

## CHAPTER 88-1

Committee Substitute for Senate Bill No. 6E

### MEDICAL INCIDENTS--QUALITY ASSURANCE & TORT REFORM

Tentative classification changes not available at time of publication

AN ACT relating to medical incidents; providing legislative findings and intent regarding regulatory reform; amending s. 20.30, F.S.; creating the Division of Medical Quality Assurance within the Department of Professional Regulation; providing duties of the division and bureau; requiring a report; placing the licensing boards for various health care professions within the division; amending s. 395.0115, F.S.; providing antitrust immunity through establishment of a state-mandated peer review process; requiring licensed facilities to provide for peer review of physicians who provide health care services at such facilities and providing procedures therefor; requiring report of final disciplinary actions to the Division of Medical Quality Assurance for further investigation; providing for peer review panel immunity and for confidentiality of records; creating s. 395.0146, F.S.; requiring a certificate of need from the Department of Health and Rehabilitative Services for termination or reduction of emergency or trauma services; amending s. 395.017, F.S.; providing maximum charge for copying records; providing access to confidential patient records for certain proceedings of the Department of Professional Regulation; limiting public access thereto; amending s. 395.041, F.S.; expanding internal risk management education and training requirements; requiring certain incident reports relating to surgical procedures; requiring report of certain incidents to the department; limiting public access; providing for department review and investigation of incidents which may involve conduct subject to discipline; providing administrative fines for violation of reporting requirements; providing for annual review of risk management programs; protecting risk managers from liability for implementation of risk

management programs; requiring a report to the Legislature; amending s. 395.504, F.S.; to correct a cross-reference; amending s. 455.225, F.S.; providing civil immunity and prohibition from discharge to persons reporting with respect to incompetence, impairment, or unprofessional conduct of specified health care providers; providing penalties; amending s. 455.241, F.S.; providing for reports of patient records; creating s. 455.2415, F.S.; providing for disclosure of patient communications under certain circumstances; amending s. 455.242, F.S.; providing for disposition of records of physicians who terminate practice or relocate; amending s. 455.245, F.S.; providing conditions for considering emergency suspension or restriction of a license; creating s. 455.247, F.S.; requiring physicians, osteopathic physicians, podiatrists, and dentists to report professional liability claims and actions to the department; specifying contents; creating s. 455.28, F.S.; requiring reporting of certain physicians for violation of grounds for disciplinary action; providing a penalty; requiring investigation of probable

disciplinary violations; amending s. 458.303, F.S.; revising exemption of certain commissioned medical officers from specified medical practice provisions; amending s. 458.307, F.S.; modifying membership of the Board of Medicine; specifying composition of probable cause panels; providing for a training program; providing for completion of a panel's work; amending s. 458.311, F.S., relating to requirements for licensure of physicians by examination; providing for an investigative process; providing for restricted licenses; amending s. 458.313, F.S.; providing for an investigative process for licensure by endorsement; requiring certain active practice; providing for restricted licenses; amending s. 458.315, F.S.; prohibiting issuance of temporary certificates for practice in areas of critical need to certain persons by endorsement; amending s. 458.3165, F.S.; providing for biennial renewal of public psychiatry certificates; amending s. 458.319, F.S.; increasing the maximum fee for renewal of a license to practice medicine; requiring evidence of active practice for license renewal; providing for supervised practice; amending ss. 458.320 and 459.0085, F.S.; authorizing physicians and osteopathic physicians to use risk retention groups to meet financial responsibility requirements; amending s. 458.327, F.S.; providing a penalty for leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without a license; creating ss. 458.3295, 459.0145, F.S.; prohibiting a concerted effort by a physician or osteopathic physician to refuse emergency room treatment to patients; authorizing a circuit court to enjoin such conduct; providing a penalty; amending ss. 458.331 and 459.015, F.S.; providing additional grounds for disciplinary action against physicians and osteopathic physicians; providing penalties and providing priorities for application thereof; establishing the burden of proof for administrative actions against physicians; providing for injunctive relief; providing for department review and investigation of claims; amending ss. 458.3315, 459.0155, F.S.; providing that a physician or osteopathic physician who is believed to be impaired must execute a release of his medical records to a consultant retained by the Department of Professional Regulation and limiting the use which the consultant may make of such records; amending s. 458.337, F.S.; specifying requirements for reports by medical organizations and hospitals when the physician has resigned; amending s. 458.345, F.S.; establishing requirements for registration of resident physicians and interns; providing a fee; restricting renewal or extension; prohibiting registration of certain persons; increasing a penalty; amending ss. 458.347 and 459.022, F.S.; allowing extended temporary certification of physician assistants and osteopathic physician assistants; amending s. 459.0055, F.S.; providing for an investigative process for licensure of osteopathic physicians; amending s. 459.008, F.S.; requiring evidence of active practice for license renewal; providing for supervised practice; amending s. 459.0092, F.S.; increasing the maximum fee for renewal of a license to practice osteopathic medicine; amending ss. 460.413, 461.013, 464.018, 465.016, and 466.028, F.S.; providing additional grounds for disciplinary action against chiropractic physicians, podiatrists, nurses, pharmacists, and dentists; amending s. 627.912, F.S.; requiring insurers to report certain claims against dentists; providing for department review and investigation; providing for an annual report; amending s. 641.55, F.S.; providing for department review and investigation of certain incidents reported by health maintenance organization internal risk management programs; limiting public access; requiring report of certain incidents relating to surgical procedures; amending s. 768.13, F.S.; providing

