Regulation shall suspend the license of the osteopathic physician pursuant to s. 120.57 and notify all health-care facilities licensed under chapter 395 of such action. Any suspension under this subsection shall remain in effect until the osteopathic physician demonstrates compliance with the requirements of this section, except that a license suspended under paragraph (5)(g) shall not be reinstated until the osteopathic physician demonstrates compliance with the requirements of that provision.

Section 33. Subsection (2) of section 459.0092, Florida Statutes, is amended to read:

459.0092 Fees.—The board shall set fees according to the following schedule:

(2) The fee for biennial renewal of licensure or certification shall not exceed *$300* ~~$150~~.

Section 34. Section 459.0145, Florida Statutes, is created to read:

459.0145 Concerted effort to refuse emergency room treatment to patients; penalties.—

(1) A physician licensed pursuant to this chapter may not instigate or engage in a concerted effort to refuse to render services to a patient in a hospital emergency room either through such physicians' failing to report for duty, such physicians' absenting themselves from their positions, such physicians' submitting their resignations, such physicians' abstaining from the full and faithful performance of their medical duties, or such physicians' otherwise causing conduct that adversely affects the services of the hospital. For the purposes of this subsection, the term "concerted" means contrived or arranged by agreement, planned or devised together, or done or performed together in cooperation.

(2) If a physician or group of physicians engages in conduct in violation of subsection (1), either the department or the hospital where the conduct occurs may file suit in circuit court to enjoin such conduct.

(a) Upon such suit being filed, the court shall conduct a hearing, with notice to the department, the board, and all interested parties, at the earliest practicable time. If the plaintiff makes a showing that a violation of subsection (1) is in progress or that there is a clear, real, and present danger that such a violation is about to commence, the court shall issue a temporary injunction enjoining such violation. Upon final hearing, the court shall either make the injunction permanent or dissolve it.

(b) A physician found to be in contempt of court for violating such an injunction shall be fined an amount considered appropriate by the court, but not less than $5,000. In determining the appropriate fine, the court shall objectively consider the extent of services lost to the hospital and its patients.

(3) A violation by a physician of subsection (1) constitutes ground for disciplinary action against him by the board, including the suspension or revocation of his license, and subjects him to liability for any damages that the hospital or any patient therein sustains as a result of the violation.

Section 35. Paragraphs (b), (p), and (y) of subsection (1) and subsections (2) and (5) of section 459.015, Florida Statutes, are amended, paragraphs (kk), (ll), (mm), and (nn) are added to subsection (1), subsections (3) through (6) are renumbered as subsections (4) through (7), respectively, and new subsections (3) and (8) are added to said section, to read:

459.015 Grounds for disciplinary action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(b) Having a license *or the authority* to practice osteopathic medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any *jurisdiction, including its agencies or subdivisions* ~~state, territory, or country~~. The licensing authority's acceptance of a physician's relinquishment of license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician, shall be construed as action against the physician's license.

(p) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, ~~and~~ test results, *records of drugs prescribed, dispensed, or administered, and reports of consultations and hospitalizations.*

(y) Gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of $10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the osteopathic physician. As used in this paragraph, "gross malpractice" or "the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances" shall not be construed so as to require more than one instance, event, or act. *Nothing in this paragraph shall be construed to require that an osteopathic physician be incompetent to practice osteopathic medicine in order to be disciplined pursuant to this paragraph.*

(kk) Misrepresenting or concealing a material fact at any time during any phase of a licensing or disciplinary process or procedure.

(ll) Improperly interfering with an investigation or with any disciplinary proceeding.

(mm) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the osteopathic physician knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the osteopathic physician also provides services.

(nn) Being found by any court in this state to have provided corroborating written medical expert opinion attached to any statutorily required notice of claim or intent or to any statutorily required response rejecting a claim, without reasonable investigation.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or certify with restrictions, to the department an application for certification, licensure, renewal, or reactivation.

(b) Revocation or suspension of a license or certificate.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Issuance of a letter of concern.

(g) Placement of the osteopathic physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the osteopathic physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another osteopathic physician.

(h) Corrective action.

(i) Refund of fees billed to and collected from the patient.

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the physician. All costs associated with compliance with orders issued under this subsection are the obligation of the physician.

(3) In any administrative action against a physician which does not involve revocation or suspension of license, the division shall have the burden, by the greater weight of the evidence, to establish the existence of grounds for disciplinary action. The division shall establish grounds for revocation or suspension of license by clear and convincing evidence.

(6)~~(5)~~ Upon the department's receipt from *an insurer or self-insurer of a report of a closed claim against an osteopathic physician pursuant to s. 627.912, or upon the receipt from a claimant of a presuit notice against an osteopathic physician pursuant to s. 768.57, the department shall review each report and determine whether it potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. However, if it is reported that an osteopathic physician has had* ~~the Department of Insurance of the name of an osteopathic physician having~~ three or more claims with indemnities exceeding $10,000 each within the previous 5-year period, ~~including reports for the 3-year period preceding October 1, 1985,~~ the department shall investigate the occurrences upon which the claims were based and determine if action by the department against the osteopathic physician is warranted.

(8) If any osteopathic physician regulated by the Division of Medical Quality Assurance is guilty of such unprofessional conduct, negligence, or mental or physical incapacity or impairment that the division determines that the osteopathic physician is unable to practice with reasonable skill and safety and presents a danger to patients, the division shall be authorized to maintain an action in circuit court enjoining such osteopathic physician from providing medical services to the public until the osteopathic physician demonstrates the ability to practice with reasonable skill and safety and without danger to patients.

Section 36. Paragraph (a) of subsection (4) of section 459.0155, Florida Statutes, is amended to read:

459.0155 Treatment programs for impaired practitioners.—

(4)(a) Whenever the consultant is notified and there is reason to believe that a practitioner licensed by the state under this chapter is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental condition, which could affect the practitioner's ability to practice his profession, and no complaint against the practitioner other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.225 if the probable cause panel of the board under which the practitioner is licensed finds that:

1. The practitioner has acknowledged his impairment problem;

2. The practitioner has voluntarily enrolled in an appropriate, approved treatment program; ~~and~~

3. The practitioner has voluntarily withdrawn from his practice or limited the scope of his practice, as determined by the panel in each case, until such time as the panel is satisfied that he has successfully completed an approved treatment program*; and.*

4. The practitioner has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the practitioner, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the practitioner's impairment and his participation in a treatment program.

Section 37. Paragraph (a) of subsection (7) of section 459.022, Florida Statutes, is amended, and paragraph (f) is added to said subsection, to read:

459.022 Osteopathic physician assistants.—

(7) OSTEOPATHIC PHYSICIAN ASSISTANT CERTIFICATION.—

(a) Any person desiring to be certified in this state as an osteopathic physician assistant shall apply to the department. The department shall *issue a certificate to any person who the board certifies has met the following requirements* ~~certify each applicant who~~:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants.

3. Has completed the application form and remitted an application fee not to exceed $100 as set by the board. An application for certification made by an osteopathic physician assistant shall include all of the following:

a. A certificate of completion of an approved physician assistant training program.

b. A sworn statement of any prior felony convictions.

c. A sworn statement of any previous revocation or denial of licensure or certification in any state.

d. Two letters of recommendation.

e. The full name, Florida osteopathic medical license number, and address of the supervising physician.

f. The specialty of the supervising osteopathic physician.

(f) Notwithstanding the provisions of subparagraph (a)2., the board may grant temporary certification to a recent graduate of an approved program to expire upon receipt of scores of the proficiency examination administered by the National Commission on Certification of Physician's Assistants. An applicant who has passed the proficiency examination may be granted permanent certification. An applicant failing the proficiency examination is no longer temporarily certified, but may reapply for a 1-year extension of temporary certification. If an applicant fails the examination two times, he is no longer eligible for certification.

Section 38. Paragraph (hh) is added to subsection (1) of section 460.413, Florida Statutes, to read:

460.413 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(hh) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the chiropractic physician knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the chiropractic physician also provides services.

Section 39. Paragraph (bb) is added to subsection (1) of section 461.013, Florida Statutes, and paragraph (a) of subsection (5) of said section is amended, to read:

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(bb) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the podiatrist knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the podiatrist also provides services.

(5)(a) Upon the department's receipt from *an insurer or self-insurer of a report of a closed claim against a podiatrist pursuant to s. 627.912, or upon the receipt from a claimant of a presuit notice against a podiatrist pursuant to s. 768.57, the department shall review each report and determine whether it potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. However, if it is reported that a podiatrist has had* ~~the Department of Insurance of the name of a podiatrist having~~ three or more claims with indemnities exceeding $10,000 each within the previous 5-year period, ~~including reports for the 3-year period preceding October 1, 1986,~~ the department shall investigate the occurrences upon which the claims were based and determine if action by the department against the podiatrist is warranted.

Section 40. Paragraph (k) is added to subsection (1) of section 464.018, Florida Statutes, to read:

464.018 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(k) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the nurse knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the nurse also provides services.

Section 41. Paragraph (o) is added to subsection (1) of section 465.016, Florida Statutes, to read:

465.016 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(o) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the pharmacist knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the pharmacist also provides services.

Section 42. Paragraph (ii) is added to subsection (1) of section 466.028, Florida Statutes, and subsection (6) of said section is amended, to read:

466.028 Grounds for disciplinary action; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(ii) Failing to report to the Division of Medical Quality Assurance, as required by s. 455.28, any physician licensed under chapter 458 or osteopathic physician licensed under chapter 459 who the dentist knows has violated the grounds for disciplinary action set out in the law under which that physician or osteopathic physician is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part II of chapter 641, in which the dentist also provides services.

