



# Journal of the Senate

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## SPECIAL ORDER CALENDAR

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

**CS for SB 2-D**—A bill to be entitled An act relating to medical incidents; providing legislative findings; 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. 395.0191, F.S.; deleting a requirement that persons act in good faith to avoid liability or discipline for their actions regarding the awarding of staff membership or clinical privileges; 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 that an appropriately trained person 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; repealing the requirement that licensed facilities notify the agency within 1 business day of the occurrence of certain adverse incidents; repealing s. 395.0198, F.S., which provides a public records exemption for adverse incident notifications; 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; 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; 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; amending s. 456.013, F.S.; requiring, as a condition of licensure and license renewal, that physicians and physician assistants complete continuing education relating to misdiagnosed conditions as part of a continuing education course on prevention of medical errors; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; 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 within which certain health care practitioners must 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 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

## CALL TO ORDER

The Senate was called to order by President King at 10:00 a.m. A quorum present—36:

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

Excused: Senators Miller, Siplin and Wasserman Schultz

## PRAYER

The following prayer was offered by Senator Wise:

Dear God,

As Senators, Lord, we come together today to ask you for divine wisdom and guidance in all that we do in this Senate. We pray that we will only do and say that which would be honorable and righteous in your eyes and by your standards.

Lord, please help us now as we have important decisions to make that will have a profound effect upon the citizens of this great state.

Lord, there are Senators who are not present with us today. Please keep them safe and protect them from harm.

We ask this in your most Holy and Precious Name. And all the people said, “Amen.”

## PLEDGE

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

## MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator Pruitt, by two-thirds vote **SB 4-D** was withdrawn from the Committee on Appropriations.

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 for medical malpractice; 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. 456.072, F.S.; providing for determining the amount of any costs to be assessed in a disciplinary proceeding; 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; excepting gross or repeated malpractice and standard-of-care violations from the 6-year limitation on investigation or filing of an administrative complaint; amending s. 456.077, F.S.; providing a presumption related to an undisputed citation; revising requirements under which the Department of Health may issue citations as an alternative to disciplinary procedures against certain licensed health care practitioners; 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 medical physicians; providing for payment of any outstanding judgments or settlements pending at the time a physician is suspended by the Department of Health; 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 Health; 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; amending s. 458.331, F.S., relating to grounds for disciplinary action against a physician; redefining the term "repeated malpractice"; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 458.3311, F.S.; establishing emergency procedures for disciplinary actions; amending s. 459.015, F.S., relating to grounds for disciplinary action against an osteopathic physician; redefining the term "repeated malpractice"; 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; creating s. 459.0151, F.S.; establishing emergency procedures for disciplinary actions; 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 departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 461.0131, F.S.; establishing emergency procedures for disciplinary actions; 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; requiring that the Division of Administrative Hearings designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; creating ss. 1004.08 and 1005.07, F.S.; requiring schools, col-

leges, and universities to include material on patient safety in their curricula if the institution awards specified degrees; 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; requiring the Agency for Health Care Administration to conduct a study on patient safety; requiring a report and submission of findings to the Legislature; 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 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; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; prohibiting the submission of medical malpractice insurance rate filings to arbitration; 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; requiring the Office of Insurance Regulation to calculate a presumed factor that reflects the impact of medical malpractice legislation on rates; requiring insurers to make a rate filing reflecting such presumed factor; allowing for deviations; requiring that rates remain in effect until new rate filings are approved; requiring that the Office of Program Policy Analysis and Government Accountability study the feasibility of authorizing the Office of the Public Counsel to represent the public in medical malpractice rate hearings; 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; creating s. 627.41495, F.S.; providing for notice to policyholders of certain medical malpractice rate filings; amending s. 627.912, F.S.; revising requirements for the medical malpractice closed claim reports that must be filed with the Office of Insurance Regulation; applying such requirements to additional persons and entities; providing for access by the Department of Health to such reports; providing for the imposition of a fine or disciplinary action for failing to report; requiring that reports obtain additional information; authorizing the Financial Services Commission to adopt rules; requiring that the Office of Insurance Regulation prepare summaries of closed claim reports of prior years and prepare an annual report and analysis of closed claim and insurer financial reports; amending s. 641.19, F.S.; revising definitions; providing that health care providers providing services pursuant to coverage provided under a health maintenance organization contract are not employees or agents of the health maintenance organization; providing exceptions; amending s. 641.51, F.S.; proscribing a health maintenance organization's right to control the professional judgment of a physician; providing that a health maintenance organization shall not be vicariously liable for the medical negligence of a health care provider; providing exceptions; amending s. 766.102, F.S.; revising requirements for health care providers who offer corroborating medical expert opinion and expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; requiring certification that an expert witness not previously have been found guilty of fraud or perjury; amending s. 766.106, F.S.; specifying sanctions for failure to cooperate with presuit investigations; requiring the execution of medical release to allow taking of unsworn statements from claimant's treating physicians; imposing limits on use of such statements; deleting provisions relating to voluntary arbitration in conflict with s. 766.207, F.S.; 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 negligence against licensed facilities; requiring that the agency review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; amending ss. 766.1115, 766.112, 766.113, 766.201, 766.303, 768.21, F.S.; revising references to "medical malpractice" to "medical negligence"; amending s. 766.113, F.S.; requiring that a specific statement be included in all medical negligence settlement agreements; creating s. 766.118, F.S.; limiting noneconomic damages in medical negligence actions; providing legislative findings and intent regarding provision of emergency medical services and care; creating s.

