



Journal of the Senate

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CALL TO ORDER

The Senate was called to order by President King at 10:00 a.m. in lieu of 9:00 a.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peadar
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Garcia	Saunders
Atwater	Geller	Sebesta
Bennett	Haridopolos	Siplin
Campbell	Hill	Smith
Carlton	Jones	Villalobos
Clary	Klein	Wasserman Schultz
Constantine	Lawson	Webster
Cowin	Lee	Wilson
Crist	Lynn	Wise
Dawson	Miller	

Excused: Senators Bullard and Margolis

PRAYER

The following prayer was offered by Senator Lynn:

Lift your eyes to the heavens, lift your voices in praise, "This is the day which the Lord has made; we will rejoice and be glad in it." Psalm 118:24

Let us pray!

Most gracious God of all the earth and the universe, by whose spirit man is taught knowledge, who gives wisdom to all who ask—grant your blessing and your guidance, we beseech you, as we strive to serve you and all who count on us for honesty, commitment, and assistance. Help us in the work which you have given us to do. Enable us to labor diligently and faithfully, remembering that without you we can do nothing.

God, from your throne which beholds all the dwellers upon the earth, we pray that you provide for the leaders of nations and of states the guidance and wisdom to work for and achieve peace, and the sensitivity to recognize the plights of all people before taking action or making decisions.

Gracious God, you have shown us hope and you offer us courage. We come to you as leaders who long to walk your pathways of grace and love but many times we get discouraged. We fear difficult experiences; we despair at challenges given to us. Well, Lord, this week we face some of those challenges.

Let us be guided by Isaiah 30:21, "And your ears shall hear a word behind you saying, This is the way, walk in it, when you turn to the right or when you turn to the left."

O God, we pray that you provide us with empathy, understanding and sensitivity in a process that requires we consider all aspects of issues, as we find answers to questions and solutions to problems.

We pray you allow us to leave this week with a sense of accomplishment, with a sense that we are all winners, and with the knowledge of closure—that the task was accomplished successfully—in good faith, on time, and in the best interest of those we serve.

God, we ask that the power of your goodness and mercy oversee our thoughts, our actions and our deeds, today and evermore. Shalom and Amen.

PLEDGE

Senator Wasserman Schultz led the Senate in the pledge of allegiance to the flag of the United States of America.

SPECIAL ORDER CALENDAR

Consideration of **CS for SB 2-B**, **CS for SB 4-B** and **SB 6-B** was deferred.

On motion by Senator Cowin, by two-thirds vote **HB 29-B** was withdrawn from the Committee on Ethics and Elections.

On motion by Senator Cowin, by two-thirds vote—

HB 29-B—A bill to be entitled An act relating to elections; amending s. 97.012, F.S.; revising and providing duties of the Secretary of State as chief election officer; amending s. 97.021, F.S.; deleting the definition of "central voter file"; revising the definition of "provisional ballot"; amending s. 97.052, F.S.; requiring the uniform statewide voter registration application to contain a notice to first-time registrants about required identification prior to voting the first time; amending s. 97.053, F.S.; authorizing use of a driver's license or state-issued identification card number in lieu of a portion of the social security number on a voter registration application; creating s. 97.028, F.S.; providing procedures on complaints of violations of Title III of the Help America Vote Act of 2002; creating s. 97.0535, F.S.; providing registration requirements for applicants who register by mail and who haven't previously voted in the county; amending s. 98.045, F.S.; deleting a reference, to conform; repealing s. 98.097, F.S., relating to the central voter file; amending s. 98.0977, F.S.; providing for continued operation and maintenance of the statewide voter registration database until the statewide voter registration system required by the Help America Vote Act of 2002 is operational; requiring the Department of State to begin the development of a statewide voter registration system designed to meet certain requirements of the Help America Vote Act of 2002; amending s. 98.212, F.S.; removing duty of supervisors of elections relating to the central voter file, to conform; amending s. 98.461, F.S.; requiring use of a computer printout as a precinct register at the polls; requiring the precinct register to contain space for elector signatures and clerk or inspector initials; amending and renumbering s. 98.471, F.S.; providing requirements for identification required at the polls; providing for voting a provisional ballot under certain circumstances; repealing s. 98.491, F.S., relating to intent that alternative electronic procedures for registration and elections be followed at the discretion of the supervisor of elections; amending s. 101.048, F.S.; providing for casting a provisional ballot by electronic means; requiring each supervisor of elections to create a free

access system that allows each person casting a provisional ballot to find out whether the ballot was counted and, if not, why; requiring each person casting a provisional ballot to be given written instructions regarding the free access system; creating s. 101.049, F.S.; requiring voting that occurs during polling hours extended by a court or other order to be done by provisional ballot; providing requirements for casting provisional ballots under such circumstances; amending s. 101.111, F.S.; revising provisions relating to challenging the right of a person to vote; providing for voting a provisional ballot under certain circumstances; amending s. 101.62, F.S.; providing an exception to limiting an absentee ballot request to ballots for elections within a single calendar year; amending s. 101.64, F.S.; revising a reference on the Voter's Certificate; amending s. 101.65, F.S.; revising the instructions to absentee electors to include instructions to prevent overvoting; amending s. 101.657, F.S.; requiring certain persons voting absentee in person to vote a provisional ballot; creating s. 101.6921, F.S.; providing requirements for delivery of special absentee ballots for certain first-time voters; creating s. 101.6923, F.S.; providing voter instructions for such special absentee ballots; creating s. 101.6925, F.S.; providing requirements for the canvassing of special absentee ballots; amending s. 101.694, F.S.; authorizing federal postcard applicants for absentee ballots to receive ballots for two general election cycles; amending s. 102.141, F.S.; requiring the canvassing of provisional ballots cast during any extended polling-hour period to segregate the votes from such ballots from other votes; directing the Department of State to adopt uniform rules for machine recounts; amending s. 125.01, F.S.; conforming a cross reference; repealing s. 20, ch. 2002-281, Laws of Florida; eliminating future revision of a cross reference, to conform; amending s. 163.511, F.S.; revising a reference; revising the primary date in 2004; suspending operation of the second primary election until January 1, 2006; providing a date in 2004 by which candidates for Lieutenant Governor must be designated and qualified; providing campaign finance reporting dates; specifying applicability of contribution limits for the 2004 elections; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing effective dates.

—a companion measure, was substituted for **SB 10-B** and by two-thirds vote read the second time by title.

On motion by Senator Cowin, by two-thirds vote **HB 29-B** was read the third time by title.

On motion by Senator Cowin, further consideration of **HB 29-B** was deferred.

On motion by Senator Diaz de la Portilla, by two-thirds vote **HB 23-B** was withdrawn from the Committee on Education.

On motion by Senator Diaz de la Portilla—

HB 23-B—A bill to be entitled An act relating to high school graduation; creating s. 1003.433, F.S.; providing learning opportunities for certain students to meet high school graduation requirements; providing requirements for certain transfer students; authorizing alternate assessments; requiring district school superintendents to notify students of the consequences of failure to receive a standard high school diploma; authorizing rules; amending s. 1008.22, F.S., relating to student assessment for public schools; providing for alternate assessments for the grade 10 FCAT; directing the Commissioner of Education to approve certain standardized tests if determined to meet certain criteria as equivalents to the FCAT and to permit passage of such tests in lieu of passage of the grade 10 FCAT for students graduating in the 2002-2003 school year or thereafter; providing for retroactive application; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing an effective date.

—a companion measure, was substituted for **CS for SB 8-B** and by two-thirds vote read the second time by title.

MOTION

On motion by Senator Constantine, the rules were waived to allow the following amendment to be considered:

Senator Constantine moved the following amendment which was adopted:

Amendment 1 (225718)(with title amendment)—On page 7, lines 201 through 207, delete those lines and insert: *such tests as alternate assessments to the grade 10 FCAT for the 2002-2003 school year. Students who attain scores that equate to the passing scores on the grade 10 FCAT for purposes of high school graduation on any of the approved alternative assessments shall satisfy the assessment requirement for a standard high school diploma as provided in s. 1003.43(5)(a) for the 2002-2003 school year graduating class. Prior to the application of these alternative assessments in subsequent school years, the Legislature shall review the continued use of these alternative tests.*

And the title is amended as follows:

On page 1, line 16, delete “or thereafter;” and insert: ; providing for legislative review;

MOTION

On motion by Senator Klein, the rules were waived to allow the following amendment to be considered:

Senator Klein moved the following amendment which failed:

Amendment 2 (344562)—On page 7, line 199, delete that line and insert: *entry into the military. Additionally, any school district may apply to the commissioner for approval by the State Board of Education of a test or series of tests that may be used as an alternate assessment to the grade 10 FCAT. If any such tests are deemed to be valid*

MOTION

On motion by Senator Wilson, the rules were waived to allow the following amendment to be considered:

Senators Wilson, Hill and Siplin offered the following amendment which was moved by Senator Wilson and failed:

Amendment 3 (440814)(with title amendment)—On page 3, between lines 78 and 79, insert:

Section 2. (1) *Beginning with the 2002-2003 school year and notwithstanding sections 1008.22, 1008.25, and 1003.43(9), Florida Statutes, a student may not be subject to mandatory retention or denied a standard high school diploma on the basis of the student's scores on the Florida Comprehensive Assessment Test (FCAT) until the criterion in subsection (2) is met.*

(2) *The median scaled score of each subgroup of students taking the FCAT within each grade level may not vary from the median scaled score of any other subgroup within that grade level by greater than 10 percent.*

(3) *For purposes of this section, subgroups consist of:*

- (a) *Economically disadvantaged students;*
- (b) *White students;*
- (c) *Black students;*
- (d) *Hispanic students;*
- (e) *Asian students;*
- (f) *American Indian students;*
- (g) *Students with disabilities; and*
- (h) *Limited English-proficient students.*

Notwithstanding the provisions of this section, no student who has failed to attain minimum required scores on the FCAT may receive a standard high school diploma unless the student has taken the grade 10 FCAT at least four times prior to the student's scheduled high school graduation or unless the student meets the statutory requirements of another exemption from taking the grade 10 FCAT.

Section 3. *Beginning with the 2002-2003 school year, the State Board of Education shall annually report, no later than December 31, to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees, the results of the*

Florida Comprehensive Assessment Test for all of the following sub-groups of students taking the test at all grade levels:

- (1) *Economically disadvantaged students;*
- (2) *White students;*
- (3) *Black students;*
- (4) *Hispanic students;*
- (5) *Asian students;*
- (6) *American Indian students;*
- (7) *Students with disabilities; and*
- (8) *Limited English-proficient students.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the second semicolon (;) insert: prohibiting the results of the Florida Comprehensive Assessment Test from being used for purposes of retaining a student in grade 3 or as a requirement for high school graduation until a certain criterion is met; providing for the criterion; defining subgroups; requiring students to take the grade 10 FCAT to fulfill the high school graduation requirement under certain circumstances; requiring the State Board of Education to report to the Legislature;

MOTION

On motion by Senator Wilson, the rules were waived to allow the following amendment to be considered:

Senators Wilson, Hill and Siplin offered the following amendment which was moved by Senator Wilson:

Amendment 4 (232422)(with title amendment)—On page 3, between lines 78 and 79, insert:

Section 2. *Beginning with the 2003-2004 school year, each school designated as a "D" or an "F" school at the end of the previous school year shall provide an intensive reading program for all students at each grade level beginning in grade 1 and ending in grade 12. As used in this section, the term "intensive reading program" means a part of the student's school day that is in addition to the student's regular instruction, and includes, but is not limited to, a series of sessions of reading instruction with a certified reading instructor and the individual student in which the following are offered, based on the student's learning style:*

1. *phonemic awareness;*
2. *phonics;*
3. *fluency;*
4. *comprehension; and*
5. *vocabulary.*

The student's progress must be checked a minimum of three times during the school year to assess the teaching method used and to assure that progress is being achieved. Following the student's completion of the intensive reading program, each student shall be reassessed and the results shall become a part of the student's academic improvement plan.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the second semicolon (;) insert: requiring an intensive reading program for all students at specified grade levels in schools designated as "D" or "F" by time certain; defining the term "intensive reading program"; requiring reassessments of students following the completion of the program; providing for assessment results;

POINT OF ORDER

Senator Wise raised a point of order that pursuant to Rule 7.1 **Amendment 4** was not germane to the bill.

The President referred the point of order and the amendment to Senator Villalobos, Vice Chairman of the Committee on Rules and Calendar.

Further consideration of **Amendment 4** was deferred.