(6) Upon the department's receipt from *an insurer or self-insurer of a report of a closed claim against a dentist pursuant to s. 627.912, or upon the receipt from a claimant of a presuit notice against a dentist pursuant to s. 768.57, the department shall review each report and determine whether it potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. However, if it is reported that a dentist has had* ~~the Department of Insurance of the name of a dentist with~~ any indemnity paid in excess of $5,000 in a judgment or settlement or *has had* ~~any dentist having~~ three or more claims for dental malpractice within the previous 5-year period which resulted in indemnity being paid, the department shall investigate the occurrence upon which the claims were based and determine if action by the department against the dentist is warranted.

Section 43. Subsections (1) and (3) and paragraph (e) of subsection (2) of section 627.912, Florida Statutes, are amended to read:

627.912 Professional liability claims and actions; reports by insurers.—

(1) Each self-insurer authorized under s. 627.356 or s. 627.357 and each insurer or joint underwriting association providing professional liability insurance to a practitioner of medicine licensed pursuant to the provisions of chapter 458, to a practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, to a podiatrist licensed pursuant to the provisions of chapter 461, *to a dentist licensed pursuant to the provisions of chapter 466,* to a hospital licensed pursuant to the provisions of chapter 395, to clinics included in ~~chapter 389 and~~ chapter 390, to an ambulatory surgical center as defined in s. 395.002(2), or to a member of The Florida Bar shall report in duplicate to the Department of Insurance any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent, if the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the department *and, if the insured party is licensed pursuant to chapter 458, chapter 459, chapter 461, or chapter 466, with the Department of Professional Regulation,* no later than 60 days following the occurrence of any event listed in paragraph (a), paragraph (b), or paragraph (c). *The Department of Professional Regulation shall review each report and determine whether any of the incidents that resulted in the claim potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. The Department of Professional Regulation, as part of the annual report required by s. 455.2285, shall publish annual statistics, without identifying licensees, on the reports it receives, including final action taken on such reports by the Department of Professional Regulation or the appropriate regulatory board.*

(2) The reports required by subsection (1) shall contain:

(e) The name *and address* of the injured person. This information shall be privileged and confidential and shall not be disclosed by the department without the injured person's consent. This information may be used by the department for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(3) ~~The department shall screen the reports and send to the Department of Professional Regulation and the appropriate regulatory board copies of the reports of any physicians or osteopaths having three or more claims with indemnities exceeding $10,000 each within the previous 5-year period, including screening reports for the 3-year period preceding October 1, 1985.~~ With respect to any such report, the Department of Professional Regulation shall be authorized to obtain the name of the patient to whom the report applies directly from the insurer or self-insurer filing the report, and the insurer or self-insurer shall promptly furnish the name of the patient to the department when requested. For purposes of safety management, the department shall annually provide the Department of Health and Rehabilitative Services with copies of the reports in cases resulting in an indemnity being paid to the claimants.

Section 44. Subsections (5) and (6) of section 641.55, Florida Statutes, as renumbered from section 641.395 by chapter 87-236, Laws of Florida, are amended to read:

641.55 Internal risk management program.—

(5)(a) Each health maintenance organization subject to this section shall submit an annual report to the Department of Health and Rehabilitative Services summarizing the incident reports that have been filed in

the health maintenance organization for that year pertaining to services rendered on the premises of the health maintenance organization. The report shall be on a form prescribed by rule of the Department of Health and Rehabilitative Services and shall include with respect to medical services rendered on the premises of the health maintenance organization:

1. The total number of adverse incidents causing injury to patients.

2. A listing, by category, of the types of operations, diagnostic or treatment procedures, or other actions causing the injuries and the number of incidents occurring within each category.

3. A listing, by category, of the types of injuries caused and the number of incidents occurring within each category.

4. The name of each individual or provider responsible for adverse incidents causing injury to patients, the relationship of the individual or provider to the health maintenance organization, and the number of incidents in which each individual or provider has been directly involved.

5. A description of all medical malpractice claims filed against the health maintenance organization or its providers, including the total number pending and closed, the nature of the incident which led to the claims, the persons involved in the claim, and the status and disposition of each claim. Each report shall update status and disposition for all prior reports.

6. A report of all disciplinary actions taken against any provider or any medical staff member of the health maintenance organization, including the nature and cause of the action.

(b) The information reported to the department pursuant to subparagraphs (a)4., 5., and 6. which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall also be reported to the Department of Professional Regulation. The Department of Professional Regulation shall review the information and determine whether any of the incidents potentially involved conduct by a licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply.

(c)~~(b)~~ The annual report shall also contain the name of the risk manager of the health maintenance organization, a copy of its policy and procedures which govern the measures taken by the organization and its risk manager to reduce the risk of injuries and adverse or untoward incidents, and the results of these measures. This report shall be held confidential and shall not be available to the public pursuant to s. 119.07 or any other law providing access to public records, nor shall the report be discoverable or admissible~~.~~ *in any civil or administrative action, except in disciplinary proceedings by the Department of Professional Regulation and the appropriate regulatory board. This report shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause.*

(6) If an adverse or untoward incident, whether occurring in the facilities of the health maintenance organization or arising from health care prior to admission to the facilities of the organization or in the facility of one of its providers, results in*:*

(a) The death of a patient*;* ~~or~~

(b) Severe brain or spinal damage to a patient*;*~~,~~

(c) A surgical procedure being performed on the wrong patient; or

(d) A surgical procedure unrelated to the patient's diagnosis or medical needs being performed on any patient,

the organization shall report this incident to the Department of Health and Rehabilitative Services within 3 working days of its occurrence. A more detailed follow-up report shall be submitted to the Department of Health and Rehabilitative Services within 10 days after the first report. The department may require an additional, final report. *Reports under this subsection shall be sent immediately by the department to the Department of Professional Regulation whenever they involve a health care provider licensed under chapter 458, chapter 459, chapter 461, or chapter 466.* These reports shall not be available to the public pursuant to s. 119.07 or any other law providing access to public records~~.~~*, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Professional Regulation and the appropriate regulatory board, nor shall they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Professional Regulation or the appropriate regulatory board. However, the Department of Professional Regulation shall make available, upon written request by a practitioner against whom probable cause has been found, any such records which form the basis of the determination of probable cause.* The Department of Health and Rehabilitative Services may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken by the health maintenance organization in response to the incident. *The Department of Professional Regulation shall review each incident and determine whether it potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply* ~~The requirements of this subsection shall take effect January 1, 1986.~~ The gross data compiled pursuant to this section or s. 395.041 shall be furnished by the Department of Health and Rehabilitative Services upon request to health maintenance organizations to be utilized for risk management purposes. The department may promulgate rules necessary to carry out the provisions of this section.

Section 45. Legislative findings and intent.—

(1) The Legislature makes the following findings:

(a) The adequate delivery of medical emergency care services is a priority health care need and can have a dramatic impact in reducing civil lawsuits which ultimately result in high medical malpractice insurance premiums. Therefore, the delivery of emergency medical care represents an essential public service.

(b) Medical emergency care providers are often faced with civil lawsuits brought on behalf of medical emergency care patients, many of which may not be the direct result of substandard care, but rather may be prompted by recovery of such patient to less than full mental and physical health due to the severe nature of the medical emergency.

(c) Civil lawsuits brought on behalf of medical emergency care patients are often the result of factors beyond the control of the medical emergency care facility or the provider rendering such care, including, but not limited to:

1. The severe nature of many such emergencies; and

2. The fact that the emergency patient may not have had a previously established medical relationship with the defendant, may have been unknown to the defendant, and may have been unconscious or unable to provide essential information, such as medical history, allergies to drugs, and other relevant facts.

(2) It is the intent of the Legislature to promote the availability of emergency medical care by providing immunity from civil liability to hospitals and trauma centers and the medical emergency care providers rendering care therein to medical emergency patients, unless such care is rendered with reckless disregard for the life or health of the patient.

Section 46. Section 768.13, Florida Statutes, is amended to read:

768.13 Good Samaritan Act; immunity from civil liability.—

(1) This act shall be known and cited as the "Good Samaritan Act."

(2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

(b)*1.* Any *hospital licensed under chapter 395, any employee of such hospital working in a clinical area within the facility and providing patient care, and any* person licensed to practice medicine who ~~gratuitously and~~ in good faith renders *medical* ~~emergency~~ care or treatment *necessitated by a sudden, unexpected situation or occurrence resulting in a serious medical condition demanding immediate medical attention, for which the patient enters the hospital through its emergency room* ~~in~~

~~response to a "code blue" emergency within a hospital~~ or trauma center, shall not be held liable for any civil damages as a result of such *medical* care or treatment, *unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.*

2. The immunity provided by this paragraph does not apply to damages as a result of any act or omission of providing medical care or treatment:

a. Which occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the immunity provided by this paragraph applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery;

b. Unrelated to the original medical emergency; or ~~as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as a reasonably prudent person licensed to practice medicine who would have acted under the same or similar circumstances.~~

3. For purposes of this paragraph, "reckless disregard" as it applies to a given health care provider rendering emergency medical services shall be such conduct which a health care provider knows or should know would be likely to result in injury so as to affect the life or health of another, taking into account the following to the extent they may be present;

a. The extent or serious nature of the circumstances prevailing.

b. The lack of time or ability to obtain appropriate consultation.

c. The lack of a prior patient-physician relationship.

d. The inability to obtain an appropriate medical history of the patient.

e. The time constraints imposed by coexisting emergencies.