766.1185, F.S.; providing that an action for bad faith may not be brought against a medical malpractice insurer if such insurer offers to pay policy limits and meets other specified conditions of settlement within a specified time period; providing for factors to be considered in determining whether a medical malpractice insurer has acted in bad faith; providing for the delivery of a copy of an amended witness list to the insurer of a defendant health care provider; providing a limitation on the amount of damages which may be awarded to certain third parties in actions alleging bad faith by a medical malpractice insurer; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," and "noneconomic damages"; defining the term "health care provider"; creating s. 766.2021, F.S.; providing a limitation on damages against insurers, prepaid limited health service organizations, health maintenance organizations, or prepaid health clinics for medical negligence of contracted health care providers; requiring actions against such entities to be brought pursuant to ch. 766, F.S.; amending s. 766.203, F.S.; providing for discovery of presuit medical expert opinion; 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. 766.209, F.S.; revising applicable damages available in voluntary binding arbitration relating to claims of medical negligence; creating s. 768.0981, F.S.; providing a limitation on damages arising from vicarious liability for insurers, prepaid limited health service organizations, health maintenance organizations, and prepaid health clinics for actions of a health care provider; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.28, F.S.; providing that health care practitioners furnishing medical services to student athletes for intercollegiate athletics under specified circumstances will be considered agents of a state university board of trustees; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; preserving sovereign immunity and the abrogation of certain joint and several liability; 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; requiring the Department of Health to study the efficacy and constitutionality of medical review panels; requiring a report; amending s. 391.025, F.S.; adding infants receiving compensation awards as eligible for Children's Medical Services health services; amending s. 391.029, F.S.; providing financial eligibility criteria for Children's Medical Services; amending s. 766.304, F.S.; limiting the use of civil actions when claimants accept awards from the Florida Birth-Related Neurological Injury Compensation Plan; amending s. 766.305, F.S.; deleting a requirement for provision of certain information in a petition filed with the Florida Birth-Related Neurological Injury Compensation Plan; providing for service of copies of such petition to certain participants; requiring that a claimant provide the Florida Birth-Related Neurological Injury Compensation Association with certain information within 10 days after filing such petition; amending s. 766.309, F.S.; allowing for claims against the association to be bifurcated; amending s. 766.31, F.S.; providing for a death benefit for an infant in the amount of \$10,000; limiting liability of the claimant for expenses and attorney's fees; amending s. 766.314, F.S.; revising obsolete terms; providing procedures by which hospitals in certain counties may pay the annual fees for participating physicians and nurse midwives; providing for annually assessing participating physicians; requiring that the Office of Program Policy Analysis and Government Accountability study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or a 2003 special session of the Legislature; providing for severability; providing effective dates.

—was read the second time by title.

Senator Klein moved the following amendments which failed:

**Amendment 1 (474972)(with title amendment)**—On page 93, line 21, through page 95, line 27, delete those lines and insert:

(8)(a) *No later than 60 days after the effective date of medical malpractice legislation enacted during the 2003 Special Session D of the Florida Legislature, the office shall calculate a presumed factor that reflects the impact that the changes contained in such legislation will*

*have on rates for medical malpractice insurance and shall issue a notice informing all insurers writing medical malpractice coverage of such presumed factor. In determining the presumed factor, the office shall use generally accepted actuarial techniques and standards provided in this section in determining the expected impact on losses, expenses, and investment income of the insurer.*

(b) *For any coverage for medical malpractice insurance subject to this chapter issued or renewed on or after October 1, 2003, every insurer shall reduce its rates to levels that are at least 20 percent less than the rates for the same coverage that were in effect on January 1, 2003.*

(c) *Notwithstanding any provision of law to the contrary, between October 1, 2003, and October 1, 2004, rates reduced pursuant to paragraph (b) may only be increased if the director of the Office of Insurance Regulation finds, after a hearing, that an insurer or self-insurer or the Florida Medical Malpractice Joint Underwriting Association is unable to earn a fair rate of return, taking into consideration a presumed factor reflecting the impact on medical malpractice rates calculated by the Office of Insurance Regulation.*

(d) *Commencing October 1, 2003, insurance rates for medical malpractice subject to this chapter must be approved by the director of the Office of Insurance Regulation prior to being used.*

(e) *Any separate affiliate of an insurer is subject to the provisions of this section.*

(f) *The calculation and notice by the office of the presumed factor pursuant to paragraph (a) is not an order or rule that is subject to chapter 120. If the office enters into a contract with an independent consultant to assist the office in calculating the presumed factor, such contract shall not be subject to the competitive solicitation requirements of s. 287.057.*

And the title is amended as follows:

On page 9, lines 23 through 26, delete those lines and insert: requiring a medical malpractice insurance rate rollback; providing for subsequent increases under certain circumstances; requiring approval for use of certain medical malpractice insurance rates;

The vote was:

Yeas—8

Aronberg	Dawson	Margolis
Bullard	Hill	Wilson
Campbell	Klein	

Nays—27

Mr. President	Crist	Lynn
Alexander	Diaz de la Portilla	Posey
Argenziano	Dockery	Pruitt
Atwater	Fasano	Saunders
Bennett	Garcia	Sebesta
Carlton	Haridopolos	Smith
Clary	Jones	Villalobos
Constantine	Lawson	Webster
Cowin	Lee	Wise

Vote after roll call:

Yea—Geller

Nay—Peaden

**Amendment 2 (120088)**—On page 94, delete those lines and insert:

2. *No later than 60 days after the office issues its notice of the presumed rate change factor under subparagraph 1., each insurer writing medical malpractice coverage in this state shall submit to the office a rate filing for medical malpractice insurance, which will take effect no later than January 1, 2004, and apply to policies issued or renewed on or after January 1, 2004. Except as authorized under paragraph (b), the filing shall reflect an overall rate reduction at least as great as the presumed factor determined under subparagraph 1.*

The vote was:

Yeas—7

Aronberg	Hill	Margolis
Bullard	Klein	Wilson
Campbell		

Nays—24

Mr. President	Diaz de la Portilla	Posey
Alexander	Dockery	Pruitt
Argenziano	Fasano	Saunders
Bennett	Garcia	Sebesta
Carlton	Haridopolos	Smith
Clary	Jones	Villalobos
Constantine	Lee	Webster
Cowin	Lynn	Wise

Vote after roll call:

Yea—Geller

Nay—Crist, Peaden

Senator Campbell moved the following amendments which failed:

**Amendment 3 (124652)**—On page 132, between lines 22 and 23, insert:

(8) *Each limitation on noneconomic damages set forth in this section shall be adjusted at the end of each calendar year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, the term "consumer price index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.*

**Amendment 4 (702218)**—On page 59, line 5, through page 63, line 7, delete those lines and insert:

7. The licensee ~~must shall~~ submit biennially to the department 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 provide a written statement to any person to whom medical services are being provided. ~~The~~ Such sign or statement ~~must shall~~ state that: Under Florida law, 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 physicians who meet state requirements are exempt from the financial responsibility law. YOUR DOCTOR 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:~~

(6)(a)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:

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

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

a.(4) A copy of a supersedeas bond properly posted in the amount required by law; or

b.(4) An order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal.

b)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.

c)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 ~~paragraph (a) subparagraph 1.~~

d)4. If the board determines that the factual requirements of ~~paragraph (a) 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 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.

e)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."~~

(7)(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.

(8)(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.

(9) *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).

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

Senators Campbell and Aronberg offered the following amendment which was moved by Senator Campbell and failed:

**Amendment 5 (531896)(with title amendment)**—On page 106, line 1 through page 108, line 15, delete sections 46 and 47 and renumber subsequent sections.

And the title is amended as follows:

On page 10, line 26, through page 11, line 7, delete those lines and insert: 766.102, F.S.; revising

Senator Smith moved the following amendment which was adopted:

**Amendment 6 (725240)**—On page 130, line 15, delete that line and insert: *providing services as provided in s. 401.265, or providing services pursuant to obligations imposed by 42 U.S.C. s. 1395dd to persons with*

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

## RECESS

By direction of the President, the Senate recessed at 12:04 p.m. to reconvene at 1:15 p.m.

## AFTERNOON SESSION

The Senate was called to order by the President at 1:21 p.m. A quorum present—37:

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

## SPECIAL ORDER CALENDAR, continued

The Senate resumed consideration of—

**CS for SB 2-D**—A bill to be entitled An act relating to medical incidents; providing legislative findings; 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. 395.0191, F.S.; deleting a requirement that persons act in good faith to avoid liability or discipline for their actions regarding the awarding of staff membership or clinical privileges; 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 that an appropriately trained person 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; repealing the requirement that licensed facilities notify the agency within 1 business day of the occurrence of certain adverse incidents; repealing s. 395.0198, F.S., which provides a public records exemption for adverse incident notifications; 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; 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; 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; amending s. 456.013, F.S.; requiring, as a condition of licensure and license renewal, that physicians and physician assistants complete continuing education relating to misdiagnosed conditions as part of a continuing education course on prevention of medical errors; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; 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 within which certain health care practitioners must 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 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 for medical malpractice; 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. 456.072, F.S.; providing for determining the amount of any costs to be assessed in a disciplinary proceeding; 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; excepting gross or repeated malpractice and standard-of-care violations from the 6-year limitation on investigation or filing of an administrative complaint; amending s. 456.077, F.S.; providing a presumption related to an undisputed citation; revising requirements under which the Department of Health may issue citations as an alternative to disciplinary procedures against certain licensed health care practitioners; 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 medical