MOTION

On motion by Senator Wilson, the rules were waived to allow the following amendment to be considered:

Senators Wilson, Hill and Siplin offered the following amendment which was moved by Senator Wilson and failed:

Amendment 5 (071494)(with title amendment)—On page 3, between lines 78 and 79, insert:

Section 2. *Notwithstanding any other provision of law, a Florida public school student who has been accepted to an accredited college or university and has met all of the requirements for a standard high school diploma except for passage of the grade 10 FCAT shall be awarded a standard high school diploma.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the second semicolon (;) insert: providing for the award of a standard high school diploma to certain students who have been accepted to an accredited college or university;

POINT OF ORDER, DISPOSITION

The Senate resumed consideration of pending **Amendment 4 (232422)**. On motion by Senator Wilson, **Amendment 4** was withdrawn.

MOTION

On motion by Senator Wilson, the rules were waived to allow the following amendment to be considered:

Senators Wilson, Hill and Siplin offered the following amendment which was moved by Senator Wilson and failed:

Amendment 6 (412170)(with title amendment)—On page 3, between lines 78 and 79, insert:

Section 2. (a) *All students subject to mandatory retention must be provided two opportunities to take approved alternative assessments to the FCAT. The second of these testing opportunities must take place after completion of the student's school's summer intensive reading camp, if the school offers such a camp, or after other remediation is offered to the student.*

(b) *Required scores for purposes of student promotion on alternative assessments to the FCAT may not exceed the median scaled score of all students within a grade level who have taken such alternative assessment.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 1, line 9, after the second semicolon (;) insert: providing for additional testing opportunities; providing limitations on required test scores;

On motion by Senator Diaz de la Portilla, by two-thirds vote **HB 23-B** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38

Mr. President	Aronberg	Campbell
Alexander	Atwater	Carlton
Argenziano	Bennett	Clary

Constantine	Hill	Saunders
Cowin	Jones	Sebesta
Crist	Klein	Siplin
Dawson	Lawson	Smith
Diaz de la Portilla	Lee	Villalobos
Dockery	Lynn	Wasserman Schultz
Fasano	Miller	Webster
Garcia	Peaden	Wilson
Geller	Posey	Wise
Haridopolos	Pruitt	
Nays—None		

The Senate resumed consideration of—

HB 29-B—A bill to be entitled An act relating to elections; amending s. 97.012, F.S.; revising and providing duties of the Secretary of State as chief election officer; amending s. 97.021, F.S.; deleting the definition of “central voter file”; revising the definition of “provisional ballot”; amending s. 97.052, F.S.; requiring the uniform statewide voter registration application to contain a notice to first-time registrants about required identification prior to voting the first time; amending s. 97.053, F.S.; authorizing use of a driver’s license or state-issued identification card number in lieu of a portion of the social security number on a voter registration application; creating s. 97.028, F.S.; providing procedures on complaints of violations of Title III of the Help America Vote Act of 2002; creating s. 97.0535, F.S.; providing registration requirements for applicants who register by mail and who haven’t previously voted in the county; amending s. 98.045, F.S.; deleting a reference, to conform; repealing s. 98.097, F.S., relating to the central voter file; amending s. 98.0977, F.S.; providing for continued operation and maintenance of the statewide voter registration database until the statewide voter registration system required by the Help America Vote Act of 2002 is operational; requiring the Department of State to begin the development of a statewide voter registration system designed to meet certain requirements of the Help America Vote Act of 2002; amending s. 98.212, F.S.; removing duty of supervisors of elections relating to the central voter file, to conform; amending s. 98.461, F.S.; requiring use of a computer printout as a precinct register at the polls; requiring the precinct register to contain space for elector signatures and clerk or inspector initials; amending and renumbering s. 98.471, F.S.; providing requirements for identification required at the polls; providing for voting a provisional ballot under certain circumstances; repealing s. 98.491, F.S., relating to intent that alternative electronic procedures for registration and elections be followed at the discretion of the supervisor of elections; amending s. 101.048, F.S.; providing for casting a provisional ballot by electronic means; requiring each supervisor of elections to create a free access system that allows each person casting a provisional ballot to find out whether the ballot was counted and, if not, why; requiring each person casting a provisional ballot to be given written instructions regarding the free access system; creating s. 101.049, F.S.; requiring voting that occurs during polling hours extended by a court or other order to be done by provisional ballot; providing requirements for casting provisional ballots under such circumstances; amending s. 101.111, F.S.; revising provisions relating to challenging the right of a person to vote; providing for voting a provisional ballot under certain circumstances; amending s. 101.62, F.S.; providing an exception to limiting an absentee ballot request to ballots for elections within a single calendar year; amending s. 101.64, F.S.; revising a reference on the Voter’s Certificate; amending s. 101.65, F.S.; revising the instructions to absentee electors to include instructions to prevent overvoting; amending s. 101.657, F.S.; requiring certain persons voting absentee in person to vote a provisional ballot; creating s. 101.6921, F.S.; providing requirements for delivery of special absentee ballots for certain first-time voters; creating s. 101.6923, F.S.; providing voter instructions for such special absentee ballots; creating s. 101.6925, F.S.; providing requirements for the canvassing of special absentee ballots; amending s. 101.694, F.S.; authorizing federal postcard applicants for absentee ballots to receive ballots for two general election cycles; amending s. 102.141, F.S.; requiring the canvassing of provisional ballots cast during any extended polling-hour period to segregate the votes from such ballots from other votes; directing the Department of State to adopt uniform rules for machine recounts; amending s. 125.01, F.S.; conforming a cross reference; repealing s. 20, ch. 2002-281, Laws of Florida; eliminating future revision of a cross reference, to conform; amending s. 163.511, F.S.; revising a reference; revising the primary date in 2004; suspending operation of the second

primary election until January 1, 2006; providing a date in 2004 by which candidates for Lieutenant Governor must be designated and qualified; providing campaign finance reporting dates; specifying applicability of contribution limits for the 2004 elections; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing effective dates.

—which was previously considered this day.

On motion by Senator Cowin, **HB 29-B** was passed and certified to the House. The vote on passage was:

Yeas—38

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Garcia	Saunders
Atwater	Geller	Sebesta
Bennett	Haridopolos	Siplin
Campbell	Hill	Smith
Carlton	Jones	Villalobos
Clary	Klein	Wasserman Schultz
Constantine	Lawson	Webster
Cowin	Lee	Wilson
Crist	Lynn	Wise
Dawson	Miller	
Nays—None		

RECESS

On motion by Senator Villalobos, the Senate recessed at 12:43 p.m. to reconvene at 3:00 p.m. or upon call of the President.

AFTERNOON SESSION

The Senate was called to order by the President at 3:25 p.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Garcia	Saunders
Atwater	Geller	Sebesta
Bennett	Haridopolos	Siplin
Campbell	Hill	Smith
Carlton	Jones	Villalobos
Clary	Klein	Wasserman Schultz
Constantine	Lawson	Webster
Cowin	Lee	Wilson
Crist	Lynn	Wise
Dawson	Miller	

SPECIAL ORDER CALENDAR, continued

On motion by Senator Jones, by two-thirds vote—

CS for SB 2-B—A bill to be entitled An act relating to medical malpractice; providing legislative findings; amending s. 46.015, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; creating s. 381.0409, F.S.; providing that creation of the Florida Center for Excellence in Health Care is contingent on the enactment of a public-records exemption; creating the Florida Center for Excellence in Health Care; providing goals and duties of the center; providing definitions; providing limitations on the center’s liability for any lawful actions taken; requiring the center to issue patient safety recommendations; requiring the development of a statewide electronic infrastructure to improve patient care and the delivery and quality of health care services; providing requirements for development of a core electronic medical record; authorizing access to the electronic medical records and other data maintained by the center; providing for the use of computerized physician order entry systems; providing for the establishment of a simulation center for high technology intervention surgery and intensive care; providing for

the immunity of specified information in adverse incident reports from discovery or admissibility in civil or administrative actions; providing limitations on liability of specified health care practitioners and facilities under specified conditions; providing requirements for the appointment of a board of directors for the center; establishing a mechanism for financing the center through the assessment of specified fees; requiring the Florida Center for Excellence in Health Care to develop a business and financing plan; authorizing state agencies to contract with the center for specified projects; authorizing the use of center funds and the use of state purchasing and travel contracts for the center; requiring the center to submit an annual report and providing requirements for the annual report; providing for the center's books, records, and audits to be open to the public; requiring the center to annually furnish an audited report to the Governor and Legislature; amending s. 395.004, F.S., relating to licensure of certain health care facilities; providing for discounted medical liability insurance based on certification of programs that reduce adverse incidents; requiring the Office of Insurance Regulation to consider certain information in reviewing discounted rates; creating s. 395.0056, F.S.; requiring the Agency for Health Care Administration to review complaints submitted if the defendant is a hospital; amending s. 395.0193, F.S., relating to peer review and disciplinary actions; providing for discipline of a physician for mental or physical abuse of staff; limiting the liability of certain participants in certain disciplinary actions at a licensed facility; amending s. 395.0197, F.S., relating to internal risk management programs; requiring a system for notifying patients that they are the subject of an adverse incident; requiring risk managers or their designees to give notice; requiring licensed facilities to annually report certain information about health care practitioners for whom they assume liability; requiring the Agency for Health Care Administration and the Department of Health to annually publish statistics about licensed facilities that assume liability for health care practitioners; requiring a licensed facility at which sexual abuse occurs to offer testing for sexually transmitted diseases at no cost to the victim; creating s. 395.1012, F.S.; requiring facilities to adopt a patient safety plan; providing requirements for a patient safety plan; requiring facilities to appoint a patient safety officer and a patient safety committee and providing duties for the patient safety officer and committee; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; directing the Agency for Health Care Administration to conduct or contract for a study to determine what information to provide to the public comparing hospitals, based on inpatient quality indicators developed by the federal Agency for Healthcare Research and Quality; creating s. 395.1051, F.S.; requiring certain facilities to notify patients about adverse incidents under specified conditions; creating s. 456.0575, F.S.; requiring licensed health care practitioners to notify patients about adverse incidents under certain conditions; amending s. 456.026, F.S., relating to an annual report published by the Department of Health; requiring that the department publish the report to its website; requiring the department to include certain detailed information; amending s. 456.039, F.S.; revising requirements for the information furnished to the Department of Health for licensure purposes; amending s. 456.041, F.S., relating to practitioner profiles; requiring the Department of Health to compile certain specified information in a practitioner profile; establishing a timeframe for certain health care practitioners to report specified information; providing for disciplinary action and a fine for untimely submissions; deleting provisions that provide that a profile need not indicate whether a criminal history check was performed to corroborate information in the profile; authorizing the department or regulatory board to investigate any information received; requiring the department to provide an easy-to-read narrative explanation concerning final disciplinary action taken against a practitioner; requiring a hyperlink to each final order on the department's website which provides information about disciplinary actions; requiring the department to provide a hyperlink to certain comparison reports pertaining to claims experience; requiring the department to include the date that a reported disciplinary action was taken by a licensed facility and a characterization of the practitioner's conduct that resulted in the action; deleting provisions requiring the department to consult with a regulatory board before including certain information in a health care practitioner's profile; providing for a penalty for failure to comply with the timeframe for verifying and correcting a practitioner profile; requiring the department to add a statement to a practitioner profile when the profile information has not been verified by the practitioner; requiring the department to provide, in the practitioner profile, an explanation of disciplinary action taken and the reason for sanctions imposed; requiring the department to include a hyperlink to a practitioner's website when requested; providing that practitioners licensed under ch. 458 or ch. 459, F.S., shall have claim information