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

Section 47. Section 768.78, Florida Statutes, is amended to read:

768.78 Alternative methods of payment of damage awards.—

(1)*(a)* In any action to which this part applies in which the trier of fact makes an award to compensate the claimant for future economic losses which exceed $250,000, payment of amounts intended to compensate the claimant for these losses shall be made by one of the following means, *unless an alternative method of payment of damages is provided in this section*:

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

(b)~~(2)~~ In entering a judgment ordering the payment of such future damages by periodic payments, the court shall make a specific finding of the dollar amount of periodic payments which will compensate the judgment creditor for these future damages after offset for collateral sources. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value, less any attorney's fees payable from future damages in accordance with *paragraph (f)* ~~subsection (6)~~. The period of time over which the periodic payments shall be made is the period of years determined by the trier of fact in arriving at its itemized verdict and shall not be extended if the plaintiff lives beyond the determined period. 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 periodic payments are to be made, the remaining liability of the defendant, reduced to present value, shall be paid into the estate of the claimant in a lump sum. The court may order that the payments be equal or vary in amount, depending upon the need of the claimant.

(c)~~(3)~~ As a condition to authorizing periodic payments of future damages, the court shall require the defendant to post a bond or security or otherwise to assure full payment of these damages awarded by the judgment. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A§ by Best's. If the defendant is unable to adequately assure full payment of the damages, the court shall order that all damages be paid to the claimant in a lump sum pursuant to the verdict. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the judgment creditor. Upon termination of periodic payments, the court shall order the return of the security, or so much as remains, to the judgment debtor.

(d)1.~~(4)(a)~~ In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to timely make the required periodic payments, the court shall:

a.~~1.~~ Order that all remaining amounts of the award be paid by lump sum within 30 days after entry of the order;

b.~~2.~~ Order that, in addition to the required periodic payments, the judgment debtor pay the claimant all damages caused by the failure to timely make periodic payments, including court costs and attorney's fees; or

c.~~3.~~ Enter other orders or sanctions as appropriate to protect the judgment creditor.

2.~~(b)~~ If it appears that the judgment debtor may be insolvent or that there is a substantial risk that the judgment debtor may not have the financial responsibility to pay all amounts due and owing the judgment creditor, the court may:

a.~~1.~~ Order additional security;

b.~~2.~~ Order that the balance of payments due be placed in trust for the benefit of the claimant;

c.~~3.~~ Order that all remaining amounts of the award be paid by lump sum within 30 days after entry of the order; or

d.~~4.~~ Order such other protection as may be necessary to assure the payment of the remaining balance of the judgment.

(e)~~(5)~~ The judgment providing for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Periodic payments shall be subject to modification only as specified in this *subsection* ~~section~~.

(f)~~(6)~~ 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. If a claimant has agreed to pay his attorney's fees on a contingency fee basis, the claimant shall be responsible for paying the agreed percentage calculated solely on the basis of that portion of the award not subject to periodic payments. The remaining unpaid portion of the attorney's fees shall be paid in a lump sum by the defendant, who shall receive credit against future payments for this amount. However, the credit against each future payment is limited to an amount equal to the contingency fee percentage of each periodic payment. Any provision of this *paragraph* ~~subsection~~ may be modified by the agreement of all interested parties.

(g)~~(7)~~ Nothing in this *subsection* ~~section~~ shall preclude any other method of payment of awards, if such method is consented to by the parties.

(2)(a) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, in which the trier of fact makes an award to compensate the claimant for future economic losses, payment of amounts intended to compensate the claimant for these losses 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. The court shall, at the request of either party, enter a judgment ordering future economic damages, as itemized pursuant to s. 768.68, to be paid by periodic payments rather than lump sum.

(b) For purposes of this subsection "periodic payment" means provision for the spreading of future economic damage payments, in whole or in part, over a period of time, as follows:

1. A specific finding of the dollar amount of periodic payments which will compensate for these future damages after offset for collateral sources shall be made. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.

2. The defendant shall be required to post a bond or security or otherwise to assure full payment of these damages awarded. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A§ by Best's. If the defendant is unable to adequately assure full payment of the damages, all damages, reduced to present value, shall be paid to the claimant in a lump sum. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the claimant. Upon termination of periodic payments, the security, or so much as remains, shall be returned to the defendant.

3. The provision for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

Section 48. Legislative findings and intent.—

(1) The Legislature makes the following findings:

(a) Medical malpractice liability insurance premiums have increased dramatically in recent years, resulting in increased medical care costs for most patients and functional unavailability of malpractice insurance for some physicians.

(b) The primary cause of increased medical malpractice liability insurance premiums has been the substantial increase in loss payments to claimants caused by tremendous increases in the amounts of paid claims.

(c) The average cost of defending a medical malpractice claim has escalated in the past decade to the point where it has become imperative to control such cost in the interests of the public need for quality medical services.

(d) The high cost of medical malpractice claims in the state can be substantially alleviated by requiring early determination of the merit of claims, by providing for early arbitration of claims, thereby reducing delay and attorney's fees, and by imposing reasonable limitations on damages, while preserving the right of either party to have its case heard by a jury.

(e) The recovery of 100 percent of economic losses constitutes overcompensation because such recovery fails to recognize that such awards are not subject to taxes on economic damages.

(2) It is the intent of the Legislature to provide a plan for prompt resolution of medical negligence claims. Such plan shall consist of two separate components, presuit investigation and arbitration. Presuit investigation shall be mandatory and shall apply to all medical negligence claims and defenses. Arbitration shall be voluntary, and shall be available except as specified.

(a) Presuit investigation shall include:

1. Verifiable requirements that reasonable investigation precede both malpractice claims and defenses in order to eliminate frivolous claims and defenses.

2. Medical corroboration procedures.

(b) Arbitration shall provide:

1. Substantial incentives for both claimants and defendants to submit their cases to binding arbitration, thus reducing attorney's fees, litigation costs, and delay.

2. A conditional limitation on noneconomic damages where the defendant concedes willingness to pay economic damages and reasonable attorney's fees.

3. Limitations on the noneconomic damages components of large awards to provide increased predictability of outcome of the claims resolution process for insurer anticipated losses planning, and to facilitate early resolution of medical negligence claims.

Section 49. Definitions.—As used in sections 48-59, the term:

(1) "Claimant" means any person who has a cause of action arising from medical negligence.

(2) "Collateral sources" means any payments made to the claimant, or made on his behalf, by or pursuant to:

(a) The United States Social Security Act; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except as prohibited by federal law.

(b) Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by him or provided by others.

(c) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

(d) Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

(3) "Economic damages" means financial losses which would not have occurred but for the injury giving rise to the cause of action, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity.

(4) "Investigation" means that an attorney has reviewed the case against each and every potential defendant and has consulted with a medical expert and has obtained a written opinion from said expert.

(5) "Medical expert" means a person duly and regularly engaged in the practice of his profession who holds a health care professional degree from a university or college and has had special professional training and experience or one possessed of special health care knowledge or skill about the subject upon which he is called to testify or provide an opinion.

(6) "Medical negligence" means medical malpractice, whether grounded in tort or in contract.

(7) "Noneconomic damages" means nonfinancial losses which would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses.

(8) "Periodic payment" means provision for the structuring of future economic damages payments, in whole or in part, over a period of time, as follows:

(a) A specific finding of the dollar amount of periodic payments which will compensate for these future damages after offset for collateral sources shall be made. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.

(b) The defendant shall be required to post a bond or security or otherwise to assure full payment of these damages awarded. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A§ by Best's. If the defendant is unable to adequately assure full payment of the damages, all damages, reduced to present value, shall be paid to the claimant in a lump sum. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the claimant. Upon termination of periodic payments, the security, or so much as remains, shall be returned to the defendant.

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

Section 50. Presuit investigation of medical negligence claims and defenses by prospective parties.—

(1) Presuit investigation of medical negligence claims and defenses pursuant to sections 50-53 shall apply to all medical negligence, including dental negligence, claims and defenses. This shall include:

(a) Rights of action under s. 768.19, Florida Statutes, and defenses thereto.

(b) Rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28, Florida Statutes, and defenses thereto.

(2) Prior to issuing notification of intent to initiate medical malpractice litigation pursuant to s. 768.57, Florida Statutes, the claimant shall conduct an investigation to ascertain that there are reasonable grounds to believe that:

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

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

Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in section 49(5), at the time the notice of intent to initiate litigation is filed, which statement shall corroborate reasonable grounds to support the claim of medical negligence.

(3) Prior to issuing its response to the claimant's notice of intent to initiate litigation, during the time period for response authorized pursuant to s. 768.57, Florida Statutes, the defendant or the defendant's insurer or self-insurer shall conduct an investigation to ascertain whether there are reasonable grounds to believe that:

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

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

Corroboration of lack of reasonable grounds for medical negligence litigation shall be provided with any response rejecting the claim by the defendant's submission of a verified written medical expert opinion from a medical expert as defined in section 49(5), at the time the response rejecting the claim is filed, which statement shall corroborate reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

(4) The medical expert opinions required by this section shall specify whether any previous opinion by the same medical expert has been disqualified and if so the name of the court and the case number in which the ruling was issued.

