

1 A bill to be entitled
 2 An act relating to medical malpractice; amending s.
 3 766.102, F.S.; establishing the burden of proof that a
 4 claimant must meet in certain damage claims against
 5 health care providers based on death or personal
 6 injury; amending s. 766.106, F.S.; allowing a
 7 prospective medical malpractice defendant to interview
 8 a claimant's treating health care providers without
 9 the presence of the claimant or the claimant's legal
 10 representative; requiring a prospective defendant to
 11 provide the claimant notice a specified period before
 12 such an interview; providing an effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Subsection (4) of section 766.102, Florida
 17 Statutes, is amended to read:

18 766.102 Medical negligence; standards of recovery; expert
 19 witness.—

20 (4) (a) The Legislature is cognizant of the changing trends
 21 and techniques for the delivery of health care in this state and
 22 the discretion that is inherent in the diagnosis, care, and
 23 treatment of patients by different health care providers. The
 24 failure of a health care provider to order, perform, or
 25 administer supplemental diagnostic tests is ~~shall~~ not be
 26 actionable if the health care provider acted in good faith and
 27 with due regard for the prevailing professional standard of
 28 care.

29 (b) In an action for damages based on death or personal
30 injury which alleges that such death or injury resulted from the
31 failure of a health care provider to order, perform, or
32 administer supplemental diagnostic tests, the claimant has the
33 burden of proving by clear and convincing evidence that the
34 alleged actions of the health care provider represented a breach
35 of the prevailing professional standard of care.

36 Section 2. Paragraph (b) of subsection (6) of section
37 766.106, Florida Statutes, is amended to read:

38 766.106 Notice before filing action for medical
39 negligence; presuit screening period; offers for admission of
40 liability and for arbitration; informal discovery; review.—

41 (6) INFORMAL DISCOVERY.—

42 (b) Informal discovery may be used by a party to obtain
43 unsworn statements, the production of documents or things, ~~and~~
44 physical and mental examinations, and ex parte interviews, as
45 follows:

46 1. Unsworn statements.—Any party may require other parties
47 to appear for the taking of an unsworn statement. Such
48 statements may be used only for the purpose of presuit screening
49 and are not discoverable or admissible in any civil action for
50 any purpose by any party. A party desiring to take the unsworn
51 statement of any party must give reasonable notice in writing to
52 all parties. The notice must state the time and place for taking
53 the statement and the name and address of the party to be
54 examined. Unless otherwise impractical, the examination of any
55 party must be done at the same time by all other parties. Any
56 party may be represented by counsel at the taking of an unsworn

57 | statement. An unsworn statement may be recorded electronically,
58 | stenographically, or on videotape. The taking of unsworn
59 | statements is subject to the provisions of the Florida Rules of
60 | Civil Procedure and may be terminated for abuses.

61 | 2. Documents or things.—Any party may request discovery of
62 | documents or things. The documents or things must be produced,
63 | at the expense of the requesting party, within 20 days after the
64 | date of receipt of the request. A party is required to produce
65 | discoverable documents or things within that party's possession
66 | or control. Medical records shall be produced as provided in s.
67 | 766.204.

68 | 3. Physical and mental examinations.—A prospective
69 | defendant may require an injured claimant to appear for
70 | examination by an appropriate health care provider. The
71 | prospective defendant shall give reasonable notice in writing to
72 | all parties as to the time and place for examination. Unless
73 | otherwise impractical, a claimant is required to submit to only
74 | one examination on behalf of all potential defendants. The
75 | practicality of a single examination must be determined by the
76 | nature of the claimant's condition, as it relates to the
77 | liability of each prospective defendant. Such examination report
78 | is available to the parties and their attorneys upon payment of
79 | the reasonable cost of reproduction and may be used only for the
80 | purpose of presuit screening. Otherwise, such examination report
81 | is confidential and exempt from the provisions of s. 119.07(1)
82 | and s. 24(a), Art. I of the State Constitution.

83 | 4. Written questions.—Any party may request answers to
84 | written questions, the number of which may not exceed 30,

85 including subparts. A response must be made within 20 days after
86 receipt of the questions.

87 5. Unsworn statements of treating health care providers.—A
88 prospective defendant or his or her legal representative may
89 also take unsworn statements of the claimant's treating health
90 care providers. The statements must be limited to those areas
91 that are potentially relevant to the claim of personal injury or
92 wrongful death. Subject to the procedural requirements of
93 subparagraph 1., a prospective defendant may take unsworn
94 statements from a claimant's treating physicians. Reasonable
95 notice and opportunity to be heard must be given to the claimant
96 or the claimant's legal representative before taking unsworn
97 statements. The claimant or claimant's legal representative has
98 the right to attend the taking of such unsworn statements.

99 6. Ex parte interviews of treating health care providers.—
100 A prospective defendant or his or her legal representative may
101 interview the claimant's treating health care providers without
102 the presence of the claimant or the claimant's legal
103 representative. A prospective defendant or his or her legal
104 representative that intends to interview a claimant's health
105 care providers must provide the claimant with notice of such
106 intent at least 10 days before the interview.

107 Section 3. This act shall take effect upon becoming a law
108 and shall apply to any cause of action accruing on or after that
109 date.