concerning an indemnity payment greater than a specified amount posted in the practitioner profile; amending s. 456.042, F.S.; providing for the update of practitioner profiles; designating a timeframe within which a practitioner must submit new information to update his or her profile; amending s. 456.049, F.S., relating to practitioner reports on professional liability claims and actions; revising requirements for a practitioner to report claims or actions that were not covered by an insurer; requiring the department to forward information on liability claims and actions to the Office of Insurance Regulation; amending s. 456.051, F.S.; establishing the responsibility of the Department of Health to provide reports of professional liability actions and bankruptcies; requiring the department to include such reports in a practitioner's profile within a specified period; amending s. 456.057, F.S.; allowing the department to obtain patient records by subpoena without the patient's written authorization, in specified circumstances; amending s. 456.063, F.S.; authorizing regulatory boards or the department to adopt rules to implement requirements for reporting allegations of sexual misconduct; authorizing health care practitioner regulatory boards to adopt rules to establish standards of practice for prescribing drugs to patients via the Internet; amending s. 456.072, F.S.; providing for determining the amount of any costs to be assessed in a disciplinary proceeding; prescribing the standard of proof in certain disciplinary proceedings; amending s. 456.073, F.S.; authorizing the Department of Health to investigate certain paid claims made on behalf of practitioners licensed under ch. 458 or ch. 459, F.S.; amending procedures for certain disciplinary proceedings; providing a deadline for raising issues of material fact; providing a deadline relating to notice of receipt of a request for a formal hearing; amending s. 456.077, F.S.; providing a presumption related to an undisputed citation; amending s. 456.078, F.S.; revising standards for determining which violations of the applicable professional practice act are appropriate for mediation; amending s. 458.320, F.S., relating to financial responsibility requirements for medical physicians; requiring maintenance of financial responsibility as a condition of licensure of physicians; providing for payment of any outstanding judgments or settlements pending at the time a physician is suspended by the Department of Business and Professional Regulation; providing for an alternative method of providing financial responsibility; requiring the department to suspend the license of a medical physician who has not paid, up to the amounts required by any applicable financial responsibility provision, any outstanding judgment, arbitration award, other order, or settlement; amending s. 459.0085, F.S., relating to financial responsibility requirements for osteopathic physicians; requiring maintenance of financial responsibility as a condition of licensure of osteopathic physicians; providing for payment of any outstanding judgments or settlements pending at the time an osteopathic physician is suspended by the Department of Business and Professional Regulation; providing for an alternative method of providing financial responsibility; requiring that the department suspend the license of an osteopathic physician who has not paid, up to the amounts required by any applicable financial responsibility provision, any outstanding judgment, arbitration award, other order, or settlement; providing civil immunity for certain participants in quality improvement processes; defining the terms "patient safety data" and "patient safety organization"; providing for use of patient safety data by a patient safety organization; providing limitations on use of patient safety data; providing for protection of patient-identifying information; providing for determination of whether the privilege applies as asserted; providing that an employer may not take retaliatory action against an employee who makes a good-faith report concerning patient safety data; requiring that a specific statement be included in each final settlement statement relating to medical malpractice actions; providing requirements for the closed claim form of the Office of Insurance Regulation; requiring the Office of Insurance Regulation to compile annual statistical reports pertaining to closed claims; requiring historical statistical summaries; specifying certain information to be included on the closed claim form; amending s. 458.331, F.S., relating to grounds for disciplinary action against a physician; redefining the term "repeated malpractice"; revising the standards for the burden of proof in an administrative action against a physician; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; amending s. 459.015, F.S., relating to grounds for disciplinary action against an osteopathic physician; redefining the term "repeated malpractice"; revising the standards for the burden of proof in an administrative action against an osteopathic physician; amending conditions that necessitate a departmental investigation of an osteopathic physician; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; amending s. 460.413, F.S., relating to grounds for disciplinary action against a chiropractic physician; revising the standards for the burden of proof in an administrative

action against a chiropractic physician; providing a statement of legislative intent regarding the change in the standard of proof in disciplinary cases involving the suspension or revocation of a license; providing that the practice of health care is a privilege, not a right; providing that protecting patients overrides purported property interest in the license of a health care practitioner; providing that certain disciplinary actions are remedial and protective, not penal; providing that the Legislature specifically reverses case law to the contrary; requiring the Division of Administrative Hearings to designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; amending s. 461.013, F.S., relating to grounds for disciplinary action against a podiatric physician; redefining the term "repeated malpractice"; amending the minimum amount of a claim against such a physician which will trigger a department investigation; amending s. 466.028, F.S., relating to grounds for disciplinary action against a dentist or a dental hygienist; redefining the term "dental malpractice"; revising the minimum amount of a claim against a dentist which will trigger a departmental investigation; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; providing that an insurer may not require arbitration of a rate filing for medical malpractice; providing additional requirements for medical malpractice insurance rate filings; providing that portions of judgments and settlements entered against a medical malpractice insurer for bad-faith actions or for punitive damages against the insurer, as well as related taxable costs and attorney's fees, may not be included in an insurer's base rate; providing for review of rate filings by the Office of Insurance Regulation for excessive, inadequate, or unfairly discriminatory rates; requiring insurers to apply a discount based on the health care provider's loss experience; amending s. 627.0645, F.S.; excepting medical malpractice insurers from certain annual filings; requiring the Office of Program Policy Analysis and Government Accountability to study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; creating s. 627.0662, F.S.; providing definitions; requiring each medical liability insurer to report certain information to the Office of Insurance Regulation; providing for determination of whether excessive profit has been realized; requiring return of excessive amounts; amending s. 627.357, F.S.; providing guidelines for the formation and regulation of certain self-insurance funds; amending s. 627.4147, F.S.; revising certain notification criteria for medical and osteopathic physicians; requiring prior notification of a rate increase; authorizing the purchase of insurance by certain health care providers; creating s. 627.41491, F.S.; requiring the Office of Insurance Regulation to require health care providers to annually publish certain rate comparison information; creating s. 627.41492, F.S.; requiring the Office of Insurance Regulation to publish an annual medical malpractice report; creating s. 627.41493, F.S.; requiring a medical malpractice insurance rate rollback; providing for subsequent increases under certain circumstances; requiring approval for use of certain medical malpractice insurance rates; providing for a mechanism to make effective the Florida Medical Malpractice Insurance Fund in the event the rollback of medical malpractice insurance rates is not completed; creating the Florida Medical Malpractice Insurance Fund; providing purpose; providing governance by a board of governors; providing for the fund to issue medical malpractice policies to any physician regardless of specialty; providing for regulation by the Office of Insurance Regulation of the Financial Services Commission; providing applicability; providing for initial funding; providing for tax-exempt status; providing for initial capitalization; providing for termination of the fund; providing that practitioners licensed under ch. 458 or ch. 459, F.S., must, as a licensure requirement, obtain and maintain professional liability coverage; creating s. 627.41495, F.S.; providing for consumer participation in review of medical malpractice rate changes; providing for public inspection; providing for adoption of rules by the Financial Services Commission; requiring the Office of Insurance Regulation to order insurers to make rate filings effective January 1, 2004, which reflect the impact of the act; providing criteria for such rate filing; amending s. 627.912, F.S.; amending provisions prescribing conditions under which insurers must file certain reports with the Department of Health; requiring the Financial Services Commission to adopt by rule requirements for reporting financial information; increasing the limitation on a fine imposed against insurers; creating s. 627.9121, F.S.; requiring certain claims, judgments, or settlements to be reported to the Office of Insurance Regulation; providing penalties; amending s. 766.102, F.S.; revising requirements for health care providers providing expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; amending s. 766.106, F.S.; providing for application of common law principles of good faith to an

insurance company's bad-faith actions arising out of medical malpractice claims; providing that an insurer shall not be held to have acted in bad faith for certain activities during the presuit period and for a specified later period; providing legislative intent with respect to actions by insurers, insureds, and their assigns and representatives; revising requirements for presuit notice and for an insurer's or self-insurer's response to a claim; requiring that a claimant provide the Agency for Health Care Administration with a copy of the complaint alleging medical malpractice; requiring the agency to review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; creating s. 766.118, F.S.; providing a maximum amount to be awarded as noneconomic damages in medical negligence actions; providing exceptions; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," "noneconomic damages," and "periodic payment"; amending s. 766.206, F.S.; providing for dismissal of a claim under certain circumstances; requiring the court to make certain reports concerning a medical expert who fails to meet qualifications; amending s. 766.207, F.S.; providing for the applicability of the Wrongful Death Act and general law to arbitration awards; amending s. 768.041, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; amending s. 768.81, F.S.; requiring the trier of fact to apportion total fault solely among the claimant and joint tortfeasors as parties to an action; requiring the Office of Program Policy Analysis and Government Accountability and the Office of the Auditor General to conduct an audit of the health care practitioner disciplinary process and closed claims and report to the Legislature; creating ss. 1004.08 and 1005.07, F.S.; requiring schools, colleges, and universities to include material on patient safety in their curricula if the institution awards specified degrees; creating a workgroup to study the health care practitioner disciplinary process; providing for workgroup membership; providing that the workgroup deliver its report by January 1, 2004; creating s. 766.1065, F.S.; providing for mandatory presuit investigations; providing that certain records be provided to opposing parties; providing subpoena power; providing for sworn depositions of parties and medical experts; providing for mandatory in-person mediation if binding arbitration has not been agreed to; providing for a mandatory presuit screening panel hearing in the event of mediation impasse; creating s. 766.1066, F.S.; creating the Office of Presuit Screening Administration; providing for a database of volunteer panel members; prescribing qualifications for panel membership; providing a funding mechanism; providing panel procedures; providing for determination and recodation of panel findings; providing for disposition of panel findings; providing immunity from liability for panel members; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing for severability; providing for retroactive application; providing effective dates.

—was read the second time by title.

Senator Jones moved the following amendment which was adopted:

Amendment 1 (364386)—On page 18, lines 23-24, delete and insert: *a cap on noneconomic damages is imposed under certain circumstances.*

(14) *The Legislature finds that the high cost of medical malpractice claims can be substantially alleviated, in the short term, by imposing a limitation on noneconomic damages in medical malpractice actions under certain circumstances.*

(15) *The Legislature further finds that there is no alternative measure of accomplishing such result without imposing even greater limits upon the ability of persons to recover damages for medical malpractice.*

(16) *The Legislature finds that the provisions of this*

Senator Jones moved the following amendment:

Amendment 2 (140856)(with title amendment)—On page 65, line 15 through page 80, line 27, delete those lines and insert:

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

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

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

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

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

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

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

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

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

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

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

(6) Any deceptive, untrue, or fraudulent representation by the licensee with respect to any provision of this section shall result in permanent disqualification from any exemption to mandated financial responsibility as provided in this section and shall constitute grounds for disciplinary action under s. 458.331.

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

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

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

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

459.0085 Financial responsibility.—

(1) As a condition of licensing *and maintaining an active license*, 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 *must 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:

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

(b) Obtaining and maintaining professional liability coverage *for the current year and for each of the prior years that the applicant or licensee has been in the active practice of medicine, up to a maximum of 4 prior years*, 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. *The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.*

(c) Obtaining and maintaining an unexpired, irrevocable letter of credit, established pursuant to chapter 675, *for the current year and for each of the prior years that the applicant or licensee has been in the active practice of medicine, up to a maximum of 4 prior years*, in an amount not less than \$100,000 per claim, with a minimum aggregate availability of credit of not less than \$300,000. The letter of credit *must shall* be payable to the osteopathic physician as beneficiary upon presentment of a final judgment indicating liability and awarding damages to be paid by the osteopathic physician or upon presentment of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, medical care and services. Such letter of credit *must shall* be nonassignable and nontransferable. Such letter of credit *must shall* be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States *which that* has its principal place of business in this state or has a branch office *that which* is authorized under the laws of this state or of the United States to receive deposits in this state.

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

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

(b) Obtaining and maintaining professional liability coverage for the current year and for each of the prior years that the applicant or licensee has been in the active practice of medicine, up to a maximum of 4 prior years, 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), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance that which meets the conditions specified for satisfying financial responsibility in s. 766.110.

(c) Obtaining and maintaining an unexpired, irrevocable letter of credit, established pursuant to chapter 675, for the current year and for each of the prior years that the applicant or licensee has been in the active practice of medicine, up to a maximum of 4 prior years, in an amount not less than \$250,000 per claim, with a minimum aggregate availability of credit of not less than \$750,000. The letter of credit must shall be payable to the osteopathic physician as beneficiary upon presentation of a final judgment indicating liability and awarding damages to be paid by the osteopathic physician or upon presentation of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, medical care and services. The Such letter of credit must shall be nonassignable and nontransferable. The Such letter of credit must shall be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States which that has its principal place of business in this state or has a branch office that which is authorized under the laws of this state or of the United States to receive deposits in this state.

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

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

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

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

~~(4)(a) Each insurer, self-insurer, risk retention group, or joint underwriting association must shall promptly notify the department of cancellation or nonrenewal of insurance required by this section. Unless the osteopathic physician demonstrates that he or she is otherwise in compliance with the requirements of this section, the department shall suspend the license of the osteopathic physician pursuant to ss. 120.569 and 120.57 and notify all health care facilities licensed under chapter 395, part IV of chapter 394, or part I of chapter 641 of such action. Any suspension under this subsection remains shall remain in effect until the osteopathic physician demonstrates compliance with the requirements of this section. If any judgments or settlements are pending at the time of suspension, those judgments or settlements must be paid in accordance with this section unless otherwise mutually agreed to in writing by the parties. This paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment 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.~~

(b) If financial responsibility requirements are met by maintaining an escrow account or letter of credit as provided in this section, upon the entry of an adverse final judgment arising from a medical malpractice arbitration award, from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the licensee shall pay the entire amount of the judgment together with all accrued interest or the amount maintained in the escrow account or provided in the letter of credit as required by this section, whichever is

less, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. If timely payment is not made by the osteopathic physician, the department shall suspend the license of the osteopathic physician pursuant to procedures set forth in subparagraphs (5)(g)3., 4., and 5. Nothing in this paragraph shall abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

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

(a) Any person licensed under this chapter who practices medicine exclusively 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 its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(15).