physicians; providing for payment of any outstanding judgments or settlements pending at the time a physician is suspended by the Department of Health; 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 Health; 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; amending s. 458.331, F.S., relating to grounds for disciplinary action against a physician; redefining the term "repeated malpractice"; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 458.3311, F.S.; establishing emergency procedures for disciplinary actions; amending s. 459.015, F.S., relating to grounds for disciplinary action against an osteopathic physician; redefining the term "repeated malpractice"; 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; creating s. 459.0151, F.S.; establishing emergency procedures for disciplinary actions; 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 departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 461.0131, F.S.; establishing emergency procedures for disciplinary actions; 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; requiring that the Division of Administrative Hearings designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; 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; 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; requiring the Agency for Health Care Administration to conduct a study on patient safety; requiring a report and submission of findings to the Legislature; 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 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; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; prohibiting the submission of medical malpractice insurance rate filings to arbitration; 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; requiring the Office of Insurance Regulation to calculate a presumed factor that reflects the impact of medical malpractice legislation on rates; requiring insurers to make a rate filing reflecting such presumed factor; allowing for deviations; requiring that rates remain in effect until new rate filings are approved; requiring that the Office of Program Policy Analysis and Government Accountability study the feasibility of authorizing the Office of the Public Counsel to represent the public in medical malpractice rate hearings; 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; creating s. 627.41495, F.S.; providing for notice to policyholders of certain medical malpractice rate filings; amending s. 627.912, F.S.; revising requirements for the medical malpractice closed claim reports that must be filed with the Office of Insurance Regulation; applying such requirements to additional persons and entities; providing for access by the Department of Health to such reports; providing for the imposition of a fine or disciplinary action for failing to report; requiring that reports obtain additional information; authorizing the Financial Services Commission to adopt rules; requiring that the Office of Insurance Regulation prepare summaries of closed claim reports of prior years and prepare an annual report and analysis of closed claim and insurer financial reports; amending s. 641.19, F.S.; revising definitions; providing that health care providers providing services pursuant to coverage provided under a health maintenance organization contract are not employees or agents of the health maintenance organization; providing exceptions; amending s. 641.51, F.S.; proscribing a health maintenance organization's right to control the professional judgment of a physician; providing that a health maintenance organization shall not be vicariously liable for the medical negligence of a health care provider; providing exceptions; amending s. 766.102, F.S.; revising requirements for health care providers who offer corroborating medical expert opinion and expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; requiring certification that an expert witness not previously have been found guilty of fraud or perjury; amending s. 766.106, F.S.; specifying sanctions for failure to cooperate with presuit investigations; requiring the execution of medical release to allow taking of unsworn statements from claimant's treating physicians; imposing limits on use of such statements; deleting provisions relating to voluntary arbitration in conflict with s. 766.207, F.S.; 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 negligence against licensed facilities; requiring that the agency review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; amending ss. 766.1115, 766.112, 766.113, 766.201, 766.303, 768.21, F.S.; revising references to "medical malpractice" to "medical negligence"; amending s. 766.113, F.S.; requiring that a specific statement be included in all medical negligence settlement agreements; creating s. 766.118, F.S.; limiting noneconomic damages in medical negligence actions; providing legislative findings and intent regarding provision of emergency medical services and care; creating s. 766.1185, F.S.; providing that an action for bad faith may not be brought against a medical malpractice insurer if such insurer offers to pay policy limits and meets other specified conditions of settlement within a specified time period; providing for factors to be considered in determining whether a medical malpractice insurer has acted in bad faith; providing for the delivery of a copy of an amended witness list to the insurer of a defendant health care provider; providing a limitation on the amount of damages which may be awarded to certain third parties in actions alleging bad faith by a medical malpractice insurer; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," and "noneconomic damages"; defining the term "health care provider"; creating s. 766.2021, F.S.; providing a limitation on damages against insurers, prepaid limited health service organizations, health maintenance organizations, or prepaid health clinics for medical negligence of contracted health care providers; requiring actions against such entities to be brought pursuant to ch. 766, F.S.; amending s. 766.203, F.S.; providing for discovery of presuit medical expert opinion; 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. 766.209, F.S.; revising applicable damages available in voluntary binding arbitration relating to claims of medical negligence; creating s. 768.0981, F.S.; providing a limitation on damages arising from vicarious liability for insurers, prepaid limited health service organizations, health maintenance organizations, and prepaid health clinics for actions of a health care provider; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.28, F.S.; providing that health care practitioners furnishing medical services to student athletes for intercollegiate athletics under specified circumstances will be considered agents of a state university board of trustees; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; preserving sovereign immunity and the abrogation of certain joint and several liability; 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; requiring the Department of Health to study the efficacy and constitutionality of medical review panels; requiring a report; amending s. 391.025, F.S.; adding infants receiving compensation awards as eligible for Children's Medical Services health services; amending s. 391.029, F.S.; providing financial eligibility criteria for Children's Medical Services; amending s. 766.304, F.S.; limiting the use of civil actions when claimants accept awards from the Florida Birth-Related Neurological Injury Compensation Plan; amending s. 766.305, F.S.; deleting a requirement for provision of certain information in a petition filed with the Florida Birth-Related Neurological Injury Compensation Plan; providing for service of copies of such petition to certain participants; requiring that a claimant provide the Florida Birth-Related Neurological Injury Compensation Association with certain information within 10 days after filing such petition; amending s. 766.309, F.S.; allowing for claims against the association to be bifurcated; amending s. 766.31, F.S.; providing for a death benefit for an infant in the amount of \$10,000; limiting liability of the claimant for expenses and attorney's fees; amending s. 766.314, F.S.; revising obsolete terms; providing procedures by which hospitals in certain counties may pay the annual fees for participating physicians and nurse midwives; providing for annually assessing participating physicians; requiring that the Office of Program Policy Analysis and Government Accountability study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or a 2003 special session of the Legislature; providing for severability; providing effective dates.

