

## Session 115 - (2003-2004)

### **S 0948 General Bill, By McGill and O'Dell**

#### ***Similar (H 4464)***

#### **Summary:** Medical Malpractice and Patient Safety Reform Act

A BILL TO ENACT THE "MEDICAL MALPRACTICE AND PATIENT SAFETY REFORM ACT" BY ADDING CHAPTER 80, TO TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, WHICH, AMONG OTHER THINGS, ESTABLISHES THE MEDICAL CLAIMS REVIEW OFFICE IN THE DEPARTMENT OF INSURANCE TO CONDUCT PRELITIGATION REVIEWS OF ALL CLAIMS OF ALLEGED MEDICAL MALPRACTICE, TO PROVIDE THAT THIS OFFICE SHALL APPOINT PANELS OF HEALTHCARE PROVIDERS TO REVIEW THESE CLAIMS, TO FURTHER PROVIDE FOR THE OPERATION OF THESE PANELS, AND TO PROVIDE THAT SUBMITTING SUCH A CLAIM FOR REVIEW TOLLS THE STATUTE OF LIMITATIONS; TO REQUIRE MANDATORY ADJUSTING OF MEDICAL MALPRACTICE CLAIMS BY A HEALTHCARE PROVIDER'S INSURANCE CARRIER AND TO FURTHER PROVIDE FOR THE CARRIER'S RESPONSIBILITIES IN ADJUSTING THESE CLAIMS; TO REQUIRE CERTAIN IDENTIFYING HEALTHCARE PROVIDER OUTCOME DATA TO BE AVAILABLE TO CERTAIN GOVERNMENTAL ENTITIES AND TO REQUIRE CERTAIN NONIDENTIFYING HEALTHCARE PROVIDER OUTCOME DATA AND CERTAIN IDENTIFYING HOSPITAL OUTCOME DATA TO BE AVAILABLE TO THE PUBLIC, AND TO PROVIDE THAT SUCH INFORMATION IS NOT ADMISSIBLE IN A MALPRACTICE ACTION OR SUBJECT TO THE FREEDOM OF INFORMATION ACT; TO REQUIRE PARTIES IN A MEDICAL MALPRACTICE ACTION TO PARTICIPATE IN MEDIATION PRIOR TO THE CASE COMING TO TRIAL AND TO AUTHORIZE MEDIATION AT ANY TIME AND BINDING ARBITRATION UPON AGREEMENT OF THE PARTIES; TO REQUIRE THE COURT TO REPORT AN EXPERT TO THE APPROPRIATE PROFESSIONAL LICENSING ENTITY IF THE EXPERT IN A MALPRACTICE ACTION MAY HAVE ENGAGED IN UNJUSTIFIABLE CONDUCT WHILE TESTIFYING AND TO PROVIDE THAT BY TESTIFYING AS AN EXPERT IN SUCH AN ACTION, A HEALTHCARE PROVIDER AGREES TO SUBMIT, FOR CERTAIN PURPOSES, TO THE JURISDICTION OF THAT LICENSING ENTITY; TO ESTABLISH A THREE HUNDRED THOUSAND DOLLAR CAP ON NONECONOMIC DAMAGES AND TO PROVIDE FOR AN ANNUAL ADJUSTMENT BASED ON THE CONSUMER PRICE INDEX; TO PROVIDE THAT IN MEDICAL MALPRACTICE ACTIONS LIABILITY FOR DAMAGES IS APPORTIONED ACCORDING TO EACH DEFENDANT'S PERCENTAGE OF FAULT, TO ALSO PROVIDE FOR THE REALLOCATION OF DAMAGES WHEN A DEFENDANT'S SHARE OF THE DAMAGES IS UNCOLLECTABLE, AND TO PROVIDE THAT A DEFENDANT IS SUBJECT TO CONTRIBUTION WHEN HIS SHARE OF THE DAMAGES IS REALLOCATED AMONG THE OTHER DEFENDANTS; TO REMOVE THE BAR IMPOSED BY THE STATUTE OF LIMITATIONS UNDER CERTAIN CIRCUMSTANCES IN MEDICAL MALPRACTICE ACTIONS FOR THE JOINDER OF THIRD PARTY DEFENDANTS IN INSTANCES OF COMPARATIVE FAULT; TO ADD SECTION 40-47-290 SO AS TO REQUIRE THE STATE BOARD OF MEDICAL EXAMINERS TO ESTABLISH LICENSURE FEES SUFFICIENT TO PERFORM ITS DUTIES AND ENHANCE ITS CAPABILITIES UNDER ITS PRACTICE ACT; TO ADD SECTION 38-79-40 SO AS TO REQUIRE A MEDICAL MALPRACTICE INSURANCE CARRIER TO OFFER INSUREDS THE OPTION OF DEDUCTIBLES AND POLICY LIMITS; TO ADD SECTION 38-79-50, SO AS TO PROHIBIT A MEMBER OF THE BOARD OF DIRECTORS OF THE JOINT UNDERWRITING ASSOCIATION OR THE BOARD OF GOVERNORS OF THE PATIENT'S COMPENSATION FUND FROM BEING EMPLOYED OR COMPENSATED BY THE ASSOCIATION OR FUND WHILE SERVING ON THE BOARD AND FOR ONE YEAR THEREAFTER; TO AMEND SECTION 15-36-10, RELATING TO LIABILITY FOR ATTORNEY'S FEES AND COSTS OF FRIVOLOUS LAWSUITS, SO AS TO REQUIRE THE ATTORNEY OR PRO SE LITIGANT IN A CIVIL ACTION TO SIGN ALL PLEADINGS AND OTHER DOCUMENTS; WHICH THEREBY CONSTITUTES CERTIFICATION THAT THE ACTION IS NOT FRIVOLOUS, AND TO PROVIDE SANCTIONS FOR VIOLATIONS; TO AMEND SECTIONS 38-79-460 AND 38-79-470, BOTH RELATING TO THE MANAGEMENT OF THE PATIENT'S COMPENSATION FUND, SO AS TO TRANSFER THE MANAGEMENT OF THE FUND FROM THE STATE TREASURER TO THE BOARD OF GOVERNORS OF THE FUND; AND TO REPEAL SECTIONS 15-36-20 THROUGH SECTION 15-36-50 RELATING TO THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT.

**02/11/04 Senate Introduced and read first time SJ-22**

**02/11/04 Senate Referred to Committee on Judiciary SJ-22**