

STORAGE NAME: h4063.jud

DATE: March 3, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 4063

RELATING TO: Florida Statutes/Repeals

SPONSOR(S): Rules & Calendar and Rep. Byrd

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) JUDICIARY

(2)

(3)

(4)

(5)

I. SUMMARY:

HB 4063 repeals certain statutes that are considered to be outdated, obsolete, unnecessary, or impliedly superseded.

The bill repeals the following sections of the Florida Statutes:

- 766.106(13), relating to medical malpractice presuit requirements.
- 768.151, relating to sovereign immunity.
- 768.27, relating to the effective date of the Wrongful Death Act.
- 768.30, relating to sovereign immunity in tort actions.
- 960.296, relating to severability and civil restitution liens.

The fiscal impact of the bill is indeterminate.

The bill shall take effect on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Section 766.106, F.S. sets forth the presuit notice requirements for medical malpractice actions. Subsection (13) is an effectiveness provision which states that s. 766.106, F.S., will apply to any cause of action with respect to which suit has not been filed prior to October 1, 1985. It is very unlikely that there are any medical malpractice suits that have been ongoing since prior to October 1, 1985. As such subsection (13) is unnecessary, since it will generally apply to all existing medical malpractice suits.

Section 768.151, F.S., revives the waiver of sovereign immunity authorized by chapter 69-116, L.O.F., for causes of action arising during the period from July 1, 1969 to July 1, 1970. Any such causes of action that might have accrued during that time would ordinarily be barred by applicable statutes of limitations or repose, and therefore there is little likelihood that such causes of action exist today. Section 768.151, F.S., is therefore unnecessary.

Section 768.27, F.S., provides an effective date for the Wrongful Death Act. That section states that the Act will be effective for deaths occurring after July 1, 1972. Because it is unlikely that a cause of action under that Act survives to the present, the effectiveness provision is unnecessary.

Section 768.30, F.S., provides an effectiveness date for the sovereign immunity provisions of s. 768.28, F.S. The law states that the section will be effective for the executive branch on July 1, 1974 and for all other state agencies on January 1, 1975. It is unlikely that any tort causes of action that might implicate s. 768.28, F.S., and that arose before 1974 or 1975 survive to the present. As such, s. 768.30, F.S., is unnecessary.

Section 960.296, F.S., relates to civil restitution liens. Subsection (1) states that it supersedes all other provisions of law to the contrary. Subsection (2) contains a standard severability clause. As a matter of statutory construction, later-in-time laws prevail over conflicting laws that were passed earlier. McKendry v. State, 641 So.2d 45 (Fla. 1994). In addition, a severability clause is not determinative of whether portions of a statute may be severed from the remainder of the statute. Barndollar v. Sunset Realty Corp., 379 So.2d 1278 (Fla. 1979). In order for an invalid portion of a law to be severable, a court must be able to conclude that the Legislature would have been content to enact the law without the invalid provision. Barndollar, supra at 1280 (citing State ex rel. Limpus v. Newell, 85 So.2d 124 (Fla. 1956)). While the existence of a severability clause may be persuasive, Moreau v. Lewis, 648 So.2d 124 (Fla. 1995), it is not necessary to ensure the viability of the statute at issue. Therefore, s. 960.296, F.S., is unnecessary.

C. EFFECT OF PROPOSED CHANGES:

The bill repeals the following sections of the Florida Statutes:

- 766.106(13), relating to medical malpractice presuit requirements.
- 768.151, relating to sovereign immunity.
- 768.27, relating to the effective date of the Wrongful Death Act.
- 768.30, relating to sovereign immunity in tort actions.
- 960.296, relating to severability and civil restitution liens.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

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