Section 51. Availability of medical records for presuit screening of medical negligence claims and defenses; penalty.—

(1) Copies of any medical record relevant to any litigation of a medical negligence claim or defense shall be provided to a claimant or a defendant, or to the attorney thereof, at a reasonable charge within 10 business days of a request for copies. It shall not be grounds to refuse copies of such medical records that they are not yet completed or that a medical bill is still owing.

(2) Failure to provide copies of such medical records, or failure to make the charge for copies a reasonable charge, shall constitute evidence of failure of that party to comply with good-faith discovery requirements and shall waive the requirement of written medical corroboration by the requesting party.

(3) A hospital shall not be held liable for any civil damages as a result of complying with this section.

Section 52. Presuit discovery of medical negligence claims and defenses.—

(1) Upon the completion of presuit investigation pursuant to section 50, which investigation has resulted in the filing of a notice of intent to initiate litigation in accordance with s. 768.57, Florida Statutes, corroborated by medical expert opinion that there exist reasonable grounds for a claim of negligent injury, each party shall provide to the other party reasonable access to information within its possession or control, in order to facilitate evaluation of the claim.

(2) Such access shall be provided without formal discovery, pursuant to s. 768.57, Florida Statutes, and failure to so provide shall be grounds for dismissal of any applicable claim or defense ultimately asserted.

(3) Failure of any party to comply with this section shall constitute evidence of failure of that party to comply with good-faith discovery requirements and shall waive the requirement of written medical corroboration by the party seeking production.

(4) No statement, discussion, written document, report, or other work product generated solely by the presuit screening process is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, hospitals and other medical facilities, and the officers, directors, trustees, employees, and agents thereof, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process. Such immunity from civil liability includes immunity for any acts by a medical facility in connection with providing medical records pursuant to section 51(1) regardless of whether the medical facility is or is not a defendant.

Section 53. Presuit investigation of medical negligence claims and defenses by court.—

(1) After the completion of presuit investigation by the parties pursuant to section 50 and any informal discovery pursuant to s. 768.57, Florida Statutes, any party may file a motion in the circuit court requesting the court to determine whether the opposing party's claim or denial rests on a reasonable basis.

(2) If the court finds that the notice of intent to initiate litigation filed by the claimant is not in compliance with the reasonable investigation requirements of sections 48-59, the court shall dismiss the claim, and the person who filed such notice of intent, whether the claimant or the claimant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

(3) If the court finds that the response filed by a defendant rejecting the claim is not in compliance with the reasonable investigation requirements, the court shall strike the defendant's response, and the person who filed such response, whether the defendant, the defendant's insurer, or the defendant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the claimant.

(4) If the court finds that an attorney for the claimant filed notice of intent to initiate litigation without reasonable investigation, or filed a medical negligence claim without first filing such notice of intent which complies with the reasonable investigation requirements, or if the court finds that an attorney for a defendant filed a response rejecting the claim without reasonable investigation, the court shall submit its finding in the matter to The Florida Bar for disciplinary review of the attorney. Any attorney so reported three or more times within a 5-year period shall be reported to a circuit grievance committee acting under the jurisdiction of the Supreme Court. If such committee finds probable cause to believe that an attorney has violated this section, such committee shall forward to the Supreme Court a copy of its finding.

(5)(a) If the court finds that the corroborating written medical expert opinion attached to any notice of claim or intent or to any response rejecting a claim lacked reasonable investigation, the court shall report the medical expert issuing such corroborating opinion to the Division of Medical Quality Assurance or its designee. If such medical expert is not a resident of the state, the division shall forward such report to the disciplining authority of that medical expert.

(b) The court may refuse to consider the testimony of such an expert who has been disqualified three times pursuant to this section.

Section 54. Voluntary binding arbitration of medical negligence claims.—

(1) Voluntary binding arbitration pursuant to sections 54-59 shall not apply to rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28, Florida Statutes.

(2) Upon the completion of presuit investigation with preliminary reasonable grounds for a medical negligence claim intact, the parties may elect to have damages determined by an arbitration panel. Such election may be initiated by either party by serving a request for voluntary binding arbitration of damages within 90 days of service of the claimant's notice of intent to initiate litigation upon the defendant. The evidentiary standards for voluntary binding arbitration of medical negligence claims shall be as provided in s. 120.58(1)(a), Florida Statutes. To the extent not inconsistent with sections 48-59, voluntary binding arbitration of medical negligence claims shall utilize the procedures in s. 44.304, Florida Statutes.

(3) Upon receipt of a party's request for such arbitration, the opposing party may accept the offer of voluntary binding arbitration within 30 days. However, in no event shall the defendant be required to respond to the request for arbitration sooner than 90 days after service of the notice of intent to initiate litigation under s. 768.57, Florida Statutes. Such acceptance within the time period provided by this subsection shall be a binding commitment to comply with the decision of the arbitration panel. The liability of any insurer shall be subject to any applicable insurance policy limits.

(4) The arbitration panel shall be composed of three arbitrators, one selected by the claimant, one selected by the defendant, and one an administrative hearing officer furnished by the Division of Administrative Hearings who shall serve as the chief arbitrator with the authority granted a chief arbitrator under s. 44.304, Florida Statutes. In the event of multiple plaintiffs or multiple defendants, the arbitrator selected by the side with multiple parties shall be the choice of those parties. If the multiple parties cannot reach agreement as to their arbitrator, each of the multiple parties shall submit a nominee, and the director of the Division of Administrative Hearings shall appoint the arbitrator from among such nominees.

(5) The arbitrators shall be independent of all parties, witnesses, and legal counsel, and no officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

(6) The rate of compensation for medical negligence claims arbitrators other than the administrative hearing officer shall be set by the chief judge of the appropriate circuit court by schedule providing for compensation of not less than $250 per day nor more than $750 per day or as agreed by the parties. In setting the schedule, the chief judge shall consider the prevailing rates charged for the delivery of professional services in the community.

(7) Arbitration pursuant to this section shall preclude recourse to any other remedy by the claimant against any participating defendant, and shall be undertaken with the understanding that:

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

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

(c) Damages for future economic losses shall be awarded to be paid by periodic payments pursuant to section 49(8), and shall be offset by future collateral source payments.

(d) Punitive damages shall not be awarded.

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

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

(g) The defendant shall pay all the costs of the arbitration proceeding and the fees of all the arbitrators other than the administrative hearing officer.

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

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

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

(k) Any offer by a claimant to arbitrate must be made to each defendant against whom the claimant has made a claim. Any offer by a defendant to arbitrate must be made to each claimant who has joined in the notice of intent to initiate litigation, as provided in s. 768.57, Florida Statutes. A defendant who rejects a claimant's offer to arbitrate shall be subject to the provisions of section 56(3). A claimant who rejects a defendant's offer to arbitrate shall be subject to the provisions of section 56(4).

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

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

(8) Any issue between the defendant and the defendant's insurer or self-insurer as to who shall control the defense of the claim and any responsibility for payment of an arbitration award, shall be determined under existing principles of law; provided that the insurer or self-insurer shall not offer to arbitrate or accept a claimant's offer to arbitrate without the written consent of the defendant.

(9) The Division of Administrative Hearings is authorized to promulgate rules to effect the orderly and efficient processing of the arbitration procedures of sections 48-59.

(10) Rules promulgated by the Division of Administrative Hearings pursuant to this section, s. 120.53 or s. 120.65, may authorize any reasonable sanctions except contempt for violation of the rules of the Division or failure to comply with a reasonable order issued by a Hearing Officer, which is not under judicial review.

Section 55. Arbitration to allocate responsibility among multiple defendants.—

(1) The provisions of this section shall apply when more than one defendant has participated in voluntary binding arbitration pursuant to section 54.

(2) Within 20 days after the determination of damages by the arbitration panel in the first arbitration proceeding, those defendants who have agreed to voluntary binding arbitration shall submit any dispute among them regarding the apportionment of financial responsibility to a separate binding arbitration proceeding. Such proceeding shall be with a panel of three arbitrators, which panel shall consist of the administrative hearing officer who presided in the first arbitration proceeding, who shall serve as the chief arbitrator with the authority granted a chief arbitrator under s. 44.304, Florida Statutes, and two medical practitioners appointed by the defendants, except that if a hospital licensed pursuant to chapter 395, Florida Statutes, is involved in the arbitration proceeding, one arbitrator appointed by the defendants shall be a certified hospital risk manager. In the event the defendants cannot agree on their selection of arbitrators within 20 days after the determination of damages by the arbitration panel in the first arbitration proceeding, a list of not more than five nominees shall be submitted by each defendant to the director of the Division of Administrative Hearings, who shall select the other arbitrators but shall not select more than one from the list of nominees of any defendant.

(3) The administrative hearing officer appointed to serve as the chief arbitrator shall convene the arbitrators for the purpose of determining allocation of responsibility among multiple defendants within 65 days after the determination of damages by the arbitration panel in the first arbitration proceeding.

(4) The arbitration panel shall allocate financial responsibility among all defendants named in the notice of intent to initiate litigation, regardless of whether the defendant has submitted to arbitration. The defendants in the arbitration proceeding shall pay their proportionate share of the economic and noneconomic damages awarded by the arbitration panel. All defendants in the arbitration proceeding shall be jointly and severally liable for their proportionate share of any damages assessed in arbitration. The determination of the percentage of fault of any defendant not in the arbitration case shall not be binding against that defendant, nor shall it be admissible in any subsequent legal proceeding.

(5) Payment by the defendants of the damages awarded by the arbitration panel in the first arbitration proceeding shall extinguish those defendants' liability to the claimant and shall also extinguish those defendants' liability for contribution to any defendants who did not participate in arbitration.