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

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

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

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

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

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

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

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

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

5. The licensee has not been subject within the last 10 years of practice to license revocation or suspension for any period of time, probation for a period of 3 years or longer, or a fine of \$500 or more for a violation of this chapter or the medical practice act of another jurisdiction. The regulatory agency's acceptance of an osteopathic 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 osteopathic physician's license, constitutes shall be construed as action against the physician's license for the purposes of this paragraph.

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

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

A licensee who meets the requirements of this paragraph ~~must shall be required either to~~ post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or ~~to~~ provide a written statement to any person to whom medical services are being provided. ~~The Such~~ sign or statement ~~must read as follows shall state that~~: "Under Florida law, osteopathic physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. However, certain part-time osteopathic physicians who meet state requirements are exempt from the financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided pursuant to Florida law."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And the title is amended as follows:

On page 7, lines 26 and 27 and on page 8, lines 11-13, delete "providing for an alternative method of providing financial responsibility;"

MOTION

On motion by Senator Wasserman Schultz, the rules were waived to allow the following amendment to be considered:

Senator Wasserman Schultz moved the following substitute amendment which failed:

Amendment 3 (355662)—On page 80, between lines 27 and 28, insert:

(12) *The provisions of this section shall not apply to physicians until 3 years after graduation from medical school.*

The vote was:

Yeas—13

Aronberg
Atwater

Campbell
Dawson

Geller
Hill

Klein	Sebesta	Wasserman Schultz
Lawson	Siplin	Wilson
Miller		
Nays—23		
Mr. President	Crist	Peaden
Alexander	Diaz de la Portilla	Posey
Argenziano	Dockery	Pruitt
Bennett	Fasano	Saunders
Carlton	Garcia	Villalobos
Clary	Haridopolos	Webster
Constantine	Jones	Wise
Cowin	Lynn	

And the title is amended as follows:

On page 8, line 2, after the semicolon (;) insert: creating ss. 458.352 and 459.027, F.S.; providing sanctions for repeated malpractice by a physician or an osteopathic physician; providing definitions; authorizing the Department of Health to adopt rules;

MOTION

On motion by Senator Villalobos, the rules were waived and the time of recess was extended until completion of the Special Order Calendar, motions and announcements.

Senator Jones moved the following amendment which was adopted:

Amendment 5 (801802)—On page 111, line 22 through page 112, line 3, delete those lines and insert:

(7) *INITIAL CAPITALIZATION.*—By July 1, 2004, the Legislature shall provide by law for adequate initial capitalization of the Florida Medical Malpractice Insurance Fund to occur on the date that the Office of Insurance Regulation notifies the Legislature that it has made the determination necessary for the fund to begin providing or offering coverage pursuant to subsection (3).

Senator Campbell moved the following amendment which failed:

Amendment 6 (261370)—On page 113, line 27, after the period (.) insert: Any licensed physician shall have standing to challenge any rate filing submitted to the Financial Services Commission.

Senator Jones moved the following amendment which was adopted:

Amendment 7 (471834)—On page 131, lines 24 and 25, delete:

“including actions pursuant to ss. 766.207-766.212,”

Senator Campbell moved the following amendment which was adopted:

Amendment 8 (332632)(with title amendment)—On page 131, line 31, after the semicolon (;) insert: The maximum amount of noneconomic damages that may be awarded under this section must be adjusted each year on July 1 to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for all urban consumers which is published by the United States Department of Labor. However, the maximum amount of noneconomic damages that may be awarded may not be less than \$500,000.

And the title is amended as follows:

On page 14, line 24, after the second semicolon (;) insert: providing for cost-of-living adjustments to such maximum amount of noneconomic damages;

Senator Lee moved the following amendments which were adopted:

Amendment 9 (392490)(with title amendment)—On page 126, between lines 26 and 27, insert:

(d) This subsection is repealed effective September 1, 2006, but shall continue to apply with respect to incidents that occur prior to that date.

And the title is amended as follows:

On page 14, line 11, after the semicolon (;) insert: providing for future repeal;

Amendment 10 (410004)(with title amendment)—On page 132, between lines 7 and 8, insert:

(3) This section is repealed effective September 1, 2006, but shall continue to apply with respect to incidents that occur prior to that date.

And the title is amended as follows:

On page 14, line 24, after the second semicolon (;) insert: providing for future repeal;

Senator Wasserman Schultz moved the following amendment:

The question recurred on **Amendment 2 (140856)** which was adopted.

Senator Fasano moved the following amendment which failed:

Amendment 4 (140546)(with title amendment)—On page 68, line 31, insert:

Section 27. Section 458.352, Florida Statutes, is created to read:

458.352 *Repeated malpractice.*—

(1) The Department of Health shall immediately suspend the license of any person holding a license to practice medicine pursuant to chapter 458 who has been found to have committed three or more incidents of medical malpractice within 5 years. The license shall remain suspended until the department has investigated the cases and the Board of Medicine has issued a final order addressing the cases.

(2) For purposes of this section, the term:

(a) “Medical malpractice” means both the failure to practice medicine in this state with that level of care, skill, and treatment recognized in general law related to licensed physicians and any similar wrongful act, neglect, or default in any other state or country which, if committed in this state would be considered medical malpractice.

(b) “Found to have committed” means that the malpractice has been found pursuant to a final judgment of a court of law, a final decision by an administrative agency, or a decision of binding arbitration, which judgment or decisions must be in unrelated matters.

(3) The Department of Health may adopt rules to administer this section.

Section 28. Section 459.027, Florida Statutes, is created to read:

459.027 *Repeated malpractice.*—

(1) The Department of Health shall immediately suspend the license of any person holding a license to practice osteopathic medicine pursuant to chapter 459 who has been found to have committed three or more incidents of medical malpractice within 5 years. The license shall remain suspended until the department has investigated the cases and the Board of Osteopathic Medicine has issued a final order addressing the cases.

(2) For purposes of this section, the term:

(a) “Medical malpractice” means both the failure to practice osteopathic medicine in this state with that level of care, skill, and treatment recognized in general law related to licensed osteopathic physicians and any similar wrongful act, neglect, or default in any other state or country which, if committed in this state would be considered medical malpractice.

(b) “Found to have committed” means that the malpractice has been found pursuant to a final judgment of a court of law, a final decision by an administrative agency, or a decision of binding arbitration, which judgment or decisions must be in unrelated matters.

(3) The Department of Health may adopt rules to administer this section.

(Redesignate subsequent sections.)

Amendment 11 (481998)—On page 132, delete line 7, and insert: *state, or where the trier of fact determines that there is substantial or permanent loss, or impairment of a bodily function, or substantial disfigurement, except in those actions under ss. 766.207-766.212.*

MOTION

On motion by Senator Wasserman Schultz, the rules were waived to allow the following amendment to be considered:

Senator Wasserman Schultz moved the following amendment to **Amendment 11** which was adopted:

Amendment 11A (160374)—On page 1, line 17, delete *substantial or Amendment 11* as amended failed.

Senator Jones moved the following amendment which was adopted:

Amendment 12 (983492)—On page 132, line 7, delete:

“, *except in those actions under ss. 766.207-766.212*”

Senator Fasano moved the following amendment which failed:

Amendment 13 (835280)(with title amendment)—On page 136, between lines 6 and 7, insert:

Section 63. Section 766.2061, Florida Statutes, is created to read:

766.2061 *Repeated filing of frivolous claims or defenses.—*

(1) *An attorney against whom sanctions have been imposed three or more times within a 5-year period under s. 57.105 by a court in this state, or who has had three or more similar sanctions for frivolous claims or defenses imposed upon him or her by a court of another state, may not file an action for medical malpractice on behalf of any client or defend a medical malpractice action on behalf of any client in this state.*

(2) *The Legislature requests that the Florida Supreme Court establish criteria that disqualify attorneys who have been found to have repeatedly filed frivolous claims or defenses in medical malpractice actions consistent with subsection (1) from filing and defending medical malpractice claims.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 15, line 1, after the semicolon (;) insert: creating s. 766.2061, F.S.; prohibiting certain previously sanctioned attorneys from filing or defending an action for medical malpractice; requesting the Florida Supreme Court to establish disqualifying criteria;

Senator Smith moved the following amendment which was adopted:

Amendment 14 (822762)(with title amendment)—On page 141, between lines 18 and 19, insert:

Section 68. *Nothing in this act constitutes a waiver of sovereign immunity under section 768.28, Florida Statutes, or contravenes the abrogation of joint and several liability contained in section 766.112, Florida Statutes.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 15, line 16, after the semicolon (;) insert: preserving sovereign immunity and the abrogation of certain joint and several liability;

Senator Dawson moved the following amendment which failed:

Amendment 15 (223640)(with title amendment)—On page 149, between lines 20 and 21, insert:

Section 74. *The Agency for Health Care Administration shall, for the period beginning August 1, 2003, and ending February 28, 2004, conduct an onsite survey of a representative sample of state-licensed hospitals. The agency shall report the number of licensed nurse full-time equivalents per patient and the mix of licensed nurse full-time equivalents per patient, by hospital unit, for the following types of hospitals and units:*

- (1) *Academic medical centers;*
- (2) *Public acute care hospitals;*
- (3) *Nonprofit private hospitals;*
- (4) *For-profit hospitals;*
- (5) *Rural hospitals;*
- (6) *Critical care units;*
- (7) *Emergency rooms;*
- (8) *Medical units;*
- (9) *Medical-surgical units;*
- (10) *Labor and delivery units;*
- (11) *Mother and baby units;*
- (12) *Telemetry units;*
- (13) *Pediatric units;*
- (14) *Pediatric intensive care units;*
- (15) *Psychiatric units; and*
- (16) *Subacute units.*

The survey must be conducted to produce statistically reliable results during all shifts, and must be designed to ensure sufficient sampling by hospital type and by unit. Each state-licensed hospital shall cooperate in completing the survey. Hospitals shall allow surveyors direct access to hospital units and to all staff and data as may be necessary to gather and verify reliable data.

Section 75. *The Agency for Health Care Administration shall develop a measure of direct-care-licensed-nursing hours per patient and incorporate this measure in its data-collection activities. Researchers and policy-makers shall use such collected data to study the links, if any, between the level and mix of licensed nurse staff, patient lengths of stay, and patient outcomes.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 16, line 18, after the semicolon (;) insert: directing the Agency for Health Care Administration to conduct an onsite survey of state-licensed hospitals to report the number of licensed nurse full-time equivalents per patient; requiring that access to staff and data be allowed in order to facilitate gathering and verification of data; directing the Agency for Health Care Administration to measure direct-care nursing hours per patient;

Senator Campbell moved the following amendment which was adopted:

Amendment 16 (241902)(with title amendment)—On page 149, between lines 20 and 21, insert:

Section 74. Section 624.156, Florida Statutes, is created to read:

624.156 *Applicability of consumer protection laws to the business of insurance.—*

(1) *Notwithstanding any provision of law to the contrary, the business of insurance shall be subject to the laws of this state applicable to any other business, including, but not limited to, the Florida Civil Rights Act of 1992 set forth in part I of chapter 760, the Florida Antitrust Act of 1980 set forth in chapter 542, the Florida Deceptive and Unfair Trade Practices Act set forth in part II of chapter 501, and the consumer protection provisions contained in chapter 540. The protections afforded consumers by chapters 501, 540, 542, and 760 shall apply to insurance consumers.*

(2) *Nothing in this section shall be construed to prohibit:*

(a) Any agreement to collect, compile, and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the Office of Insurance Regulation and made available for public inspection.

(b) Participation in any joint arrangement established by law or the Office of Insurance Regulation to assure availability of insurance.

(c) Any agent or broker, representing one or more insurers, from obtaining from any insurer such agent or broker represents information relative to the premium for any policy or risk to be underwritten by that insurer.

(d) Any agent or broker from disclosing to an insurer the agent or broker represents any quoted rate or charge offered by another insurer represented by that agent or broker for the purpose of negotiating a lower rate, charge, or term from the insurer to whom the disclosure is made.

(e) Any agents, brokers, or insurers from using, or participating with multiple insurers or reinsurers for underwriting, a single risk or group of risks.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 16, line 18, after the semicolon (;) insert: creating s. 624.156, F.S.; providing that certain consumer protection laws apply to the business of insurance;

Senator Lee moved the following amendment which was adopted:

Amendment 17 (503986)(with title amendment)—On page 149, between lines 20 and 21, insert:

(8) This section is repealed effective September 1, 2006, but shall continue to apply with respect to incidents that occur prior to that date.