immunity from civil liability to physicians, hospitals, and certain hospital employees rendering medical care or treatment in response to an emergency within a hospital or trauma center; providing exceptions to such immunity; amending s. 768.45, F.S.; prescribing matters to be considered by the trier of fact in a claim of negligence for services provided in a hospital emergency room; limiting who may give expert medical testimony; amending s. 768.78, F.S.; providing additional methods of payments of damage awards; providing legislative findings and intent; providing definitions; providing applicability of and procedure for mandatory presuit investigation and medical expert corroboration of medical negligence claims and defenses by prospective parties; requiring availability of medical records for presuit screening of claims and defenses and providing penalties; providing for presuit discovery of medical negligence claims and defenses and providing immunity with respect thereto; providing for presuit investigation of medical negligence claims and defenses by the court, and providing penalties for lack of reasonable investigation in filing or in corroborating medical negligence claims or defenses; providing for nonbinding arbitration of civil cases involving claims for medical negligence; providing for selection of arbitration panels; providing for referral of cases to arbitration and procedures for referral; providing procedures for hearings; providing for arbitration awards and judgments; providing for trial de novo; providing for assessment of attorney's fees and costs in certain circumstances; providing for appeal of award; creating the Florida Birth-Related Neurological Injury Compensation Plan; providing legislative findings and intent; providing definitions; providing exclusiveness of remedy; providing for the hearing of claims by deputy commissioners of the Division of Workers' Compensation of the Department of Labor and Employment Security; providing procedure for the filing of claims and responses; providing for medical disciplinary review; providing for tolling of the statute of limitations; providing for hearings, parties, and discovery; providing for review by a medical advisory panel; providing for determination of claims; providing a presumption as to injury; providing for binding nature of findings; providing for awards for birth-related neurological injuries, and for notice of such awards; providing for conclusiveness of determination or award; providing for appeal; providing for enforcement of awards; providing a limitation on the bringing of claims; creating the Birth-Related Neurological Injury Compensation Trust Fund within the Department of Insurance and providing for administration of the fund by the Florida Birth-Related Neurological Injury Compensation Association pursuant to a plan of operation approved by said department; providing for assessments for participation in the plan; providing for actuarial valuation of the fund by the department; providing for membership and a board of directors for the association; providing powers and duties of the association; providing for notice to obstetrical patients of participation in the plan; providing for certain appropriations; providing for assessment by certain boards; amending s. 768.81, F.S.; providing for an apportionment of damages based on a party's percentage of fault and not on the basis of the doctrine of joint and several liability; requiring medical malpractice insurers to reflect certain savings in rate filings and schedules; providing an effective date.

WHEREAS, the Legislature finds that there is in Florida a financial crisis in the medical liability insurance industry, and

WHEREAS, it is the sense of the Legislature that if the present crisis is not abated, many persons who are subject to civil actions will be unable to purchase liability insurance, and many injured persons will therefore be unable to recover damages for either their economic losses or their noneconomic losses, and

WHEREAS, the people of Florida are concerned with the increased cost of litigation and the need for a review of the tort and insurance laws, and

WHEREAS, the Legislature believes that, in general, the cost of medical liability insurance is excessive and injurious to the people of Florida and must be reduced, and

WHEREAS, the Legislature finds that there are certain elements of damage presently recoverable that have no monetary value, except on a purely arbitrary basis, while other elements of damage are either easily measured on a monetary basis or reflect ultimate monetary loss, and

WHEREAS, the Legislature desires to provide a rational basis for determining damages for noneconomic losses which may be awarded in certain civil actions, recognizing that such noneconomic losses should be fairly compensated and that the interests of the injured party should be balanced against the interests of society as a whole, in that the burden of compensating for such losses is ultimately borne by all persons, rather than by the tortfeasor alone, and

WHEREAS, the Legislature created the Academic Task Force for Review of the Insurance and Tort Systems which has studied the medical malpractice problems currently existing in the State of Florida, and

WHEREAS, the Legislature has reviewed the findings and recommendations of the Academic Task Force relating to medical malpractice, and

WHEREAS, the Legislature finds that the Academic Task Force has established that a medical malpractice crisis exists in the State of Florida which can be alleviated by the adoption of comprehensive legislatively enacted reforms, and

WHEREAS, the magnitude of this compelling social problem demands immediate and dramatic legislative action, NOW, THEREFORE,

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