(6) Any defendant paying damages assessed pursuant to this section or section 54 shall have an action for contribution against any nonarbitrating person whose negligence contributed to the injury.

Section 56. Effects of failure to offer or accept voluntary binding arbitration.—

(1) A proceeding for voluntary binding arbitration is an alternative to jury trial and shall not supersede the right of any party to a jury trial.

(2) If neither party requests or agrees to voluntary binding arbitration, the claim shall proceed to trial or to any available legal alternative such as offer of and demand for judgment under s. 768.79, Florida Statutes, or offer of settlement under s. 45.061, Florida Statutes.

(3) If the defendant refuses a claimant's offer of voluntary binding arbitration:

(a) The claim shall proceed to trial without limitation on damages, and the claimant, upon proving medical negligence, shall be entitled to recover prejudgment interest, and reasonable attorney's fees up to 25 percent of the award reduced to present value.

(b) The claimant's award at trial shall be reduced by any damages recovered by the claimant from arbitrating codefendants following arbitration.

(4) If the claimant rejects a defendant's offer to enter voluntary binding arbitration:

(a) The damages awardable at trial shall be limited to net economic damages, plus noneconomic damages not to exceed $350,000 per incident. The Legislature expressly finds that such conditional limit on noneconomic damages is warranted by the claimant's refusal to accept arbitration, and represents an appropriate balance between the interests of all patients who ultimately pay for medical negligence losses and the interests of those patients who are injured as a result of medical negligence.

(b) Net economic damages reduced to present value shall be awardable, including, but not limited to, past and future medical expenses and 80 percent of wage loss and loss of earning capacity, offset by any collateral source payments.

(c) Damages for future economic losses shall be awarded to be paid by periodic payments pursuant to section 49(9), and shall be offset by future collateral source payments.

(5) Jury trial shall proceed in accordance with existing principles of law.

Section 57. Misarbitration.—

(1) At any time during the course of voluntary binding arbitration of a medical negligence claim pursuant to section 54 or section 55, the administrative hearing officer serving as chief arbitrator on the arbitration panel, if he determines that agreement cannot be reached, shall be authorized to dissolve the arbitration panel and request the director of the Division of Administrative Hearings to appoint two new arbitrators from new lists of five names provided by each party to the arbitration. Not more than one arbitrator shall be appointed from the list provided by any party.

(2) Upon appointment of the new arbitrators, arbitration shall proceed at the direction of the chief arbitrator in accordance with the provisions of sections 48-59.

Section 58. Payment of arbitration award; interest.—

(1) Within 20 days after the determination of damages by the arbitration panel pursuant to section 54, the defendant shall:

(a) Pay the arbitration award, including interest at the legal rate, to the claimant; or

(b) Submit any dispute among multiple defendants to arbitration pursuant to section 55.

(2) Commencing 90 days after the award rendered in the arbitration procedure pursuant to section 10, such award shall begin to accrue interest at the rate of 18 percent per year.

Section 59. Appeal of arbitration award.—An arbitration award is a final agency action for purposes of ss. 120.68 and 120.69, Florida Statutes. Any appeal of an award shall be taken to the district court of appeal and shall be limited to review on the record, and not de novo.

Section 60. Legislative findings and intent.—

(1) The Legislature makes the following findings:

(a) Physicians practicing obstetrics are high-risk medical specialists for whom malpractice insurance premiums are very costly, and recent increases in such premiums have been greater for such physicians than for other physicians.

(b) Any birth other than a normal birth frequently leads to a claim against the attending physician; consequently, such physicians are among the physicians most severely affected by current medical malpractice problems.

(c) Because obstetric services are essential, it is incumbent upon the Legislature to provide a plan designed to result in the stabilization and reduction of malpractice insurance premiums for providers of such services in Florida.

(d) The costs of birth-related neurological injury claims are particularly high and warrant the establishment of a limited system of compensation irrespective of fault.

(2) It is the intent of the Legislature to provide compensation, on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for custodial care and rehabilitation. This plan shall apply only to birth-related neurological injuries.

Section 61. Definitions.—As used in sections 60-75, the term:

(1) "Association" means the Florida Birth-Related Neurological Injury Compensation Association established in section 74 to administer the Florida Birth-Related Neurological Injury Compensation Plan and the Birth-Related Neurological Injury Compensation Trust Fund established in section 73.

(2) "Birth-related neurological injury" means injury to the brain or spinal cord of an infant of term gestation caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality.

(3) "Claimant" means any person who files a claim pursuant to section 64 for compensation for a birth-related neurological injury to an infant. Such a claim may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, personal representative, or other legal representative thereof.

(4) "Deputy commissioner" means a deputy commissioner of the Division of Workers' Compensation of the Department of Labor and Employment Security.

(5) "Division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.

(6) "Hospital" means any hospital licensed in Florida.

(7) "Participating physician" means a physician licensed in Florida to practice medicine who practices obstetrics or performs obstetrical services either full time or part time and who had paid at the time of the injury the assessment required for participation in the birth-related neurological injury compensation plan for the year in which the injury occurred. Such term shall not apply to:

(a) Any physician who practices medicine as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies or subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(13).

(b) Any physician who practices obstetrics in conjunction with his teaching duties at an accredited medical school or in its main teaching hospitals.

Section 62. Florida Birth-Related Neurological Injury Compensation Plan; exclusiveness of remedy.—

(1) There is established the Florida Birth-Related Neurological Injury Compensation Plan for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims. Such plan shall apply to births occurring on or after January 1, 1989, and shall be administered by the Florida Birth-Related Neurological Injury Compensation Association.

(2) The rights and remedies granted by this plan on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents, and next of kin, at common law or otherwise, arising out of or related to a medical malpractice claim with respect to such injury; except that a civil action shall not be foreclosed where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property, provided that such suit is filed prior to and in lieu of payment of an award under sections 60-75. Such suit shall be filed before the award of the division becomes conclusive and binding as provided for in section 70.

(3) Sovereign immunity is hereby waived on behalf of the Birth-Related Neurological Injury Compensation Association solely to the extent necessary to assure payment of compensation as provided in section 69.

Section 63. Deputy commissioner of Division of Workers' Compensation to determine claims.—The deputy commissioner shall hear and determine all claims filed pursuant to sections 60-75 and shall exercise the full power and authority granted to him with respect to workers' compensation claims, as necessary, to carry out the purposes of such sections.

Section 64. Filing of claims and responses; medical disciplinary review.—

(1) All claims filed for compensation under the plan shall commence by the claimant filing with the division a petition seeking compensation. Such petition shall include the following information:

(a) The name and address of the legal representative and the basis for his representation of the injured infant.

(b) The name and address of the injured infant.

(c) The name and address of any physician providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred.

(d) A description of the disability for which the claim is made.

(e) The time and place the injury occurred.

(f) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

(g) All available relevant medical records relating to the birth-related neurological injury, and an identification of any unavailable records known to the claimant and the reasons for their unavailability.

(h) Appropriate assessments, evaluations, and prognoses, and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant on account of the birth-related neurological injury.

(i) Documentation of expenses and services incurred to date, which indicates any payment made for such expenses and services, and by whom.

(j) Documentation of any applicable private or governmental source of services or reimbursement relative to the impairments.

(2) The claimant shall furnish the division with as many copies of the petition as required for service upon the association, any physician and hospital named in the petition, and the Division of Medical Quality Assurance, along with a $15 filing fee for deposit in the Workers' Compensation Administration Trust Fund. Upon receipt of the petition, the division shall immediately serve the association, by service upon the agent designated to accept service on behalf of the association, by registered or certified mail, and shall mail copies of the petition to any physician and hospital named in the petition, the Division of Medical Quality Assurance, the Department of Health and Rehabilitative Services, and the medical advisory review panel provided for in section 67.

(3) The association shall have 45 days from the date of service in which to file a response to the petition and to submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury.

(4) Upon receipt of such petition, the Division of Medical Quality Assurance shall review the information therein and determine whether it involved conduct by a physician licensed under chapter 458, Florida Statutes, or an osteopathic physician licensed under chapter 459, Florida Statutes, that is subject to disciplinary action, in which case the provisions of s. 455.225, Florida Statutes, shall apply.

(5) Upon receipt of such petition, the Department of Health and Rehabilitative Services shall investigate the claim, and if it determines that the injury resulted from, or was aggravated by, a breach of duty on the part of a hospital in violation of chapter 395, Florida Statutes, it shall take any such action consistent with its disciplinary authority as may be appropriate.

Section 65. Tolling of statute of limitations.—The statute of limitations with respect to any civil action that may be brought by, or on behalf of, an injured infant allegedly arising out of, or related to, a birth-related neurological injury shall be tolled by the filing of a claim in accordance with sections 60-75, and the time such claim is pending or is on appeal shall not be computed as part of the period within which such civil action may be brought.

Section 66. Hearing; parties; discovery.—

(1) The deputy commissioner shall set the date for a hearing no sooner than 60 days and no later than 120 days after the filing by a claimant of a petition in compliance with section 64. The deputy commissioner shall immediately notify the parties of the time and place of such hearing, which shall be held in the county where the injury occurred unless otherwise agreed to by the parties and authorized by the division.

(2) The parties to the hearing shall include the claimant and the association.

(3) Any party to a proceeding under sections 60-75 may, upon application to the deputy commissioner setting forth the materiality of the evidence to be given, serve interrogatories or cause the depositions of witnesses residing within or without the state to be taken, the costs thereof to be taxed as expenses incurred in connection with the filing of a claim. Such depositions shall be taken after giving notice and in the manner prescribed for the taking of depositions in actions at law, except that they shall be directed to the deputy commissioner before whom the proceedings may be pending.

