

Chapter 88-277

Committee Substitute for Committee Substitute for House Bill No. 819

AN ACT relating to medical incidents; amending s. 20.30, F.S.; providing for a director of the Division of Medical Quality Assurance of the Department of Professional Regulation; amending s. 395.0115, F.S.; providing for disciplinary proceedings against hospitals; amending s. 395.041, F.S.; providing for quarterly medical incident reports by licensed health care facilities under the internal risk management program; providing for confidentiality thereof; providing that the report to the Legislature by the Department of Professional Regulation on classifications of adverse incidents include incidents in health maintenance organizations; amending s. 395.509, F.S., relating to review of hospital budgets, to provide for approval of assessments to fund the Florida Birth-Related Neurological Injury Compensation Plan; reenacting and amending s. 455.225, F.S., relating to professional disciplinary proceedings; providing for proceedings for the summary suspension or the restriction of a license of a health care practitioner; 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; reenacting and amending s. 455.241, F.S.; providing for reports in lieu of certain psychiatric patient records; providing for transfer of records; providing for assertion of psychiatrist-patient privilege; authorizing the Department of Professional Regulation to obtain certain patient records pursuant to subpoena under certain circumstances; limiting public access to records; providing maximum copying charges; reenacting s. 458.313, F.S.; providing for an investigative process for licensure by endorsement under the medical practice act; requiring certain active practice for such licensure; providing for supervised practice as a condition of licensure under the medical practice act; providing for restricted licenses under the medical practice act; amending s. 458.315, F.S.; prohibiting issuance of temporary certificates for the practice of medicine in areas of critical need to certain persons; amending ss. 458.3295, 459.0145, F.S.; as created by ch. 88-1, Laws of Florida; prohibiting a concerted effort by physicians or osteopathic physicians to refuse emergency room treatment to patients; authorizing injunctions against such conduct; providing penalties; amending s. 458.3315, F.S.; providing for disciplinary proceedings against persons licensed under the medical practice act; amending s. 459.0085, F.S.; specifying additional entities that the department must notify when an osteopathic physician's license has been suspended for failure to comply with certain financial responsibility requirements; amending s. 459.015, F.S.; providing for review of closed claim reports submitted by health care practitioners to the

Department of Professional Regulation; reenacting s. 459.0155, F.S.; providing that an 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; reenacting s. 458.347, F.S.; allowing extended temporary certification of physician assistants; amending s. 459.022, F.S.; correcting a reference to the name of a commission; reenacting and amending ss. 460.413, 461.013, 464.018, 465.016, and 466.028, F.S.; specifying grounds for disciplinary action against chiropractic physicians, podiatrists, nurses, pharmacists, and dentists; providing for certain department review and investigation with respect to such practitioners; amending s. 627.912, F.S.; requiring certain insurers to report closed claims to the Department of Insurance and the Department of Professional Regulation; providing for confidentiality of such reports; providing authority for the Department of Insurance to provide information relating to specified health care providers to the Department of Professional Regulation; amending s. 641.55, F.S.; revising requirements pertaining to internal risk management programs maintained by health maintenance organizations; revising prescribed contents of annual reports by such organizations respecting medical incidents; providing for quarterly incident reports to the Department of Professional Regulation; providing for confidentiality of certain reports under internal risk management programs required of health maintenance organizations; authorizing the Department of Insurance to impose administrative fines for violation of certain reporting requirements; authorizing the Department of Insurance and the Department of Professional Regulation to have certain access to health maintenance organization records and deleting such authority with respect to the Department of Health and Rehabilitative Services; providing for confidentiality of records so obtained; providing exceptions; requiring the Department of Insurance to review the risk management program of each health maintenance organization at least annually and to make certain determinations with respect thereto; providing for immunity from liability of risk managers of health maintenance organizations with respect to certain matters; requiring the Department of Insurance to report certain conduct by a provider, staff member, or employee of a health maintenance organization to the appropriate regulatory board for disciplinary action; transferring certain other duties under the program from the Department of Health and Rehabilitative Services to the Department of Insurance; reenacting s. 45 of ch. 88-1, Laws of Florida; providing legislative findings and intent as to emergency medical care; amending s. 768.78, F.S.; prescribing the methods by which payments for future economic losses arising out of medical malpractice must be made; amending s. 50 of ch. 88-1, Laws of Florida; providing for mailing of notice of intent to initiate litigation rather than filing; amending s. 51 of ch. 88-1, Laws of Florida; requiring availability of medical records for presuit investigation of claims and