—which was previously considered and amended this day.

Senator Smith moved the following amendment which was adopted:

**Amendment 7 (114390)**—On page 131, line 12, delete that line and insert: *to obligations imposed by ss. 395.1041 or 401.45, or obligations imposed by 42 U.S.C. s. 1395dd to persons*

Senator Campbell moved the following amendment which failed:

**Amendment 8 (052980)(with title amendment)**—On page 137, between lines 9 and 10, insert:

*(5) Subsection (1) does not apply when, based upon information known earlier to the insurer or its representatives, the insurer could and should have settled the claim within policy limits had it acted fairly and honestly toward its insured and with due regard for the insured's interests.*

And the title is amended as follows:

On page 12, line 26, following the semicolon (;) insert: providing applicability;

Senator Posey moved the following amendment which failed:

**Amendment 9 (983282)(with title amendment)**—On page 171, between lines 6 and 7, insert:

Section 87. Sections 395.0056, 395.1012, 395.1051, 456.0575, 458.3311, 459.0151, 461.0131, 1004.06, 1005.07, 627.41495, 766.118, 766.1185, 766.2021, and 768.0981, Florida Statutes, as created by this act, and sections 1, 9, 10, 32, 41, 55, 69, and 86 of this act expire September 15, 2005, and must be reviewed by the Legislature before that date.

(Redesignate subsequent sections.)

And the title is amended as follows:

On page 15, line 25, following the second semicolon (;) insert: providing for future repeal and review of ss. 395.0056, 395.1012, 395.1051, 456.0575, 458.3311, 459.0151, 461.0131, 1004.06, 1005.07, 627.41495, 766.118, 766.1185, 766.2021, 768.0981, F.S., and specified sections of the act;

## SENATOR CARLTON PRESIDING

### THE PRESIDENT PRESIDING

On motion by Senator Jones, by two-thirds vote **CS for SB 2-D** as amended was read the third time by title, passed, ordered engrossed and

then certified to the House. The vote on passage was:

Yeas—32

Mr. President	Crist	Margolis
Alexander	Dawson	Peaden
Argenziano	Diaz de la Portilla	Posey
Aronberg	Dockery	Pruitt
Atwater	Fasano	Saunders
Bennett	Garcia	Sebesta
Bullard	Haridopolos	Smith
Carlton	Jones	Villalobos
Clary	Lawson	Webster
Constantine	Lee	Wise
Cowin	Lynn	

Nays—4

Campbell	Hill	Klein
Geller		

**SB 4-D**—A bill to be entitled An act relating to corrections; amending s. 216.262, F.S.; providing the Department of Corrections a mechanism for additional positions and operational funds if the inmate population of the department exceeds the projections of the Criminal Justice Estimating Conference; amending s. 216.292, F.S.; permitting the Governor to initiate prison construction under certain circumstances; providing restrictions; providing additional operations and fixed capital outlay appropriations for the 2003-2004 fiscal year; providing purposes for operating appropriations; providing for waiver of certain competitive bid and procurement requirements for specified projects under specified circumstances; providing an appropriation to the Correctional Privatization Commission for the 2003-2004 fiscal year; requiring the Correctional Privatization Commission to issue a request for proposals; requiring the Correctional Privatization Commission to provide the Legislature with a ranked list of proposals by March 1, 2004; authorizing the execution of a contract upon final approval by the Legislature; authorizing the Department of Corrections to contract for the construction of certain beds consistent with s. 216.311, F.S.; providing for the reversion of certain funds appropriated in Senate Bill 2A; providing an effective date.

—was read the second time by title.

Amendments were considered and adopted to conform **SB 4-D** to **HB 3-D**.

Pending further consideration of **SB 4-D** as amended, on motion by Senator Crist, by two-thirds vote **HB 3-D** was withdrawn from the Committee on Appropriations.

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

**HB 3-D**—A bill to be entitled An act relating to corrections; amending s. 216.262, F.S.; providing the Department of Corrections a mechanism for additional positions and operational funds if the inmate population of the department exceeds the projections of the July 9, 2003, Criminal Justice Estimating Conference; amending s. 216.292, F.S.; permitting the Governor to initiate prison construction under certain circumstances; requiring review and approval by the Legislative Budget Commission; providing the Department of Corrections additional operations and fixed capital outlay appropriations for fiscal year 2003-2004 and specifying the purposes of the operations appropriations; providing for waiver of certain competitive bid and procurement requirements for specified projects under certain circumstances; requiring a report under certain circumstances; authorizing the Department of Corrections to contract for the construction of an annex at the Santa Rosa Correctional Institution; providing for the reversion of certain funds appropriated in the 2003-2004 General Appropriations Act; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or a 2003 special session of the Legislature; providing an effective date.