Section 67. Medical advisory panel review and recommendations; procedure.—

(1) Each claim filed with the division under sections 60-75 shall be reviewed by a medical advisory panel of three qualified physicians of whom one shall be a neurosurgeon, one shall be an obstetrician, and one shall be a pediatrician. The panel shall file its report, with its recommendation as to whether the injury for which the claim is filed is a birth-related neurological injury, with the division at least 10 days prior to the date set for the hearing. At the request of the division, at least one member of the panel shall be available to testify at the hearing. The deputy commissioner shall consider, but not be bound by, the recommendation of the panel.

(2) The division shall develop a plan which provides the method and procedure for such medical advisory panel review and shall develop such plan in coordination with the Division of Medical Quality Assurance of the Department of Professional Regulation and the Children's Medical Services Program Office of the Department of Health and Rehabilitative Services.

Section 68. Determination of claims; presumption; findings of deputy commissioner binding on participants.—

(1) Upon completion of the hearing, the deputy commissioner shall make the following determinations based upon all available evidence:

(a) Whether the injury claimed is a birth-related neurological injury.

1. A rebuttable presumption shall arise that the injury alleged is a birth-related neurological injury where it has been demonstrated, to the satisfaction of the deputy commissioner, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury and that the infant was thereby rendered permanently and substantially mentally and physically impaired.

2. If either party disagrees with such presumption, that party shall have the burden of proving that the injury alleged is not a birth-related neurological injury.

(b) Whether obstetrical services were delivered by a participating physician at the birth.

(c) How much compensation, if any, is awardable pursuant to section 69.

(2) If the deputy commissioner determines that the injury alleged is not a birth-related neurological injury or that obstetrical services were not delivered by a participating physician at the birth, he shall enter an order and shall cause a copy of such order to be sent immediately to the parties by registered or certified mail.

(3) By becoming a participating physician, a physician shall be bound for all purposes by the finding of the deputy commissioner or any appeal therefrom with respect to whether such injury is a birth-related neurological injury.

Section 69. Deputy commissioner awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the deputy commissioner shall make an award providing compensation for the following items relative to such injury:

(a) Actual expenses for medically necessary and reasonable medical and hospital, rehabilitative, residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel; or in lieu of compensation for such items, custodial care in a state-designated facility, if custodial care in a state-designated facility is available. However, such expenses shall not include:

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

2. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity.

3. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

4. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses included under this paragraph shall be limited to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

(b) Periodic payments of an award to the parent or legal guardian of the infant found to have sustained a birth-related neurological injury, which award shall not exceed $100,000. However, at the discretion of the deputy commissioner, such award may be made in a lump sum.

(c) Reasonable expenses incurred in connection with the filing of a claim under sections 60-75, including reasonable attorney's fees, which shall be subject to the approval and award of the deputy commissioner.

(2) The award shall require the immediate payment of expenses previously incurred and shall require that future expenses be paid as incurred.

(3) A copy of the award shall be sent immediately by registered or certified mail to each person served with a copy of the petition under section 64(2).

Section 70. Conclusiveness of determination or award; appeal.—

(1) A determination of the deputy commissioner as to qualification of the claim for purposes of compensability under section 68 or an award by the deputy commissioner pursuant to section 69 shall be conclusive and binding as to all questions of fact. Review of an order of a deputy commissioner shall be by appeal to the District Court of Appeal. Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders.

(2) In case of an appeal from an award of the deputy commissioner, the appeal shall operate as a suspension of the award, and the association shall not be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined.

Section 71. Enforcement of awards.—

(1) The deputy commissioner shall have full authority to enforce his awards and to protect himself from any deception or lack of cooperation in reaching his determination as to any award. Such authority shall include the power to petition the circuit court for an order of contempt.

(2) A party may, if the circumstances so warrant, petition the circuit court for enforcement of a final award by the deputy commissioner.

Section 72. Limitation on claim.—Any claim for compensation under sections 55-70 that is filed more than 7 years after the birth of an infant alleged to have a birth-related neurological injury shall be barred.

Section 73. Birth-Related Neurological Injury Compensation Trust Fund.—

(1) There is hereby created within the Department of Insurance the Birth-Related Neurological Injury Compensation Trust Fund to finance the Florida Birth-Related Neurological Injury Compensation Plan.

(2) Such fund shall be administered by the Florida Birth-Related Neurological Injury Compensation Association established in section 74, in accordance with the following requirements:

(a) On or before July 1, 1988, the directors of the association shall submit to the Department of Insurance for review a plan of operation which shall provide for the efficient administration of the fund and for prompt processing of claims against and awards made from the fund. The plan of operation shall include provision for:

1. Establishment of necessary facilities;

2. Management of the fund;

3. Processing of claims against the fund;

4. Initial and annual assessment of the persons and entities listed in subsection (4) to pay awards and expenses, which assessments shall be on an actuarially sound basis subject to the limits set forth in subsection (4); and

5. Any other matters necessary for the efficient operation of the birth-related neurological injury compensation plan.

(b) The plan of operation shall be subject to approval by the Department of Insurance after consultation with representatives of interested individuals and organizations. If the Department of Insurance disapproves all or any part of the plan of operation, the directors shall within 30 days submit for review an appropriate revised plan of operation. If the directors fail to do so, the Department of Insurance shall promulgate a plan of operation. The plan of operation approved or promulgated by the Department of Insurance shall become effective and operational upon order of the Department of Insurance.

(c) Amendments to the plan of operation may be made by the directors of the plan, subject to the approval of the Department of Insurance.

(3) All assessments paid pursuant to the plan of operation shall be deposited in the Birth-Related Neurological Injury Compensation Trust

Fund. The fund and any income therefrom shall be disbursed only for the payment of awards under sections 60-75 and for the payment of the reasonable expenses of administering the fund.

(4) On or before March 1, 1988, the following persons and entities shall pay into the fund an initial assessment in accordance with the plan of operation:

(a) Each physician who wishes to participate in the Florida Birth-Related Neurological Injury Compensation Plan and who otherwise qualifies as a participating physician under sections 60-75 shall pay an initial assessment of $5,000.

(b) Each hospital licensed under chapter 395, Florida Statutes, shall pay an initial assessment of $50 per infant delivered during the prior calendar year, as reported in the most recent annual licensure survey of hospitals. Each hospital owned or operated by the state or a county, special taxing district, or other political subdivision of the state shall not be required to pay the initial assessment or any assessment required by subsection (5). The term "infant delivered during the prior calendar year" shall not include infants delivered by a physician employed by the State or any political subdivision thereof.

(c) All physicians licensed by the state as of March 1, 1988, other than participating physicians, shall pay into the fund an initial assessment of $250, in the manner required by the plan of operation.

(5)(a) Beginning January 1, 1990, the persons and entities listed in subsection (4), as of the date determined in accordance with the plan of operation, shall pay an annual assessment in the amount equal to their initial assessments, in the manner required by the plan of operation.

(b) If the assessments collected pursuant to subsection (4) and the appropriation of funds provided by section 76 of this act to the fund from the Insurance Commissioner's Regulatory Trust Fund are insufficient to maintain the fund on an actuarially sound basis, there is hereby appropriated for transfer to the fund from the Insurance Commissioner's Regulatory Trust Fund an additional amount of up to $20 million.

(c)1. Taking into account the assessments collected pursuant to subsection (4) and appropriations from the Insurance Commissioner's Regulatory Trust Fund, if required to maintain the fund on an actuarially sound basis, the Department of Insurance shall require each entity licensed to issue casualty insurance as defined in s. 624.605(1)(b), (k), and (q), Florida Statutes, to pay into the fund an annual assessment in an amount determined by the department pursuant to paragraph (7)(a), in the manner required by the plan of operation.

2. All annual assessments shall be made on the basis of net direct premiums written for the business activity which forms the basis for each such entity's inclusion as a funding source for the plan in the state during the prior year ending December 31, as reported to the Department of Insurance, and shall be in the proportion that the net direct premiums written by each carrier on account of the business activity forming the basis for its inclusion in the plan bears to the aggregate net direct premiums for all such business activity written in this state by all such entities.

3. No entity listed in this paragraph shall be individually liable for an annual assessment in excess of 0.25 percent of that entity's net direct premiums written.

4. Casualty insurance carriers shall be entitled to recover their initial and annual assessments through a surcharge on future policies, a rate increase applicable prospectively, or a combination of the two.

(6)(a) The Department of Professional Regulation shall collect and enforce collection of all assessments required to be paid by participating and nonparticipating physicians pursuant to sections 60-75. Failure of a physician to pay such assessment is grounds for disciplinary action pursuant to chapter 458 or chapter 459, Florida Statutes.

(b) The Department of Health and Rehabilitative Services shall collect and enforce collection of all assessments required to be paid by hospitals pursuant to sections 60-75. Failure of a hospital to pay such assessment is grounds for disciplinary action pursuant to s. 395.018, Florida Statutes.

(c) Assessments collected pursuant to this subsection shall be transferred to the Department of Insurance for deposit in the fund.

