A bill to be entitled
An act relating to medical negligence actions;
amending s. 766.102, F.S.; establishing standard of
proof in actions based on the failure of a health care
provider to order, perform, or administer certain
tests; shifting burden of proof to claimant; revising
qualifications to give expert testimony on the
prevailing professional standard of care; deleting
provision regarding limitations of section; providing
an effective date.

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

Section 1. Subsection (4), paragraph (a) of subsection (5),
and subsection (14) of section 766.102, Florida Statutes, are
amended to read:

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

(4) The Legislature is cognizant of the changing trends and
techniques for the delivery of health care in this state and the
discretion that is inherent in the diagnosis, care, and
treatment of patients by different health care providers. The
failure of a health care provider to order, perform, or
administer supplemental diagnostic tests shall not be
actionable if the health care provider acted in good faith and
with due regard for the prevailing professional standard of
care. In an action for damages based on death or personal injury
which alleges that such death or injury resulted from the
failure of a health care provider to order, perform, or
administer supplemental diagnostic tests, the claimant has the
burden of proving by clear and convincing evidence that the
alleged action of the health care provider represented a breach
of the prevailing professional standard of care.

(5) A person may not give expert testimony concerning the
prevailing professional standard of care unless the person is a
health care provider who holds an active and valid license and
conducts a complete review of the pertinent medical records and
meets the following criteria:

(a) If the health care provider against whom or on whose
behalf the testimony is offered is a specialist, the expert
witness must:

1. Specialize in the same specialty as the health care
provider against whom or on whose behalf the testimony is
offered; or specialize in a similar specialty that includes the
evaluation, diagnosis, or treatment of the medical condition
that is the subject of the claim and have prior experience
treating similar patients; and

2. Have devoted professional time during the 3 years
immediately preceding the date of the occurrence that is the
basis for the action to:

a. The active clinical practice of, or consulting with
respect to, the same or similar specialty that includes the
evaluation, diagnosis, or treatment of the medical condition
that is the subject of the claim and have prior experience
treating similar patients;

b. Instruction of students in an accredited health
professional school or accredited residency or clinical research
program in the same or similar specialty; or
c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

(14) This section does not limit the power of the trial court to disqualify or qualify an expert witness on grounds other than the qualifications in this section.

Section 2. This act shall take effect July 1, 2013.