—a companion measure, was substituted for **SB 4-D** as amended and by two-thirds vote read the second time by title.

**SENATOR CARLTON PRESIDING**

**THE PRESIDENT PRESIDING**

On motion by Senator Crist, by two-thirds vote **HB 3-D** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—37

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

Nays—None

**REPORTS OF COMMITTEES**

The Committee on Rules and Calendar submits the following bills to be placed on the Special Order Calendar for Wednesday, August 13, 2003: CS for SB 2-D, SB 4-D

Respectfully submitted,  
Tom Lee, Chair

The Committee on Health, Aging, and Long-Term Care recommends a committee substitute for the following: SB 2-D

**The bill with committee substitute attached was placed on the calendar.**

**REPORTS OF SUBCOMMITTEES**

The Appropriations Subcommittee on Criminal Justice recommends the following pass: SB 4-D

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

**COMMUNICATION FROM COMMITTEE**

August 13, 2003

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

Dear President King:

At your direction, the Senate Committee on Judiciary met on July 14-15, 2003 for the purpose of taking testimony under oath from parties involved in the medical malpractice debate. The purpose of taking sworn testimony was to enable the committee members to separate fact from political rhetoric.

A court reporter was present during the committee meetings and the hearings were transcribed. The original transcript is on file with the Secretary of the Senate and is available to the public on the Senate's website. The sworn testimony revealed:

- There are more doctors licensed in the State of Florida today than there were five years ago, according to the Department of Health.
- First Professionals Insurance Company is making a profit for its shareholders.
- According to First Professionals Insurance Company the insurance rate problem is cyclical.
- Florida is the most profitable state in the union for First Professionals Insurance Company.

- Missouri, which as of 2002 had a \$557,000 cap, is having problems, according to First Professionals Insurance Company.
- There are no more medical malpractice claims in Florida than there were 20 years ago, even though there are more doctors, according to First Professionals Insurance Company.
- The Governor's Select Task Force on Healthcare Professional Liability Insurance based its conclusions regarding increased claims on the Milliman Study which was paid for by the Florida Hospital Association. Their conclusion contradicts data submitted to and compiled by the Office of Insurance Regulation.
- The Florida Bar has received only three complaints of a member lawyer filing a frivolous lawsuit involving a medical malpractice claim in the past five years.
- Medical malpractice liability insurance is too expensive in the perception of the insured health care providers who must pay the premiums.
- There is no evidence that there has been an increase in medical malpractice closed claims or actual payouts.
- There is a consensus among multiple parties, including First Professionals Insurance Company and the Florida Medical Association, that there are not a large number of frivolous medical malpractice lawsuits.
- There is no guarantee that any cap on noneconomic damages would lower premium rates.
- There is no statistical evidence of a crisis regarding access to physicians.
- The number of medical license applications in Florida has increased in the past few years (from 2,261 in 1999 to 2,658 through the first 6 months in 2003).
- Only three hospital emergency rooms have closed since 1999, and there is no evidence that any of the closures are directly related to medical malpractice insurance availability or affordability.
- According to the President of First Professionals Insurance Company, First Professionals Insurance Company is profitable and will continue to operate in Florida with or without any tort reform measures.
- Office of Insurance Regulation actuaries depend on honesty of insurance company data to justify rate increases and do not audit rate filings.
- The Florida Medical Association and First Professionals Insurance Company have a business relationship. First Professionals Insurance Company has paid the Florida Medical Association \$500,000 per year for the past several years as an "endorsement fee." First Professionals Insurance Company also provides remuneration and stock options to its board members who include Florida Medical Association officers and directors and past officers and directors.
- According to the Agency for Health Care Administration, there have not been any known occurrences where the Agency for Health Care Administration had to redirect a patient because of a hospital closure due to the medical malpractice crisis.
- First Professionals Insurance Company is continuing to write new policies and there is an internal "cut-off" number that the company will not exceed because they cannot meet the capital requirements.
- That although the Task Force voted to recommend a cap on noneconomic damages of \$250,000 in medical malpractice cases, members of that Task Force had requested an opportunity to take an additional vote to allow the Task Force to have some flexibility in recommending a cap that would be constitutional. Such a vote was never taken.
- Many sections of the Task Force report were written by "stakeholders" for the medical, hospital and insurance interests.

These statements contain but a few of the discrepancies and inconsistencies between earlier unsworn statements and the sworn testimony regarding the medical malpractice issue. These statements also are not conclusions based on my opinion or that of other legislators. Rather these conclusions are based on the evidence and sworn testimony given by the stakeholders. It is for this reason that the transcript of the hearings and the supplemental affidavits must be read and considered in its entirety.