And the title is amended as follows:

On page 16, line 18, after the semicolon (;) insert: providing for future repeal;

MOTION

On motion by Senator Pruitt, the rules were waived to allow the following amendment to be considered:

Senator Pruitt moved the following amendment:

Amendment 18 (321656)(with title amendment)—On page 143, line 11 through page 149, line 20 delete said lines and insert:

Section 1. Section 766.1065, Florida Statutes, is created to read:

766.1065 *Mandatory presuit investigation.*—

(1) Within 30 days after service of the presuit notice of intent to initiate medical malpractice litigation, each party shall provide to all other parties all medical, hospital, health care, and employment records concerning the claimant in the disclosing party's possession, custody, or control, and the disclosing party shall affirmatively certify in writing that such records constitute all records in that party's possession, custody, or control of that the party has no medical, hospital, health care, or employment records concerning the claimant.

(2) Within 60 days after service of the presuit notice of intent to initiate medical malpractice litigation, all parties must be made available for a sworn deposition. A deposition taken pursuant to this section may not be used in any civil action for any purpose by any party.

(3) Within 90 days after service of the presuit notice of intent to initiate medical malpractice litigation, all parties must attend in-person mandatory mediation in accordance with s. 44.102, if binding arbitration under s. 766.106 or s. 766.207 has not been agreed to by the parties. The Florida Rules of Civil Procedure shall apply to such mediation.

(4) If the parties declare an impasse during the mandatory mediation, and if the plaintiff or the defendants so request within 10 days of the impasse, via certified mail to Office of Presuit Screening Administration for a presuit screening panel, then the Office of Presuit Screening

Administration shall convene such a panel pursuant to s. 766.1066. Notwithstanding any other provision of law, the parties may stipulate to waive any proceedings under this section.

Section 2. Section 766.1066, Florida Statutes, is created to read:

766.1066 *Office of Presuit Screening Administration; presuit screening panels.*—

(1)(a) There is created within the Department of Health, the Office of Presuit Screening Administration. The department shall provide administrative support and service to the office to the extent requested by the director. The office is not subject to any control, supervision, or direction by the department, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The director of the office shall be appointed by the Governor and the Cabinet.

(b) The office shall, by September 1, 2003, develop and maintain a database of physicians, attorneys, and consumers available to serve as members of presuit screening panels.

(c) The Department of Health shall request the relevant regulatory boards to assist the office in developing the database. The office shall request the assistance of The Florida Bar in developing the database.

(d) Funding for the office's general expenses shall come from a service charge equal to 0.5 percent of the final judgment or arbitration award in each medical malpractice liability case in this state. All parties in such malpractice actions shall in equal parts pay the service charge at the time proceeds from a final judgment or an arbitration award are initially disbursed. Such charge shall be collected by the clerk of the circuit court in the county where the final judgment is entered or the arbitration award is made. The clerk shall remit the service charges to the Department of Revenue for deposit into the Presuit Screening Administration Trust Fund. The Department of Revenue shall adopt rules to administer the service charge.

(e)1. A person may not be required to serve on a presuit screening panel for more than 2 days.

2. A person on a panel shall designate in advance any time period during which he or she will not be available to serve.

3. When a plaintiff requests a hearing before a panel, the office shall randomly select members for a panel from available persons in the appropriate categories who have not served on a panel in the past 12 months. If there are no other potential panelists available, a panelist may be asked to serve on another panel within 12 months.

4. The office shall establish a panel no later than 15 days after the receipt of the request for hearing. The office shall set a hearing no later than 30 days after the receipt of the request for hearing.

(f) Panel members shall receive reimbursement from the office for their travel expenses.

(g) A physician who serves on a panel:

1. Shall receive credit for 20 hours of continuing medical education for such service;

2. Must reside and practice at least 50 miles from the location where the alleged injury occurred;

3. Must have had no more than two judgments for medical malpractice liability against him or her within the preceding 5 years and no more than 10 claims of medical malpractice filed against him or her within the preceding 3 years.

4. Must hold an active license in good standing in this state and must have been in active practice within the 5-year period prior to selection. A physician who fails to attend the designated panel hearing on two separate occasions shall be reported to his or her regulatory board for discipline and may not receive certified medical education credit for participation on the panel.

(h) An attorney who serves on a panel:

1. Should receive credit for 20 hours of continuing legal education and credit towards pro bono requirements for such service. The Legislature requests that the Supreme Court adopt rules to implement this provision.

2. Must reside and practice at least 50 miles from the location where the alleged injury occurred;

3. Must have had no judgments for filing a frivolous lawsuit within the preceding 5 years;

4. Must hold an active license to practice law in this state and have held an active license in good standing for at least 5 years; and

5. Must be a board-certified civil trial lawyer.

An attorney who fails to attend the designated panel hearing on two separate occasions shall be reported to The Florida Bar.

(2)(a) A presuit screening panel shall be composed of five persons, including:

1. Two physicians who are board-certified in the same specialty as the defendant;

2. Two attorneys; and

3. One certified mediator obtained from a list provided by the Clerk of the Court in the Judicial circuit where a prospective defendant physician resides. The mediator shall serve as the presiding officer of the panel.

(b) If there is more than one physician defendant, the plaintiff shall designate the subject areas in which both physician members of the panel must be board-certified.

(c) A panel member who knowingly has a conflict of interest or potential conflict of interest must disclose it prior to the hearing. The office must replace the conflicted panel member with a panel member from the same category as the member removed because of a conflict of interest. Failure of a panel member to report a conflict of interest shall result in dismissal from the panel and from further service. A physician member who does not report a conflict of interest shall also be reported to his or her regulatory board for disciplinary action. An attorney member who does not report a conflict of interest shall be reported to the Florida Bar and the office is to request disciplinary action be taken against the attorney.

(d) The office shall provide administrative support to the panel.

(3) The plaintiff shall be allowed 8 hours to present his or her case. All defendants shall be allowed a total of 8 hours collectively to present their case, and a hearing may not exceed a total of 16 hours; however, the panel may hear a case over the course of 2 calendar days.

(4)(a) In addition to any other information that may be disclosed under this section and no later than two weeks prior to the hearing of the screening panel, the claimant shall provide to the panel and opposing parties a detailed report, supported by one or more verified written medical expert opinion reports from medical experts as defined in this chapter, including a detailed description of the expert witness's qualifications, the precise nature of the witness's opinions regarding each instance in which each defendant is alleged to breached the prevailing professional standard of care, and a description of the factual basis for each such opinion of negligence. The report shall also include a description of all elements of damages claimed.

(b) In addition to any other information that may be disclosed under this section and no later than one week prior to the hearing of the screening panel, each defendant shall provide to the panel and opposing parties a detailed report, supported by one or more verified written medical expert opinion reports from medical experts as defined in this chapter, including a detailed description of the expert witness's qualifications, the precise nature of the witness's opinions and a description of the factual basis for each such opinion. If a party fails to comply with the requirements of this section without good cause, the court upon motion shall impose sanctions, including as award of attorney's fees and other costs, against the party failing to comply.

(5) All documentary evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible,

whether or not such evidence would be admissible in a trial. The panel may proceed with the hearing and shall render an opinion upon the evidence produced, notwithstanding the failure of a party to appear.

(6) A panel shall, by a majority vote for each defendant, determine whether reasonable grounds exists to support a claim of medical negligence. The findings of the panel are not final agency action for purposes of chapter 120.

(7) Panel members are immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section to the extent provided in s. 768.28.

(8) Unless excluded by the judge for good cause shown, the proceedings and findings of a presuit screening panel shall be discoverable and admissible in any subsequent trial arising out of the claim, and the members of the panel may be deposed and called to testify at trial. If the panel's findings, or any testimony or evidence related to the panel's findings or proceedings, are admitted into evidence, the court shall instruct the jury that the findings are not binding and shall be considered by the jury equally with all other evidence presented at trial.

(9) The statute of limitations as to all potential defendants shall be tolled from the date that any party serves upon the Office of Presuit Screening Administration the request for a medical review panel until the date that the plaintiff receives the panel's findings. These tolling provisions shall be in addition to any other tolling provision.

(10) Upon the plaintiff receipt of the presuit screening panel's determination, the plaintiff has 60 days or the remainder of the period of the statute of limitations, whichever period is greater, in which to file suit.

(11) The Administration Commission shall adopt rules to administer this section.

And the title is amended as follows:

In title, on page 15, line 29, after the semicolon (;) insert: creating s. 766.1065, F.S.; providing for mandatory presuit investigations; providing that certain records be provided to opposing parties; providing subpoena power; providing for sworn depositions of parties and medical experts; providing for mandatory in-person mediation if binding arbitration has not been agreed to; providing for a mandatory presuit screening panel hearing in the event of mediation impasse; creating s. 766.1066, F.S.; creating the Office of Presuit Screening Administration; providing for a database of volunteer panel members; prescribing qualifications for panel membership; providing a funding mechanism; providing panel procedures; providing for determination and recordation of panel findings; providing for disposition of panel findings; providing immunity from liability for panel members; authorizing positions and providing an appropriation;

MOTION

On motion by Senator Pruitt, the rules were waived to allow the following amendment to be considered:

Senator Pruitt moved the following amendment to **Amendment 18** which was adopted:

Amendment 18A (691756)—On page 3, lines 21 and 22, delete “Presuit Screening Administration Trust Fund” and insert: *Department of Health Administrative Trust Fund*

Amendment 18 as amended was adopted.

MOTION

On motion by Senator Smith, the rules were waived to allow the following amendment to be considered:

Senator Smith moved the following amendment which was adopted:

Amendment 19 (291864)(with title amendment)—On page 142, between lines 22 and 23, insert:

Section 71. Paragraph (c) of subsection (2) of section 1006.20, Florida Statutes, as amended by section 2 of chapter 2003-129, Laws of Florida, is amended to read:

1006.20 Athletics in public K-12 schools.—

(2) ADOPTION OF BYLAWS.—

(c) The organization shall adopt bylaws that require all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team to satisfactorily pass a medical evaluation each year prior to participating in interscholastic athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team. Such medical evaluation can only be administered by a practitioner licensed under the provisions of chapter 458, chapter 459, chapter 460, or s. 464.012, and in good standing with the practitioner's regulatory board. The bylaws shall establish requirements for eliciting a student's medical history and performing the medical evaluation required under this paragraph, which shall include a physical assessment of the student's physical capabilities to participate in interscholastic athletic competition as contained in a uniform preparticipation physical evaluation and history form. The evaluation form shall incorporate the recommendations of the American Heart Association for participation cardiovascular screening and shall provide a place for the signature of the practitioner performing the evaluation with an attestation that each examination procedure listed on the form was performed by the practitioner or by someone under the direct supervision of the practitioner. The form shall also contain a place for the practitioner to indicate if a referral to another practitioner was made in lieu of completion of a certain examination procedure. The form shall provide a place for the practitioner to whom the student was referred to complete the remaining sections and attest to that portion of the examination. The preparticipation physical evaluation form shall advise students to complete a cardiovascular assessment and shall include information concerning alternative cardiovascular evaluation and diagnostic tests. Practitioners administering medical evaluations pursuant to this subsection must, at a minimum, solicit all information required by, and perform a physical assessment according to, the uniform preparticipation form referred to in this paragraph and must certify, based on the information provided and the physical assessment, that the student is physically capable of participating in interscholastic athletic competition. If the practitioner determines that there are any abnormal findings in the cardiovascular system, the student may not participate until a further cardiovascular assessment, which may include an EKG, is performed which indicates that the student is physically capable of participating in interscholastic athletic competition. Results of such medical evaluation must be provided to the school. No student shall be eligible to participate in any interscholastic athletic competition or engage in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team until the results of the medical evaluation clearing the student for participation has been received and approved by the school.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 15, line 26, after the semicolon (;) insert: amending s. 1006.20, F.S.; requiring completion of a uniform participation physical evaluation and history form incorporating recommendations of the American Heart Association; deleting revisions to procedures for students' physical examinations;

MOTION

On motion by Senator Cowin, the rules were waived to allow the following amendment to be considered:

Senator Cowin moved the following amendment which was adopted:

Amendment 20 (905554)(with title amendment)—On page 57, between lines 22 and 23, insert:

Section 26. Subsection (9) is added to section 458.311, Florida Statutes, to read:

458.311 Licensure by examination; requirements; fees.—

(9) *In addition to other information required under this section, an applicant for licensure or relicensure must submit the following information to the department:*

- (a) *The name of the applicant's insurance carrier;*
- (b) *If the applicant is self-insured, a description of how, such as a certificate of deposit;*
- (c) *The dates of insurance coverage;*
- (d) *The cost of insurance coverage;*
- (e) *The terms and limits of insurance coverage, including policy changes;*
- (f) *The identity of the hospital or group name if coverage is provided by an entity other than the licensee;*
- (g) *Whether the licensee is covered by insurance;*
- (h) *The applicant's specialty of practice; and*
- (i) *The name of the county or counties in which the licensee practices medicine.*

A licensee seeking a renewal license must include the specified information for the 2 years prior to the renewal date. The department shall include the information provided on the application form in its computer database.

