

House Bill No. 947

An act relating to medical malpractice presuit investigations; amending s. 766.104, F.S.; authorizing the release of certain records relating to medical care and treatment of a decedent upon the request of certain persons; providing exemption from liability and discipline for health care practitioners complying in good faith; providing an effective date.

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

Section 1. Section 766.104, Florida Statutes, is amended to read:

766.104 Pleading in medical negligence cases; claim for punitive damages; authorization for release of records for investigation.—

(1) No action shall be filed for personal injury or wrongful death arising out of medical negligence, whether in tort or in contract, unless the attorney filing the action has made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint or initial pleading shall contain a certificate of counsel that such reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant. For purposes of this section, good faith may be shown to exist if the claimant or his or her counsel has received a written opinion, which shall not be subject to discovery by an opposing party, of an expert as defined in s. 766.102 that there appears to be evidence of medical negligence. If the court determines that such certificate of counsel was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court shall award attorney's fees and taxable costs against claimant's counsel, and shall submit the matter to The Florida Bar for disciplinary review of the attorney.

(2) Upon petition to the clerk of the court where the suit will be filed and payment to the clerk of a filing fee, not to exceed \$25, established by the chief judge, an automatic 90-day extension of the statute of limitations shall be granted to allow the reasonable investigation required by subsection (1). This period shall be in addition to other tolling periods. No court order is required for the extension to be effective. The provisions of this subsection shall not be deemed to revive a cause of action on which the statute of limitations has run.

(3) For purposes of conducting the investigation required by this section, and notwithstanding any other provision of law to the contrary, subsequent to the death of a person and prior to the administration of such person's estate, copies of all medical reports and records, including bills, films, and other records relating to the care and treatment of such person that are in the possession of a health care practitioner as defined in s. 456.001 shall be made available, upon request, to the spouse, parent, child who has reached

majority, guardian pursuant to chapter 744, surrogate or proxy pursuant to chapter 765, or attorney in fact of the deceased pursuant to chapter 709. A health care practitioner complying in good faith with the provisions of this subsection shall not be held liable for civil damages attributable to the disclosure of such records or be subject to any disciplinary action based on such disclosure.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.