Sincerely,  
J. Alex Villalobos, Chair

## COMMITTEE SUBSTITUTES

## FIRST READING

By the Committee on Health, Aging, and Long-Term Care; and Senators Jones, King, Clary, Diaz de la Portilla, Lawson, Lee, Peaden, Pruitt, Saunders, Sebesta and Smith—

**CS for SB 2-D**—A bill to be entitled An act relating to medical incidents; providing legislative findings; 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. 395.0191, F.S.; deleting a requirement that persons act in good faith to avoid liability or discipline for their actions regarding the awarding of staff membership or clinical privileges; 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 that an appropriately trained person 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; repealing the requirement that licensed facilities notify the agency within 1 business day of the occurrence of certain adverse incidents; repealing s. 395.0198, F.S., which provides a public records exemption for adverse incident notifications; 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; 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; 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; amending s. 456.013, F.S.; requiring, as a condition of licensure and license renewal, that physicians and physician assistants complete continuing education relating to misdiagnosed conditions as part of a continuing education course on prevention of medical errors; amending s. 456.025, F.S.; eliminating certain restrictions on the setting of licensure renewal fees for health care practitioners; 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 within which certain health care practitioners must 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 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 for medical malpractice; 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. 456.072, F.S.; providing for determining the amount of any costs to be assessed in a disciplinary proceeding; 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; excepting gross or repeated malpractice and standard-of-care violations from the 6-year limitation on investigation or filing of an administrative complaint; amending s. 456.077, F.S.; providing a presumption related to an undisputed citation; revising requirements under which the Department of Health may issue citations as an alternative to disciplinary procedures against certain licensed health care practitioners; 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 medical physicians; providing for payment of any outstanding judgments or settlements pending at the time a physician is suspended by the Department of Health; 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 Health; 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; amending s. 458.331, F.S., relating to grounds for disciplinary action against a physician; redefining the term “repeated malpractice”; revising the minimum amount of a claim against a licensee which will trigger a departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 458.3311, F.S.; establishing emergency procedures for disciplinary actions; amending s. 459.015, F.S., relating to grounds for disciplinary action against an osteopathic physician; redefining the term “repeated malpractice”; 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; creating s. 459.0151, F.S.; establishing emergency procedures for disciplinary actions; 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 departmental investigation; requiring that administrative orders issued by an administrative law judge or board for certain practice violations by physicians specify certain information; creating s. 461.0131, F.S.; establishing emergency procedures for disciplinary actions; 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; requiring that the Division of Administrative Hearings designate administrative law judges who have special qualifications for hearings involving certain health care practitioners; 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; 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; requiring the Agency for

Health Care Administration to conduct a study on patient safety; requiring a report and submission of findings to the Legislature; 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 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; amending s. 624.462, F.S.; authorizing health care providers to form a commercial self-insurance fund; amending s. 627.062, F.S.; prohibiting the submission of medical malpractice insurance rate filings to arbitration; 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; requiring the Office of Insurance Regulation to calculate a presumed factor that reflects the impact of medical malpractice legislation on rates; requiring insurers to make a rate filing reflecting such presumed factor; allowing for deviations; requiring that rates remain in effect until new rate filings are approved; requiring that the Office of Program Policy Analysis and Government Accountability study the feasibility of authorizing the Office of the Public Counsel to represent the public in medical malpractice rate hearings; 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; creating s. 627.41495, F.S.; providing for notice to policyholders of certain medical malpractice rate filings; amending s. 627.912, F.S.; revising requirements for the medical malpractice closed claim reports that must be filed with the Office of Insurance Regulation; applying such requirements to additional persons and entities; providing for access by the Department of Health to such reports; providing for the imposition of a fine or disciplinary action for failing to report; requiring that reports obtain additional information; authorizing the Financial Services Commission to adopt rules; requiring that the Office of Insurance Regulation prepare summaries of closed claim reports of prior years and prepare an annual report and analysis of closed claim and insurer financial reports; amending s. 641.19, F.S.; revising definitions; providing that health care providers providing services pursuant to coverage provided under a health maintenance organization contract are not employees or agents of the health maintenance organization; providing exceptions; amending s. 641.51, F.S.; proscribing a health maintenance organization's right to control the professional judgment of a physician; providing that a health maintenance organization shall not be vicariously liable for the medical negligence of a health care provider; providing exceptions; amending s. 766.102, F.S.; revising requirements for health care providers who offer corroborating medical expert opinion and expert testimony in medical negligence actions; prohibiting contingency fees for an expert witness; requiring certification that an expert witness not previously have been found guilty of fraud or perjury; amending s. 766.106, F.S.; specifying sanctions for failure to cooperate with presuit investigations; requiring the execution of medical release to allow taking of unsworn statements from claimant's treating physicians; imposing limits on use of such statements; deleting provisions relating to voluntary arbitration in conflict with s. 766.207, F.S.; 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 negligence against licensed facilities; requiring that the agency review such complaints for licensure noncompliance; permitting written questions during informal discovery; amending s. 766.108, F.S.; providing for mandatory mediation; amending ss. 766.1115, 766.112, 766.113, 766.201, 766.303, 768.21, F.S.; revising references to "medical malpractice" to "medical negligence"; amending s. 766.113, F.S.; requiring that a specific statement be included in all medical negligence settlement agreements; creating s. 766.118, F.S.; limiting noneconomic damages in medical negligence actions; providing legislative findings and intent regarding provision of emergency medical services and care; creating s. 766.1185, F.S.; providing that an action for bad faith may not be brought against a medical malpractice insurer if such insurer offers to pay policy limits and meets other specified conditions of settlement within a specified time period; providing for factors to be considered in determining whether a medical malpractice insurer has acted in bad faith; providing for the delivery of a copy of an amended witness list to the insurer of a