Section 27. Subsection (5) is added to section 459.0055, Florida Statutes, to read:

459.0055 General licensure requirements.—

(5) *In addition to other information required under this section, an applicant for licensure or relicensure must submit the following information to the department:*

- (a) *The name of the applicant's insurance carrier;*
- (b) *If the applicant is self-insured, a description of how, such as a certificate of deposit;*
- (c) *The dates of insurance coverage;*
- (d) *The cost of insurance coverage;*
- (e) *The terms and limits of insurance coverage, including policy changes;*
- (f) *The identity of the hospital or group name if coverage is provided by an entity other than the licensee;*
- (g) *Whether the licensee is covered by insurance;*
- (h) *The applicant's specialty of practice; and*
- (i) *The name of the county or counties in which the licensee practices medicine.*

A licensee seeking a renewal license must include the specified information for the 2 years prior to the renewal date. The department shall include the information provided on the application form in its computer database.

And the title is amended as follows:

On page 7, line 17, after the semicolon (;) insert: amending ss. 458.311 and 459.0055, F.S.; requiring that specified information be provided to the Department of Health;

On motion by Senator Jones, further consideration of **CS for SB 2-B** as amended was deferred.

RECESS

The President declared the Senate in recess at 6:00 p.m. to reconvene at 7:15 p.m.

EVENING SESSION

The Senate was called to order by the President at 7:15 p.m. A quorum present—38:

Mr. President	Diaz de la Portilla	Peaden
Alexander	Dockery	Posey
Argenziano	Fasano	Pruitt
Aronberg	Garcia	Saunders
Atwater	Geller	Sebesta
Bennett	Haridopolos	Siplin
Campbell	Hill	Smith
Carlton	Jones	Villalobos
Clary	Klein	Wasserman Schultz
Constantine	Lawson	Webster
Cowin	Lee	Wilson
Crist	Lynn	Wise
Dawson	Miller	

SPECIAL ORDER CALENDAR, continued

The Senate resumed consideration of—

CS for SB 2-B—A bill to be entitled An act relating to medical malpractice; providing legislative findings; amending s. 46.015, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; creating s. 381.0409, F.S.; providing that creation of the Florida Center for Excellence in Health Care is contingent on the enactment of a public-records exemption; creating the Florida Center for Excellence in Health Care; providing goals and duties of the center; providing definitions; providing limitations on the center's liability for any lawful actions taken; requiring the center to issue patient safety recommendations; requiring the development of a statewide electronic infrastructure to improve patient care and the delivery and quality of health care services; providing requirements for development of a core electronic medical record; authorizing access to the electronic medical records and other data maintained by the center; providing for the use of computerized physician order entry systems; providing for the establishment of a simulation center for high technology intervention surgery and intensive care; providing for the immunity of specified information in adverse incident reports from discovery or admissibility in civil or administrative actions; providing limitations on liability of specified health care practitioners and facilities under specified conditions; providing requirements for the appointment of a board of directors for the center; establishing a mechanism for financing the center through the assessment of specified fees; requiring the Florida Center for Excellence in Health Care to develop a business and financing plan; authorizing state agencies to contract with the center for specified projects; authorizing the use of center funds and the use of state purchasing and travel contracts for the center; requiring the center to submit an annual report and providing requirements for the annual report; providing for the center's books, records, and audits to be open to the public; requiring the center to annually furnish an audited report to the Governor and Legislature; amending s. 395.004, F.S., relating to licensure of certain health care facilities; providing for discounted medical liability insurance based on certification of programs that reduce adverse incidents; requiring the Office of Insurance Regulation to consider certain information in reviewing discounted rates; creating s. 395.0056, F.S.; requiring the Agency for Health Care Administration to review complaints submitted if the defendant is a hospital; amending s. 395.0193, F.S., relating to peer review and disciplinary actions; providing for discipline of a physician for mental or physical abuse of staff; limiting the liability of certain participants in certain disciplinary actions at a licensed facility; amending s. 395.0197, F.S., relating to internal risk management programs; requiring a system for notifying patients that they are the subject of an adverse incident; requiring risk managers or their designees to give notice; requiring licensed facilities to annually report certain information about health care practitioners for whom they assume liability; requiring the Agency for Health Care Administration and the Department of Health to annually publish statistics about licensed facilities that assume liability for health care practitioners; requiring a licensed facility at which sexual abuse occurs to offer testing for sexually transmitted diseases at no cost to the victim; creating s. 395.1012, F.S.; requiring facilities to adopt a patient safety plan; providing requirements for a patient safety plan; requiring facilities to appoint a patient safety officer and a patient safety committee and providing duties for the patient safety officer and committee; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; directing the Agency for Health Care Administration to conduct or contract for a study to determine what information to provide to the public comparing hospitals, based on inpatient quality indicators developed by the federal

Agency for Healthcare Research and Quality; creating s. 395.1051, F.S.; requiring certain facilities to notify patients about adverse incidents under specified conditions; creating s. 456.0575, F.S.; requiring licensed health care practitioners to notify patients about adverse incidents under certain conditions; amending s. 456.026, F.S., relating to an annual report published by the Department of Health; requiring that the department publish the report to its website; requiring the department to include certain detailed information; amending s. 456.039, F.S.; revising requirements for the information furnished to the Department of Health for licensure purposes; amending s. 456.041, F.S., relating to practitioner profiles; requiring the Department of Health to compile certain specified information in a practitioner profile; establishing a timeframe for certain health care practitioners to report specified information; providing for disciplinary action and a fine for untimely submissions; 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requiring the department to add a statement to a practitioner profile when the profile information has not been verified by the practitioner; requiring the department to provide, in the practitioner profile, an explanation of disciplinary action taken and the reason for sanctions imposed; requiring the department to include a hyperlink to a practitioner's website when requested; providing that practitioners licensed under ch. 458 or ch. 459, F.S., shall have claim information concerning an indemnity payment greater than a specified amount posted in the practitioner profile; amending s. 456.042, F.S.; providing for the update of practitioner profiles; designating a timeframe within which a practitioner must submit new information to update his or her profile; amending s. 456.049, F.S., relating to practitioner reports on professional liability claims and actions; revising requirements for a practitioner to report claims or actions that were not covered by an insurer; requiring the department to forward information on liability claims and actions to the Office of Insurance Regulation; amending s. 456.051, F.S.; establishing the responsibility of the Department of Health to provide reports of professional liability actions and bankruptcies; requiring the department to include such reports in a practitioner's profile within a specified period; amending s. 456.057, F.S.; allowing the department to obtain patient records by subpoena without the patient's written authorization, in specified circumstances; amending s. 456.063, F.S.; authorizing regulatory boards or the department to adopt rules to implement requirements for reporting allegations of sexual misconduct; authorizing health care practitioner regulatory boards to adopt rules to establish standards of practice for prescribing drugs to patients via the Internet; amending s. 456.072, F.S.; providing for determining the amount of any costs to be assessed in a disciplinary proceeding; prescribing the standard of proof in certain disciplinary proceedings; amending s. 456.073, F.S.; authorizing the Department of Health to investigate certain paid claims made on behalf of practitioners licensed under ch. 458 or ch. 459, F.S.; 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amending s. 459.0085, F.S., relating to financial responsibility

requirements for osteopathic physicians; requiring maintenance of financial responsibility as a condition of licensure of osteopathic physicians; providing for payment of any outstanding judgments or settlements pending at the time an osteopathic physician is suspended by the Department of Business and Professional Regulation; providing for an alternative method of providing financial responsibility; requiring that the department suspend the license of an osteopathic physician who has not paid, up to the amounts required by any applicable financial responsibility provision, any outstanding judgment, arbitration award, other order, or settlement; providing civil immunity for certain participants in quality improvement processes; defining the terms "patient safety data" and "patient safety organization"; providing for use of patient safety data by a patient safety organization; providing limitations on use of patient safety data; providing for protection of patient-identifying information; 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providing that the Legislature specifically reverses case law to the contrary; requiring the Division of Administrative Hearings to designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; amending s. 461.013, F.S., relating to grounds for disciplinary action against a podiatric physician; redefining the term "repeated malpractice"; amending the minimum amount of a claim against such a physician which will trigger a department investigation; amending s. 466.028, F.S., relating to grounds for disciplinary action against a dentist or a dental hygienist; redefining the term "dental malpractice"; revising the minimum amount of a claim against a dentist which will trigger a departmental investigation; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; providing that an insurer may not require arbitration of a rate filing for medical malpractice; providing additional requirements for medical malpractice insurance rate filings; providing that portions of judgments and settlements entered against a medical malpractice insurer for bad-faith actions or for punitive damages against the insurer, as well as related taxable costs and attorney's fees, may not be included in an insurer's base rate; providing for review of rate filings by the Office of Insurance Regulation for excessive, inadequate, or unfairly discriminatory rates; requiring insurers to apply a discount based on the health care provider's loss experience; amending s. 627.0645, F.S.; excepting medical malpractice insurers from certain annual filings; requiring the Office of Program Policy Analysis and Government Accountability to study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; creating s. 627.0662, F.S.; providing definitions; requiring each medical liability insurer to report certain information to the Office of Insurance Regulation; providing for determination of whether excessive profit has been realized; requiring return of excessive amounts; amending s. 627.357, F.S.; providing guidelines for the formation and regulation of certain self-insurance funds; amending s. 627.4147, F.S.; revising certain notification criteria for medical and osteopathic physicians; requiring prior notification of a rate increase; authorizing the

purchase of insurance by certain health care providers; creating s. 627.41491, F.S.; requiring the Office of Insurance Regulation to require health care providers to annually publish certain rate comparison information; creating s. 627.41492, F.S.; requiring the Office of Insurance Regulation to publish an annual medical malpractice report; creating s. 627.41493, F.S.; requiring a medical malpractice insurance rate rollback; providing for subsequent increases under certain circumstances; requiring approval for use of certain medical malpractice insurance rates; providing for a mechanism to make effective the Florida Medical Malpractice Insurance Fund in the event the rollback of medical malpractice insurance rates is not completed; creating the Florida Medical Malpractice Insurance Fund; providing purpose; providing governance by a board of governors; providing for the fund to issue medical malpractice policies to any physician regardless of specialty; providing for regulation by the Office of Insurance Regulation of the Financial Services Commission; providing applicability; providing for initial funding; providing for tax-exempt status; providing for initial capitalization; providing for termination of the fund; providing that practitioners licensed under ch. 458 or ch. 459, F.S., must, as a licensure requirement, obtain and maintain professional liability coverage; creating s. 627.41495, F.S.; providing for consumer participation in review of medical malpractice rate changes; providing for public inspection; providing for adoption of rules by the Financial Services Commission; requiring the Office of Insurance Regulation to order insurers to make rate filings effective January 1, 2004, which reflect the impact of the act; providing criteria for such rate filing; amending s. 627.912, F.S.; amending provisions prescribing conditions under which insurers must file certain reports with the Department of Health; requiring the Financial Services Commission to adopt by rule requirements for reporting financial information; increasing the limitation on a fine imposed against insurers; creating s. 627.9121, F.S.; requiring certain claims, judgments, or settlements to be reported to the Office of Insurance Regulation; providing penalties; amending s. 766.102, F.S.; revising requirements for health care providers providing expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; amending s. 766.106, F.S.; providing for application of common law principles of good faith to an insurance company's bad-faith actions arising out of medical malpractice claims; providing that an insurer shall not be held to have acted in bad faith for certain activities during the presuit period and for a specified later period; providing legislative intent with respect to actions by insurers, insureds, and their assigns and representatives; revising requirements for presuit notice and for an insurer's or self-insurer's response to a claim; requiring that a claimant provide the Agency for Health Care Administration with a copy of the complaint alleging medical malpractice; requiring the agency to review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; creating s. 766.118, F.S.; providing a maximum amount to be awarded as noneconomic damages in medical negligence actions; providing exceptions; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," "noneconomic damages," and "periodic payment"; amending s. 766.206, F.S.; providing for dismissal of a claim under certain circumstances; requiring the court to make certain reports concerning a medical expert who fails to meet qualifications; amending s. 766.207, F.S.; providing for the applicability of the Wrongful Death Act and general law to arbitration awards; amending s. 768.041, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; amending s. 768.81, F.S.; requiring the trier of fact to apportion total fault solely among the claimant and joint tortfeasors as parties to an action; requiring the Office of Program Policy Analysis and Government Accountability and the Office of the Auditor General to conduct an audit of the health care practitioner disciplinary process and closed claims and report to the Legislature; creating ss. 1004.08 and 1005.07, F.S.; requiring schools, colleges, and universities to include material on patient safety in their curricula if the institution awards specified degrees; creating a workgroup to study the health care practitioner disciplinary process; providing for workgroup membership; providing that the workgroup deliver its report by January 1, 2004; creating s. 766.1065, F.S.; providing for mandatory presuit investigations; providing that certain records be provided to opposing parties; providing subpoena power; providing for sworn depositions of parties and medical experts; providing for mandatory in-person mediation if binding arbitration has not been agreed to; providing for a mandatory

presuit screening panel hearing in the event of mediation impasse; creating s. 766.1066, F.S.; creating the Office of Presuit Screening Administration; providing for a database of volunteer panel members; prescribing qualifications for panel membership; providing a funding mechanism; providing panel procedures; providing for determination and recodation of panel findings; providing for disposition of panel findings; providing immunity from liability for panel members; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing for severability; providing for retroactive application; providing effective dates.