defenses and providing penalties; amending s. 52 of ch. 88-1, Laws of Florida; providing for mailing of notice of intent to initiate litigation rather than filing; providing immunity with respect to presuit investigation; amending s. 53 of ch. 88-1, Laws of Florida; providing for mailing of notice of intent to initiate litigation and response thereto rather than filing; reenacting and amending s. 54 of ch. 88-1, Laws of Florida; providing for voluntary binding arbitration of claims for medical negligence; providing for selection of arbitration panels; providing arbitration procedures; providing procedures for hearings; deleting provisions relating to using procedures prescribed in s. 44.304, F.S., and to certain authority of the chief arbitrator; reenacting and amending s. 55 of ch. 88-1, Laws of Florida; providing for binding arbitration to allocate responsibility among multiple defendants to medical negligence claims; deleting provision granting certain authority to the chief arbitrator; providing for joint and several liability of all defendants in an arbitration proceeding; reenacting and amending s. 56 of ch. 88-1, Laws of Florida; providing disincentives to a party failing to offer or accept voluntary binding arbitration, including prejudgment interest, payment of attorney's fees, and limitations on noneconomic damages; reenacting and amending s. 57 of ch. 88-1, Laws of Florida; providing procedures when agreement cannot be reached by arbitrators; revising provision relating to nomination and appointment of new arbitrators; reenacting and amending s. 58 of ch. 88-1, Laws of Florida; prescribing time when arbitration awards accrue interest; reenacting and amending s. 59 of ch. 88-1, Laws of Florida; providing for appeal of arbitration awards and allocations of financial responsibility; providing for enforceability of court orders by contempt and for issuance of execution on court judgments; amending s. 61 of ch. 88-1, Laws of Florida; revising and providing definitions with respect to the Florida Birth-Related Neurological Injury Compensation Plan; amending s. 62 of ch. 88-1, Laws of Florida; correcting a title; amending s. 72 of ch. 88-1, Laws of Florida; specifying the time within which claims for birth-related neurological injuries must be filed; amending s. 73 of ch. 88-1, Laws of Florida; providing for administration of the Florida Birth-Related Neurological Injury Compensation Plan by the Florida Birth-Related Neurological Injury Compensation Association pursuant to a plan of operation approved by the Department of Insurance; providing for assessments for participation in the plan; providing an appropriation; providing for actuarial valuation of the plan by the department; amending s. 74 of ch. 88-1, Laws of Florida; providing that the association is not a state agency; providing powers and duties of the board of directors for the association; providing for inspection of books, records, and audits of the plan; providing for fidelity bonds of certain employees of the plan; requiring the association to file certain annual reports; providing for investment of plan funds; amending s. 76 of ch. 88-1, Laws of Florida; providing for appropriations from the Insurance Commissioner's Regulatory Trust Fund to the Florida Birth-Related Neurological Injury

Compensation Association; amending s. 768.13, F.S.; redefining the term "reckless disregard" for purposes of the Good Samaritan Act, which provides immunity from civil liability to certain health care providers rendering emergency medical services; requiring acceptance of emergency and transfer emergency patients in order to obtain such immunity; providing for disciplinary action against an emergency care facility that does not accept and treat all emergency care patients within the operational capacity of the facility without regard to their ability to pay; amending s. 768.81, F.S.; providing for damages attributed to a medical teaching hospital in a medical malpractice case; amending s. 80 of ch. 88-1, Laws of Florida; providing for damages attributed to the Board of Regents in a medical malpractice case; reenacting s. 83 of ch. 88-1, Laws of Florida; requesting the Supreme Court to adopt a standard jury instruction for use in certain medical negligence cases; repealing s. 768.66, F.S., which requires a medical malpractice study; amending s. 768.40, F.S.; providing for review of complaints against physicians and osteopathic physicians by professional society medical or peer review committees; providing for advisory reports to the department; providing confidentiality; providing for review and repeal of exemption under the Open Government Sunset Review Act; providing for per diem and travel expenses; providing specified immunity; prohibiting causes of actions against health care providers for furnishing certain information; amending s. 768.57, F.S.; requiring notice to the Department of Professional Regulation prior to filing certain malpractice claims; specifying contents of notice; protecting claimants' legal rights; providing for department review and investigation; providing for informal discovery; creating s. 768.67, F.S.; prohibiting settlement agreements from denying parties thereto the right to discuss with or report to the Division of Medical Quality Assurance the events giving rise to the claim; providing that payments made under certain vocational rehabilitation programs are not collateral source payments under the meaning of ch. 88-1, Laws of Florida; providing inapplicability of act to existing causes of action; providing an effective date.

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