defendant health care provider; providing a limitation on the amount of damages which may be awarded to certain third parties in actions alleging bad faith by a medical malpractice insurer; amending s. 766.202, F.S.; redefining the terms "economic damages," "medical expert," and "noneconomic damages"; defining the term "health care provider"; creating s. 766.2021, F.S.; providing a limitation on damages against insurers, prepaid limited health service organizations, health maintenance organizations, or prepaid health clinics for medical negligence of contracted health care providers; requiring actions against such entities to be brought pursuant to ch. 766, F.S.; amending s. 766.203, F.S.; providing for discovery of presuit medical expert opinion; 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. 766.209, F.S.; revising applicable damages available in voluntary binding arbitration relating to claims of medical negligence; creating s. 768.0981, F.S.; providing a limitation on damages arising from vicarious liability for insurers, prepaid limited health service organizations, health maintenance organizations, and prepaid health clinics for actions of a health care provider; amending s. 768.13, F.S.; revising guidelines for immunity from liability under the "Good Samaritan Act"; amending s. 768.28, F.S.; providing that health care practitioners furnishing medical services to student athletes for intercollegiate athletics under specified circumstances will be considered agents of a state university board of trustees; amending s. 768.77, F.S.; prescribing a method for itemization of specific categories of damages awarded in medical malpractice actions; preserving sovereign immunity and the abrogation of certain joint and several liability; 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; requiring the Department of Health to study the efficacy and constitutionality of medical review panels; requiring a report; amending s. 391.025, F.S.; adding infants receiving compensation awards as eligible for Children's Medical Services health services; amending s. 391.029, F.S.; providing financial eligibility criteria for Children's Medical Services; amending s. 766.304, F.S.; limiting the use of civil actions when claimants accept awards from the Florida Birth-Related Neurological Injury Compensation Plan; amending s. 766.305, F.S.; deleting a requirement for provision of certain information in a petition filed with the Florida Birth-Related Neurological Injury Compensation Plan; providing for service of copies of such petition to certain participants; requiring that a claimant provide the Florida Birth-Related Neurological Injury Compensation Association with certain information within 10 days after filing such petition; amending s. 766.309, F.S.; allowing for claims against the association to be bifurcated; amending s. 766.31, F.S.; providing for a death benefit for an infant in the amount of \$10,000; limiting liability of the claimant for expenses and attorney's fees; amending s. 766.314, F.S.; revising obsolete terms; providing procedures by which hospitals in certain counties may pay the annual fees for participating physicians and nurse midwives; providing for annually assessing participating physicians; requiring that the Office of Program Policy Analysis and Government Accountability study and report to the Legislature on requirements for coverage by the Florida Birth-Related Neurological Injury Compensation Association; providing appropriations and authorizing positions; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or a 2003 special session of the Legislature; providing for severability; providing effective dates.

## 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 3-D as amended and requests the concurrence of the Senate.

*John B. Phelps, Clerk*

By Representative Kyle and others—

**HB 3-D**—A bill to be entitled An act relating to corrections; amending s. 216.262, F.S.; providing the Department of Corrections a mechanism for additional positions and operational funds if the inmate population of the department exceeds the projections of the July 9, 2003, Criminal Justice Estimating Conference; amending s. 216.292, F.S.; permitting the Governor to initiate prison construction under certain circumstances; requiring review and approval by the Legislative Budget Commission; providing the Department of Corrections additional operations and fixed capital outlay appropriations for fiscal year 2003-2004 and specifying the purposes of the operations appropriations; providing for waiver of certain competitive bid and procurement requirements for specified projects under certain circumstances; requiring a report under certain circumstances; authorizing the Department of Corrections to contract for the construction of an annex at the Santa Rosa Correctional Institution; providing for the reversion of certain funds appropriated in the 2003-2004 General Appropriations Act; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or a 2003 special session of the Legislature; providing an effective date.

—was referred to the Committee on Appropriations.

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#### RETURNING MESSAGES—FINAL ACTION

The Honorable James E. “Jim” King, Jr., President

I am directed to inform the Senate that the House of Representatives has passed CS for SB 2-D.

*John B. Phelps, Clerk*

The bill contained in the foregoing message was ordered enrolled.

#### CORRECTION AND APPROVAL OF JOURNAL

The Journal of August 12 was corrected and approved.

#### VOTES RECORDED

Senator Wasserman Schultz was recorded as voting “nay” on the following bill which was considered this day: **CS for SB 2-D**.

#### ADJOURNMENT

On motion by Senator Smith, the Senate in Special Session adjourned sine die at 5:06 p.m.