—which was previously considered and amended this day.

MOTION

On motion by Senator Siplin, the rules were waived to allow the following amendment to be considered:

Senator Siplin moved the following amendment which failed:

Amendment 21 (830534)(with title amendment)—On page 125, between lines 25 and 26, insert:

Section 57. *The Legislature finds that there is a need for experienced and qualified attorneys to represent claimants in medical malpractice cases. Therefore, the Legislature recommends to the Florida Supreme Court that it limit attorneys desiring to represent claimants in medical malpractice litigation to those attorneys who are board-certified in either civil trial practice or health law, or develop alternative qualifications that would include the following:*

(1) *The attorney must have participated in the litigation of medical liability cases for 3 years; and*

(2) *The attorney must have participated as second chair in at least three medical malpractice trials.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 14, line 1, after the semicolon (;) insert: recommending that the Florida Supreme Court establish standards for attorneys representing claimants in medical malpractice litigation;

MOTION

On motion by Senator Peaden, the rules were waived to allow the following amendment to be considered:

Senator Peaden moved the following amendment which was adopted:

Amendment 22 (823778)(with title amendment)—On page 149, between lines 20 and 21, insert:

Section 74. Subsection (7) of section 456.013, Florida Statutes, is amended to read:

456.013 Department; general licensing provisions.—

(7) The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the licensure and renewal process. The 2-hour course shall count towards the total number of continuing education hours required for the profession. The course shall be approved by the board or department, as appropriate, and shall include a study of root-cause analysis, error reduction and prevention, and patient safety. If the course is being offered by a facility licensed pursuant to chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility. *The Board of Medicine and the Board of Osteopathic Medicine shall also require as a condition of licensure and license renewal that each physician and physician assistant complete a 2-hour board-approved continuing education course relating to the five most misdiagnosed conditions, as determined by the board, during the previous biennium. This continuing education course shall count towards the total number of continuing education hours required for those physicians and physician assistants.*

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 16, line 18, after the semicolon (;) insert: amending s. 456.013, F.S.; requiring, as a condition of licensure and license renewal, that physicians and physician assistants complete a continuing education course relating to misdiagnosed conditions;

MOTION

On motion by Senator Pruitt, the rules were waived to allow the following amendment to be considered:

Senator Pruitt moved the following amendment which failed:

Amendment 23 (580034)—On page 126, lines 18-21, delete those lines and insert: *unknown to the insurer, unless, based upon information known earlier to the insurance company or its representatives, the insurance company could and should have settled the claim within policy limits if it had been acting fairly and honestly toward the insured and with due regard for the insured's interests. If a case is set for trial within 1 year after the date of filing the claim, an insurer shall not be held in bad faith if policy limits are tendered 60 days or more prior to trial, unless, based upon information known earlier to the insurance company or its representatives, the insurance company could and should have settled the claim within policy limits if it had been acting fairly and honestly toward the insured and with due regard for the insured's interests.*

MOTION

On motion by Senator Pruitt, the rules were waived to allow the following amendment to be considered:

Senator Pruitt moved the following amendment which was adopted:

Amendment 24 (470388)—On page 149, lines 21-29, delete those lines and insert:

Section 74. *Seven positions are authorized and the sum of \$454,766 is appropriated from the General Revenue Fund to the Department of Health, Office of Presuit Screening Administration, to implement the provisions of this act for the 2003-2004 fiscal year.*

MOTION

On motion by Senator Cowin, the rules were waived to allow the following amendment to be considered:

Senators Cowin and Campbell offered the following amendment which was moved by Senator Cowin and adopted:

Amendment 25 (713942)—On page 46, line 19, delete “\$50,000” and insert: *\$100,000*

MOTION

On motion by Senator Wasserman Schultz, the rules were waived to allow the following amendment to be considered:

Senator Wasserman Schultz moved the following amendment which was adopted:

Amendment 26 (414424)—On page 132, line 7, delete that line and insert: *state, mastectomy, loss of reproductive capabilities, and hemiparesis, except in those actions under ss. 766.207-766.212.*

Senator Jones moved the following amendment:

Amendment 27 (903640)—On page 131, line 19 through page 132 line 7, delete those lines and insert:

Section 60. Section 766.118, Florida Statutes, is created to read:

766.118 *Determination of noneconomic damages.—*

(1) *With respect to a cause of action for personal injury or wrongful death resulting from an occurrence of medical negligence, damages recoverable for noneconomic losses to compensate for pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss*

of capacity for enjoyment of life, and all other noneconomic damages shall not exceed \$500,000 aggregate for all defendant practitioners, \$500,000 aggregate for all defendant facilities, and \$500,000 aggregate for all other defendants regardless of the number of claimants involved in the action subject to the limitations set forth in subsection (2).

(2) *Notwithstanding subsection (1), the trier of fact may award noneconomic damages under this section in an amount not to exceed \$2 million per incident in cases where medical negligence results in certain catastrophic injuries including death, coma, severe and permanent brain damage, quadriplegia, paraplegia, blindness, or a permanent vegetative state. Regardless of the number of individual claimants, the total noneconomic damages that may be awarded for all claims arising out of the same incident, shall be limited to a maximum of \$2 million aggregate for all defendant practitioners, \$2 million aggregate for all defendant facilities, and \$2 million aggregate for all other defendants.*

On motion by Senator Jones, further consideration of **CS for SB 2-B** with pending **Amendment 27 (903640)** was deferred.

MOTION

On motion by Senator Lee, by two-thirds vote all bills remaining on the Special Order Calendar this day were placed on the Special Order Calendar for Thursday, June 19.

ANNOUNCEMENTS

Senator Pruitt announced that the meeting of the Committee on Appropriations will be held from 9:30 a.m. to 9:55 a.m., Thursday, June 19.

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Wednesday, June 18, 2003: CS for SB 2-B, CS for SB 4-B, SB 6-B, SB 10-B, CS for SB 8-B

Respectfully submitted,
Tom Lee, Chair

The Committee on Ethics and Elections recommends the following pass: SB 10-B

The Committee on Health, Aging, and Long-Term Care recommends the following pass: SB 6-B

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

The Committee on Education recommends a committee substitute for the following: SB 8-B

The Committee on Health, Aging, and Long-Term Care recommends committee substitutes for the following: SB 2-B, SB 4-B

The bills with committee substitutes attached contained in the foregoing reports were placed on the calendar.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Health, Aging, and Long-Term Care; and Senators Jones and Saunders—

CS for SB 2-B—A bill to be entitled An act relating to medical malpractice; providing legislative findings; amending s. 46.015, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; creating s. 381.0409, F.S.; providing that creation of the Florida Center for Excellence in Health Care is contingent on the enactment of a public-records exemption; creating the Florida Center for Excellence in Health Care; providing goals and duties of the center; providing definitions; providing

limitations on the center's liability for any lawful actions taken; requiring the center to issue patient safety recommendations; requiring the development of a statewide electronic infrastructure to improve patient care and the delivery and quality of health care services; providing requirements for development of a core electronic medical record; authorizing access to the electronic medical records and other data maintained by the center; providing for the use of computerized physician order entry systems; providing for the establishment of a simulation center for high technology intervention surgery and intensive care; providing for the immunity of specified information in adverse incident reports from discovery or admissibility in civil or administrative actions; providing limitations on liability of specified health care practitioners and facilities under specified conditions; providing requirements for the appointment of a board of directors for the center; establishing a mechanism for financing the center through the assessment of specified fees; requiring the Florida Center for Excellence in Health Care to develop a business and financing plan; authorizing state agencies to contract with the center for specified projects; authorizing the use of center funds and the use of state purchasing and travel contracts for the center; requiring the center to submit an annual report and providing requirements for the annual report; providing for the center's books, records, and audits to be open to the public; requiring the center to annually furnish an audited report to the Governor and Legislature; amending s. 395.004, F.S., relating to licensure of certain health care facilities; providing for discounted medical liability insurance based on certification of programs that reduce adverse incidents; requiring the Office of Insurance Regulation to consider certain information in reviewing discounted rates; creating s. 395.0056, F.S.; requiring the Agency for Health Care Administration to review complaints submitted if the defendant is a hospital; amending s. 395.0193, F.S., relating to peer review and disciplinary actions; providing for discipline of a physician for mental or physical abuse of staff; limiting the liability of certain participants in certain disciplinary actions at a licensed facility; amending s. 395.0197, F.S., relating to internal risk management programs; requiring a system for notifying patients that they are the subject of an adverse incident; requiring risk managers or their designees to give notice; requiring licensed facilities to annually report certain information about health care practitioners for whom they assume liability; requiring the Agency for Health Care Administration and the Department of Health to annually publish statistics about licensed facilities that assume liability for health care practitioners; requiring a licensed facility at which sexual abuse occurs to offer testing for sexually transmitted diseases at no cost to the victim; creating s. 395.1012, F.S.; requiring facilities to adopt a patient safety plan; providing requirements for a patient safety plan; requiring facilities to appoint a patient safety officer and a patient safety committee and providing duties for the patient safety officer and committee; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; directing the Agency for Health Care Administration to conduct or contract for a study to determine what information to provide to the public comparing hospitals, based on inpatient quality indicators developed by the federal Agency for Healthcare Research and Quality; creating s. 395.1051, F.S.; requiring certain facilities to notify patients about adverse incidents under specified conditions; creating s. 456.0575, F.S.; requiring licensed health care practitioners to notify patients about adverse incidents under certain conditions; amending s. 456.026, F.S., relating to an annual report published by the Department of Health; requiring that the department publish the report to its website; 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requiring the department to provide a hyperlink to certain comparison reports pertaining to claims experience; requiring the department to include the date that a reported disciplinary action was taken by a licensed facility and a characterization of the practitioner's conduct that resulted in the action; deleting provisions requiring the department to consult with a regulatory board before including certain

information in a health care practitioner's profile; providing for a penalty for failure to comply with the timeframe for verifying and correcting a practitioner profile; requiring the department to add a statement to a practitioner profile when the profile information has not been verified by the practitioner; requiring the department to provide, in the practitioner profile, an explanation of disciplinary action taken and the reason for sanctions imposed; requiring the department to include a hyperlink to a practitioner's website when requested; providing that practitioners licensed under ch. 458 or ch. 459, F.S., shall have claim information concerning an indemnity payment greater than a specified amount posted in the practitioner profile; amending s. 456.042, F.S.; providing for the update of practitioner profiles; designating a timeframe within which a practitioner must submit new information to update his or her profile; amending s. 456.049, F.S., relating to practitioner reports on professional liability claims and actions; 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amending s. 458.331, F.S., relating to grounds for disciplinary action against a physician; redefining the term "repeated malpractice"; revising the standards for the burden of proof in an administrative action against a physician; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation;