(7)(a) The Department of Insurance shall undertake an actuarial investigation of the requirements of the fund based on the fund's experience in the first year of operation, including without limitation the assets and liabilities of the fund. Pursuant to such investigation, the Department of Insurance shall establish the rate of contribution of the entities listed in paragraph (5)(c) for the tax year beginning January 1, 1990. Following the initial valuation, the Department of Insurance shall cause an actuarial valuation to be made of the assets and liabilities of the fund no less frequently than biennially. Pursuant to the results of such valuations, the Department of Insurance shall prepare a statement as to the contribution rate applicable to the entities listed in paragraph (5)(c). However, at no time shall the rate be greater than 0.25 percent of net direct premiums written.

(b) If the Department of Insurance finds that the fund cannot be maintained on an actuarially sound basis based on the assessments and appropriations listed in subsections (4) and (5), the department shall increase the assessments specified in subsection (4) on a proportional basis as needed.

Section 74. Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(1)(a) The Florida Birth-Related Neurological Injury Compensation Plan shall be governed by a board of five directors which shall be known as the Florida Birth-Related Neurological Injury Compensation Association.

(b) The directors shall be appointed for staggered terms of 3 years or until their successors are appointed and have qualified.

(c) The directors shall be appointed by the Insurance Commissioner as follows:

1. One citizen representative.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

(2)(a) The Insurance Commissioner may select the representative of the participating physicians from a list of at least three names to be recommended by the Florida Obstetric and Gynecologic Society; the representative of hospitals from a list of at least three names to be recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers; and the representative of physicians other than participating physicians from a list of three names to be recommended by the Florida Medical Association and a list of three names to be recommended by the Florida Osteopathic Medical Association. In no case shall the Insurance Commissioner be bound to make any appointment from among the nominees of such respective associations.

(b) The Insurance Commissioner shall promptly notify the appropriate medical association upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.

(3) The directors shall act by majority vote with five directors constituting a quorum for the transaction of any business or the exercise of any power of the plan. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the plan, in accordance with s. 112.061, Florida Statutes. The directors shall not be subject to any liability with respect to the administration of the plan.

(4) The board of directors shall have the power to:

(a) Administer the plan.

(b) Administer the Birth-Related Neurological Injury Compensation Trust Fund.

(c) Administer the payment of claims on behalf of the plan.

(d) Direct the investment and reinvestment of any surplus in the fund over losses and expenses, provided that any investment income generated thereby remains in the fund.

(e) Reinsure the risks of the fund in whole or in part.

(f) Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

(g) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the plan is created.

(h) Enter into such contracts as are necessary or proper to administer the plan.

(i) Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.

(j) Take such legal action as may be necessary to avoid payment of improper claims.

(k) Indemnify any employee, agent, member of the board of directors or alternate thereof, or person acting on behalf of the plan in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any action, suit, or proceeding, including any appeal thereof, arising out of such person's capacity acting on behalf of the plan; provided that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the plan and provided that, with respect to any criminal action or proceeding, he had reasonable cause to believe his conduct was lawful.

Section 75. Notice to obstetrical patients of participation in the plan.—Each hospital and each participating physician under the Florida Birth-Related Neurological Injury Compensation Plan shall provide notice to the obstetrical patients thereof as to participation in the limited no-fault alternative for birth-related neurological injuries. Such notice shall be provided on forms furnished by the association and shall include a clear and concise explanation of a patient's rights and limitations under the plan.

Section 76. Appropriations.—

(1) There is hereby appropriated to the Department of Professional Regulation 89 positions and $1.4 million from the Professional Regulation Trust Fund for fiscal year 1987-1988 to carry out the purposes of this act.

(2) There is hereby appropriated to the Department of Administration, Division of Administrative Hearings 5 positions and $207,168 from the General Revenue Fund and 5 positions and $66,000 from the Administrative Trust Fund for the 1987-1988 fiscal year to implement the provisions of this act. Additional salary rate of $380,425 is provided to the Division.

(3) There is hereby appropriated to the Department of Insurance 9 positions and $149,616 from the Insurance Commissioner's Regulatory Trust Fund for the 1987-1988 fiscal year to implement the provisions of this act.

(4) Effective January 1, 1990, there is hereby appropriated for transfer the sum of $20 million from the Insurance Commissioner's Regulatory Trust Fund to the Birth-Related Neurological Injury Trust Fund.

Section 77. Notwithstanding any other provision of law, the Board of Medicine and the Board of Osteopathic Medical Examiners are hereby authorized to make a one-time fee assessment and renewal within the fee limitations of this act.

Section 78. Subsection (6) is added to section 768.45, Florida Statutes, to read:

768.45 Medical negligence; standards of recovery.—

(6)(a) In any action for damages involving a claim of negligence against a physician licensed under chapter 458, osteopathic physician licensed under chapter 459, podiatrist licensed under chapter 461, or chiropractor licensed under chapter 460 providing emergency medical services in a hospital emergency department, the court shall admit expert medical testimony only from physicians, osteopathic physicians, podiatrists, and chiropractors who have had substantial professional experience within the preceding 5 years while assigned to provide emergency medical services in a hospital emergency department.

(b) For the purposes of this subsection:

1. The term "emergency medical services" means those medical services required for the immediate diagnosis and treatment of medical conditions which, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death.

2. "Substantial professional experience" shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in hospital emergency departments in the same or similar localities where the alleged negligence occurred.

Section 79. Subsection (6) is added to section 768.81, Florida Statutes, to read:

768.81 Comparative fault.—

(6) Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, when an apportionment of damages pursuant to this section is attributed to a teaching hospital as defined in s. 395.502(22), the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

Section 80. In an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, when an apportionment of damages pursuant to s. 768.81, Florida Statutes, is attributed to the Board of Regents, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability. The sole remedy available to a claimant to collect damages, subject to the provisions of this section, against the Board of Regents shall be pursuant to s. 768.28, Florida Statutes.

Section 81. Notwithstanding the provisions of s. 627.0625, Florida Statutes, insurers issuing insurance in this state shall reflect in their filings for rates, rating schedules, or rating manuals for medical malpractice insurance any savings or other effects realized by the insurer as a result of this act.

Section 82. 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 83. The Supreme Court of the State of Florida is requested to adopt a standard jury instruction for use in medical negligence cases involving alleged negligence occurring in hospital emergency rooms. It is requested that such jury instruction carry out the legislative intent as provided in section 45 with respect to the standard of care and the exigencies of medical treatment in hospital emergency rooms.

Section 84. Section 768.66, Florida Statutes, is hereby repealed.

Section 85. In the event that this act does not result in savings in medical malpractice premiums beyond those which would be otherwise realized, it is the desire of the Legislature that the provisions of this act be readdressed by the Legislature.

Section 86. This act does not apply to causes of action arising prior to the effective date of this act.

Section 87. This act shall take effect upon becoming a law.

Conference Committee Amendment 2—Strike the title and insert:

A bill to be entitled An act relating to medical incidents; providing legislative findings and intent regarding regulatory reform; amending s. 20.30, F.S.; creating the Division of Medical Quality Assurance within the Department of Professional Regulation; providing duties of the division and bureau; requiring a report; placing the licensing boards for various health care professions within the division; amending s. 395.0115, F.S.; providing antitrust immunity through establishment of a state-mandated peer review process; requiring licensed facilities to provide for peer review of physicians who provide health care services at such facilities and providing procedures therefor; requiring report of final disciplinary actions to the Division of Medical Quality Assurance for further investigation; providing for peer review panel immunity and for confidentiality of records; creating s. 395.0146, F.S.; requiring a certificate of need from the Department of Health and Rehabilitative Services for termination or reduction of emergency or trauma services; amending s. 395.017, F.S.;