amending s. 459.015, F.S., relating to grounds for disciplinary action against an osteopathic physician; redefining the term "repeated malpractice"; revising the standards for the burden of proof in an administrative action against an osteopathic physician; amending conditions that necessitate a departmental investigation of an osteopathic physician; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; amending s. 460.413, F.S., relating to grounds for disciplinary action against a chiropractic physician; revising the standards for the burden of proof in an administrative action against a chiropractic physician; providing a statement of legislative intent regarding the change in the standard of proof in disciplinary cases involving the suspension or revocation of a license; providing that the practice of health care is a privilege, not a right; providing that protecting patients overrides purported property interest in the license of a health care practitioner; providing that certain disciplinary actions are remedial and protective, not penal; providing that the Legislature specifically reverses case law to the contrary; requiring the Division of Administrative Hearings to designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; amending s. 461.013, F.S., relating to grounds for disciplinary action against a podiatric physician; redefining the term "repeated malpractice"; amending the minimum amount of a claim against such a physician which will trigger a department investigation; amending s. 466.028, F.S., relating to grounds for disciplinary action against a dentist or a dental hygienist; redefining the term "dental malpractice"; revising the minimum amount of a claim against a dentist which will trigger a departmental investigation; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; providing that an insurer may not require arbitration of a rate filing for medical malpractice; providing additional requirements for medical malpractice insurance rate filings; providing that portions of judgments and settlements entered against a medical malpractice insurer for bad-faith actions or for punitive damages against the insurer, as well as related taxable costs and attorney's fees, may not be included in an insurer's base rate; providing for review of rate filings by the Office of Insurance Regulation for excessive, inadequate, or unfairly discriminatory rates; requiring insurers to apply a discount based on the health care provider's loss experience; amending s. 627.0645, F.S.; excepting medical malpractice insurers from certain annual filings; requiring the Office of Program Policy Analysis and Government Accountability to study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; creating s. 627.0662, F.S.; providing definitions; requiring each medical liability insurer to report certain information to the Office of Insurance Regulation; providing for determination of whether excessive profit has been realized; requiring return of excessive amounts; amending s. 627.357, F.S.; providing guidelines for the formation and regulation of certain self-insurance funds; amending s. 627.4147, F.S.; revising certain notification criteria for medical and osteopathic physicians; requiring prior notification of a rate increase; authorizing the purchase of insurance by certain health care providers; creating s. 627.41491, F.S.; requiring the Office of Insurance Regulation to require health care providers to annually publish certain rate comparison information; creating s. 627.41492, F.S.; requiring the Office of Insurance Regulation to publish an annual medical malpractice report; creating s. 627.41493, F.S.; requiring a medical malpractice insurance rate rollback; providing for subsequent increases under certain circumstances; requiring approval for use of certain medical malpractice insurance rates; providing for a mechanism to make effective the Florida Medical Malpractice Insurance Fund in the event the rollback of medical malpractice insurance rates is not completed; creating the Florida Medical Malpractice Insurance Fund; providing purpose; providing governance by a board of governors; providing for the fund to issue medical malpractice policies to any physician regardless of specialty; providing for regulation by the Office of Insurance Regulation of the Financial Services Commission; providing applicability; providing for initial funding; providing for tax-exempt status; providing for initial capitalization; providing for termination of the fund; providing that practitioners licensed under ch. 458 or ch. 459, F.S., must, as a licensure requirement, obtain and maintain professional liability coverage; creating s. 627.41495, F.S.; providing for consumer participation in review of medical malpractice rate changes; providing for public inspection; providing for adoption of rules by the Financial Services Commission; requiring the Office of Insurance Regulation to order insurers to make rate filings effective January 1, 2004, which reflect the impact of the act; providing criteria for such rate filing; amending s. 627.912, F.S.; amending provisions prescribing conditions under which insurers must file certain reports

with the Department of Health; requiring the Financial Services Commission to adopt by rule requirements for reporting financial information; increasing the limitation on a fine imposed against insurers; creating s. 627.9121, F.S.; requiring certain claims, judgments, or settlements to be reported to the Office of Insurance Regulation; providing penalties; amending s. 766.102, F.S.; revising requirements for health care providers providing expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; amending s. 766.106, F.S.; providing for application of common law principles of good faith to an insurance company's bad-faith actions arising out of medical malpractice claims; providing that an insurer shall not be held to have acted in bad faith for certain activities during the presuit period and for a specified later period; providing legislative intent with respect to actions by insurers, insureds, and their assigns and representatives; revising requirements for presuit notice and for an insurer's or self-insurer's response to a claim; requiring that a claimant provide the Agency for Health Care Administration with a copy of the complaint alleging medical malpractice; requiring the agency to review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; creating s. 766.118, F.S.; providing a maximum amount to be awarded as noneconomic damages in medical negligence actions; providing exceptions; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," "noneconomic damages," and "periodic payment"; amending s. 766.206, F.S.; providing for dismissal of a claim under certain circumstances; requiring the court to make certain reports concerning a medical expert who fails to meet qualifications; amending s. 766.207, F.S.; providing for the applicability of the Wrongful Death Act and general law to arbitration awards; amending s. 768.041, F.S.; revising requirements for setoffs against damages in medical malpractice actions if there is a written release or covenant not to sue; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; amending s. 768.81, F.S.; requiring the trier of fact to apportion total fault solely among the claimant and joint tortfeasors as parties to an action; requiring the Office of Program Policy Analysis and Government Accountability and the Office of the Auditor General to conduct an audit of the health care practitioner disciplinary process and closed claims and report to the Legislature; creating ss. 1004.08 and 1005.07, F.S.; requiring schools, colleges, and universities to include material on patient safety in their curricula if the institution awards specified degrees; creating a workgroup to study the health care practitioner disciplinary process; providing for workgroup membership; providing that the workgroup deliver its report by January 1, 2004; creating s. 766.1065, F.S.; providing for mandatory presuit investigations; providing that certain records be provided to opposing parties; providing subpoena power; providing for sworn depositions of parties and medical experts; providing for mandatory in-person mediation if binding arbitration has not been agreed to; providing for a mandatory presuit screening panel hearing in the event of mediation impasse; creating s. 766.1066, F.S.; creating the Office of Presuit Screening Administration; providing for a database of volunteer panel members; prescribing qualifications for panel membership; providing a funding mechanism; providing panel procedures; providing for determination and recordation of panel findings; providing for disposition of panel findings; providing immunity from liability for panel members; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing for severability; providing for retroactive application; providing effective dates.

By the Committee on Health, Aging, and Long-Term Care; and Senators Jones and Saunders—

CS for SB 4-B—A bill to be entitled An act relating to public records and meetings; creating s. 381.04091, F.S.; providing that patient records obtained by, and other documents identifying a patient by name and contained in patient safety data held by, the Florida Center for Excellence in Health Care are exempt from public-record requirements; providing that meetings held by the center at which such information is discussed are exempt from public-meeting requirements; authorizing the release of information under specified circumstances, including the release to a health care research entity or licensed health insurer; providing for future legislative review and repeal under the Open Govern-

ment Sunset Review Act of 1995; providing a statement of public necessity; providing a contingent effective date.

By the Committee on Education; and Senators Diaz de la Portilla and Wilson—

CS for SB 8-B—A bill to be entitled An act relating to high school graduation; creating s. 1003.433, F.S.; providing learning opportunities for certain students to meet high school graduation requirements; providing requirements for certain transfer students; authorizing alternate assessments; authorizing rules; amending s. 1008.22, F.S., relating to student assessment for public schools; providing for alternate assessments for the grade 10 FCAT; directing the Commissioner of Education to approve certain standardized tests if determined to meet certain criteria as equivalents to the FCAT and to permit passage of such tests in lieu of passage of the grade 10 FCAT for students graduating in the 2002-2003 school year or thereafter; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing an effective date.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

FIRST READING

The Honorable James E. "Jim" King, Jr., President

I am directed to inform the Senate that the House of Representatives has passed HB 29-B; has passed as amended HB 23-B; has passed by the required Constitutional two-thirds vote of the membership HB 85-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Harrington and others—

HB 29-B—A bill to be entitled An act relating to elections; amending s. 97.012, F.S.; revising and providing duties of the Secretary of State as chief election officer; amending s. 97.021, F.S.; deleting the definition of "central voter file"; revising the definition of "provisional ballot"; amending s. 97.052, F.S.; requiring the uniform statewide voter registration application to contain a notice to first-time registrants about required identification prior to voting the first time; amending s. 97.053, F.S.; authorizing use of a driver's license or state-issued identification card number in lieu of a portion of the social security number on a voter registration application; creating s. 97.028, F.S.; providing procedures on complaints of violations of Title III of the Help America Vote Act of 2002; creating s. 97.0535, F.S.; providing registration requirements for applicants who register by mail and who haven't previously voted in the county; amending s. 98.045, F.S.; deleting a reference, to conform; repealing s. 98.097, F.S., relating to the central voter file; amending s. 98.0977, F.S.; providing for continued operation and maintenance of the statewide voter registration database until the statewide voter registration system required by the Help America Vote Act of 2002 is operational; requiring the Department of State to begin the development of a statewide voter registration system designed to meet certain requirements of the Help America Vote Act of 2002; amending s. 98.212, F.S.; removing duty of supervisors of elections relating to the central voter file, to conform; amending s. 98.461, F.S.; requiring use of a computer printout as a precinct register at the polls; requiring the precinct register to contain space for elector signatures and clerk or inspector initials; amending and renumbering s. 98.471, F.S.; providing requirements for identification required at the polls; providing for voting a provisional ballot under certain circumstances; repealing s. 98.491, F.S., relating to intent that alternative electronic procedures for registration and elections be followed at the discretion of the supervisor of elections; amending s. 101.048, F.S.; providing for casting a provisional ballot by electronic means; requiring each supervisor of elections to create a free access system that allows each person casting a provisional ballot to find out whether the ballot was counted and, if not, why; requiring each person casting a provisional ballot to be given written instructions regarding the free access system; creating s. 101.049, F.S.; requiring voting that occurs during polling hours extended by a court or other order

to be done by provisional ballot; providing requirements for casting provisional ballots under such circumstances; amending s. 101.111, F.S.; revising provisions relating to challenging the right of a person to vote; providing for voting a provisional ballot under certain circumstances; amending s. 101.62, F.S.; providing an exception to limiting an absentee ballot request to ballots for elections within a single calendar year; amending s. 101.64, F.S.; revising a reference on the Voter's Certificate; amending s. 101.65, F.S.; revising the instructions to absentee electors to include instructions to prevent overvoting; amending s. 101.657, F.S.; requiring certain persons voting absentee in person to vote a provisional ballot; creating s. 101.6921, F.S.; providing requirements for delivery of special absentee ballots for certain first-time voters; creating s. 101.6923, F.S.; providing voter instructions for such special absentee ballots; creating s. 101.6925, F.S.; providing requirements for the canvassing of special absentee ballots; amending s. 101.694, F.S.; authorizing federal postcard applicants for absentee ballots to receive ballots for two general election cycles; amending s. 102.141, F.S.; requiring the canvassing of provisional ballots cast during any extended polling-hour period to segregate the votes from such ballots from other votes; directing the Department of State to adopt uniform rules for machine recounts; amending s. 125.01, F.S.; conforming a cross reference; repealing s. 20, ch. 2002-281, Laws of Florida; eliminating future revision of a cross reference, to conform; amending s. 163.511, F.S.; revising a reference; revising the primary date in 2004; suspending operation of the second primary election until January 1, 2006; providing a date in 2004 by which candidates for Lieutenant Governor must be designated and qualified; providing campaign finance reporting dates; specifying applicability of contribution limits for the 2004 elections; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or 2003 Special Session A of the Legislature; providing effective dates.

—was referred to the Committee on Ethics and Elections.

By Representative Quinones and others—

HB 23-B—A bill to be entitled An act relating to high school graduation; creating s. 1003.433, F.S.; providing learning opportunities for certain students to meet high school graduation requirements; providing requirements for certain transfer students; authorizing alternate assessments; requiring district school superintendents to notify students of the consequences of failure to receive a standard high school diploma; authorizing rules; amending s. 1008.22, F.S., relating to student assessment for public schools; providing for alternate assessments for the grade 10 FCAT; directing the Commissioner of Education to approve certain standardized tests if determined to meet certain criteria as equivalents to the FCAT and to permit passage of such tests in lieu of

passage of the grade 10 FCAT for students graduating in the 2002-2003 school year or thereafter; providing for retroactive application; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing an effective date.

—was referred to the Committee on Education.

Motion

On motion by Senator Pruitt, by the required constitutional two-thirds vote of the membership the following bill was admitted for introduction outside the purview of the Governor's call:

By Representative Byrd and others—

HB 85-B—A bill to be entitled An act relating to biomedical research; amending s. 215.5602, F.S.; renaming the Florida Biomedical Research Program as the James and Esther King Biomedical Research Program; amending ss. 20.435 and 215.5601, F.S., to conform; providing an appropriation; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing an effective date.

—was referred to the Committee on Appropriations.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of June 16 was corrected and approved.

CO-SPONSORS

Senators Fasano—SB 10-B; Posey—SB 10-B; Saunders—SB 8-B

VOTES RECORDED

Senator Margolis was recorded as voting "yea" on the following bills which were considered this day: **HB 29-B** and **HB 23-B**.

RECESS

On motion by Senator Lee, the Senate recessed at 8:46 p.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 10:00 a.m., Thursday, June 19 or upon call of the President.