providing maximum charge for copying records; providing access to confidential patient records for certain proceedings of the Department of Professional Regulation; limiting public access thereto; amending s. 395.041, F.S.; expanding internal risk management education and training requirements; requiring certain incident reports relating to surgical procedures; requiring report of certain incidents to the department; limiting public access; providing for department review and investigation of incidents which may involve conduct subject to discipline; providing administrative fines for violation of reporting requirements; providing for annual review of risk management programs; protecting risk managers from liability for implementation of risk management programs; requiring a report to the Legislature; amending s. 395.504, F.S.; to correct a cross-reference; amending s. 455.225, F.S.; providing civil immunity and prohibition from discharge to persons reporting with respect to incompetence, impairment, or unprofessional conduct of specified health care providers; providing penalties; amending s. 455.241, F.S.; providing for reports of patient records; creating s. 455.2415, F.S.; providing for disclosure of patient communications under certain circumstances; amending s. 455.242, F.S.; providing for disposition of records of physicians who terminate practice or relocate; amending s. 455.245, F.S.; providing conditions for considering emergency suspension or restriction of a license; creating s. 455.247, F.S.; requiring physicians, osteopathic physicians, podiatrists, and dentists to report professional liability claims and actions to the department; specifying contents; creating s. 455.28, F.S.; requiring reporting of certain physicians for violation of grounds for disciplinary action; providing a penalty; requiring investigation of probable disciplinary violations; amending s. 458.303, F.S.; revising exemption of certain commissioned medical officers from specified medical practice provisions; amending s. 458.307, F.S.; modifying membership of the Board of Medicine; specifying composition of probable cause panels; providing for a training program; providing for completion of a panel's work; amending s. 458.311, F.S., relating to requirements for licensure of physicians by examination; providing for an investigative process; providing for restricted licenses; amending s. 458.313, F.S.; providing for an investigative process for licensure by endorsement; requiring certain active practice; providing for restricted licenses; amending s. 458.315, F.S.; prohibiting issuance of temporary certificates for practice in areas of critical need to certain persons by endorsement; amending s. 458.3165, F.S.; providing for biennial renewal of public psychiatry certificates; amending s. 458.319, F.S.; increasing the maximum fee for renewal of a license to practice medicine; requiring evidence of active practice for license renewal; providing for supervised practice; amending ss. 458.320 and 459.0085, F.S.; authorizing physicians and osteopathic physicians to use risk retention groups to meet financial responsibility requirements; amending s. 458.327, F.S.; providing a penalty for leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without a license; creating ss. 458.3295, 459.0145, F.S.; prohibiting a concerted effort by a physician or osteopathic physician to refuse emergency room treatment to patients; authorizing a circuit court to enjoin such conduct; providing a penalty; amending ss. 458.331 and 459.015, F.S.; providing additional grounds for disciplinary action against physicians and osteopathic physicians; providing penalties and providing priorities for application thereof; establishing the burden of proof for administrative actions against physicians; providing for injunctive relief; providing for department review and investigation of claims; amending ss. 458.3315, 459.0155, F.S.; providing that a physician or osteopathic physician who is believed to be impaired must execute a release of his medical records to a consultant retained by the Department of Professional Regulation and limiting the use which the consultant may make of such records; amending s. 458.337, F.S.; specifying requirements for reports by medical organizations and hospitals when the physician has resigned; amending s. 458.345, F.S.; establishing requirements for registration of resident physicians and interns; providing a fee; restricting renewal or extension; prohibiting registration of certain persons; increasing a penalty; amending ss. 458.347 and 459.022, F.S.; allowing extended temporary certification of physician assistants and osteopathic physician assistants; amending s. 459.0055, F.S.; providing for an investigative process for licensure of osteopathic physicians; amending s. 459.008, F.S.; requiring evidence of active practice for license renewal; providing for supervised practice; amending s. 459.0092, F.S.; increasing the maximum fee for renewal of a license to practice osteopathic medicine; amending ss. 460.413, 461.013, 464.018, 465.016, and 466.028, F.S.; providing additional grounds for disciplinary action against chiropractic physicians, podiatrists, nurses, pharmacists, and dentists; amending s. 627.912, F.S.; requiring insurers to report certain claims against dentists; providing for department review and investigation; providing for an annual report; amending s. 641.55, F.S.; providing for department review and investigation of certain incidents reported by health maintenance organization internal risk management programs; limiting public access; requiring report of certain incidents relating to surgical procedures; amending s. 768.13, F.S.; providing immunity from civil liability to physicians, hospitals, and certain hospital employees rendering medical care or treatment in response to an emergency within a hospital or trauma center; providing exceptions to such immunity; amending s. 768.45, F.S.; prescribing matters to be considered by the trier of fact in a claim of negligence for services provided in a hospital emergency room; limiting who may give expert medical testimony; amending s. 768.78, F.S.; providing additional methods of payments of damage awards; providing legislative findings and intent; providing definitions; providing applicability of and procedure for mandatory presuit investigation and medical expert corroboration of medical negligence claims and defenses by prospective parties; requiring availability of medical records for presuit screening of claims and defenses and providing penalties; providing for presuit discovery of medical negligence claims and defenses and providing immunity with respect thereto; providing for presuit investigation of medical negligence claims and defenses by the court, and providing penalties for lack of reasonable investigation in filing or in corroborating medical negligence claims or defenses; providing for nonbinding arbitration of civil cases involving claims for medical negligence; providing for selection of arbitration panels; providing for referral of cases to arbitration and procedures for referral; providing procedures for hearings; providing for arbitration awards and judgments; providing for trial de novo; providing for assessment of attorney's fees and costs in certain circumstances; providing for appeal of award; creating the Florida Birth-Related Neurological Injury Compensation Plan; providing legislative findings and intent; providing definitions; providing exclusiveness of remedy; providing for the hearing of claims by deputy commissioners of the Division of Workers' Compensation of the Department of Labor and Employment Security; providing procedure for the filing of claims and responses; providing for medical disciplinary review; providing for tolling of the statute of limitations; providing for hearings, parties, and discovery; providing for review by a medical advisory panel; providing for determination of claims; providing a presumption as to injury; providing for binding nature of findings; providing for awards for birth-related neurological injuries, and for notice of such awards; providing for conclusiveness of determination or award; providing for appeal; providing for enforcement of awards; providing a limitation on the bringing of claims; creating the Birth-Related Neurological Injury Compensation Trust Fund within the Department of Insurance and providing for administration of the fund by the Florida Birth-Related Neurological Injury Compensation Association pursuant to a plan of operation approved by said department; providing for assessments for participation in the plan; providing for actuarial valuation of the fund by the department; providing for membership and a board of directors for the association; providing powers and duties of the association; providing for notice to obstetrical patients of participation in the plan; providing for certain appropriations; providing for assessment by certain boards; amending s. 768.81, F.S.; providing for an apportionment of damages based on a party's percentage of fault and not on the basis of the doctrine of joint and several liability; requiring medical malpractice insurers to reflect certain savings in rate filings and schedules; providing an effective date.

WHEREAS, the Legislature finds that there is in Florida a financial crisis in the medical liability insurance industry, and

WHEREAS, it is the sense of the Legislature that if the present crisis is not abated, many persons who are subject to civil actions will be unable to purchase liability insurance, and many injured persons will therefore be unable to recover damages for either their economic losses or their noneconomic losses, and

WHEREAS, the people of Florida are concerned with the increased cost of litigation and the need for a review of the tort and insurance laws, and

WHEREAS, the Legislature believes that, in general, the cost of medical liability insurance is excessive and injurious to the people of Florida and must be reduced, and

WHEREAS, the Legislature finds that there are certain elements of damage presently recoverable that have no monetary value, except on a purely arbitrary basis, while other elements of damage are either easily measured on a monetary basis or reflect ultimate monetary loss, and

WHEREAS, the Legislature desires to provide a rational basis for determining damages for noneconomic losses which may be awarded in

certain civil actions, recognizing that such noneconomic losses should be fairly compensated and that the interests of the injured party should be balanced against the interests of society as a whole, in that the burden of compensating for such losses is ultimately borne by all persons, rather than by the tortfeasor alone, and

WHEREAS, the Legislature created the Academic Task Force for Review of the Insurance and Tort Systems which has studied the medical malpractice problems currently existing in the State of Florida, and

WHEREAS, the Legislature has reviewed the findings and recommendations of the Academic Task Force relating to medical malpractice, and

WHEREAS, the Legislature finds that the Academic Task Force has established that a medical malpractice crisis exists in the State of Florida which can be alleviated by the adoption of comprehensive legislatively enacted reforms, and

WHEREAS, the magnitude of this compelling social problem demands immediate and dramatic legislative action, NOW, THEREFORE,

On motion by Senator Jennings, the Conference Committee Report was adopted and CS for SB 6-E passed as recommended and was certified to the House together with the Conference Committee Report. The vote on passage was:

Yeas—26

Mr. President	Deratany	Jennings	Peterson
Barron	Dudley	Johnson	Scott
Beard	Girardeau	Kirkpatrick	Thomas
Brown	Grant	Kiser	Thurman
Childers, W. D.	Grizzle	Lehtinen	Woodson
Crawford	Hair	Malchon	
Crenshaw	Hollingsworth	Myers	

Nays—9

Childers, D.	Langley	Stuart
Frank	McPherson	Weinstein
Jenne	Meek	Weinstock

Vote after roll call:

Yea—Plummer

Pair

The following pair was announced by the Secretary in accordance with Senate Rule 5.4:

I am paired with Senator Gordon on CS for SB 6-E. If he were present he would vote "nay" and I would vote "yea."

Gwen Margolis, 37th District

Explanations of Vote

We support the conference report because the bill provides several first-steps toward relief of our emergency room coverage crisis, toward reasonable pretrial screening of cases, and toward providing socially-responsible medical care for newborn babies with serious birth defects. While more broad-based measures are possible (and we have supported such measures), this bill should not be defeated solely because it does not go far enough.

Dexter Lehtinen, 40th District
Ileana Ros-Lehtinen, 34th District

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote of the membership of the House and passed with amendments SB 13-E and requests the concurrence of the Senate.

John B. Phelps, Clerk

SB 13-E—A bill to be entitled An act relating to educational facilities; amending s. 235.056, F.S.; providing for separately advertising for and receiving certain bids and proposals on the financing and construction of facilities; providing for public disclosure of information related to lease-purchase agreements; providing an effective date.

Amendment 1—On page 1, line 30, after "organization" insert: *or a consortium of district school boards*

Amendment 2—On page 2, line 5, before the period insert: *and the pledged revenues are limited to those authorized in s. 236.25(2)(e)*

On motions by Senator Margolis, the Senate concurred in the House amendments.

SB 13-E passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—34

Mr. President	Frank	Kiser	Scott
Barron	Girardeau	Langley	Stuart
Beard	Grant	Malchon	Thomas
Brown	Hair	Margolis	Thurman
Childers, D.	Hollingsworth	McPherson	Weinstein
Childers, W. D.	Jenne	Meek	Weinstock
Crawford	Jennings	Myers	Woodson
Crenshaw	Johnson	Peterson	
Dudley	Kirkpatrick	Plummer	

Nays—2

Grizzle	Lehtinen

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed CS for SB 6-E as amended by the Conference Committee Report.

John B. Phelps, Clerk

The bill contained in the foregoing message was ordered engrossed and then enrolled.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of February 3 was corrected and approved.

ADJOURNMENT

On motion by Senator Barron, the Senate adjourned sine die at 10:59 p.m.