

## Session 116 - (2005-2006)

**H 3013 General Bill, By W.D. Smith, Wilkins, Harrison, G.R. Smith, Vaughn, Davenport, Sandifer, Barfield, Young, Owens, Kirsh, Leach, Battle, Viers, Littlejohn, Taylor, Rice, Hinson, Clark, Walker, Bales, Mahaffey, Toole, Brady and Cato**

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

A BILL TO ENACT THE "MEDICAL MALPRACTICE AND PATIENT SAFETY REFORM ACT" BY ADDING TITLE 15, CHAPTER 80, CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ESTABLISH THE MEDICAL CLAIMS REVIEW OFFICE WITHIN THE DEPARTMENT OF INSURANCE TO REVIEW CLAIMS FOR DAMAGES ALLEGEDLY RESULTING FROM MEDICAL MALPRACTICE AND TO ESTABLISH THE POWERS, DUTIES, AND PROCEDURES OF THIS OFFICE; TO REQUIRE A REVIEW OF A CLAIM FOR SUCH DAMAGES BY A PANEL OF THE MEDICAL CLAIMS REVIEW OFFICE AS A PREREQUISITE TO FILING A LAWSUIT; TO REQUIRE A HEALTHCARE PROVIDER'S MEDICAL MALPRACTICE INSURANCE CARRIER TO FAIRLY EVALUATE AND DILIGENTLY ADJUST EACH CLAIM FOR DAMAGES ALLEGEDLY RESULTING FROM MEDICAL MALPRACTICE; TO REQUIRE THE DEPARTMENT OF HEALTH AND DEMOGRAPHICS TO DEVELOP PROCEDURES FOR PROVIDING HEALTHCARE PROVIDER OUTCOME DATA AND HOSPITAL OUTCOME DATA TO GOVERNMENTAL ENTITIES AND TO THE PUBLIC, WITH CERTAIN RESTRICTIONS REGARDING THE IDENTITY OF HEALTHCARE PROVIDERS, AND TO PROVIDE THAT SUCH INFORMATION IS PRIVILEGED; TO REQUIRE PARTIES IN A MEDICAL MALPRACTICE ACTION TO PARTICIPATE IN MEDIATION IN ACCORDANCE WITH STATE COURT RULES IN EFFECT AT THE TIME; TO PROVIDE THAT A HEALTHCARE PROVIDER TESTIFYING AS AN EXPERT IN A MEDICAL MALPRACTICE ACTION IN THIS STATE, BY WAY OF TESTIFYING, IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THIS STATE AND UNJUSTIFIABLE CONDUCT MAY BE INVESTIGATED AND SANCTIONED IN ACCORDANCE WITH STATE LAW; TO PROVIDE THAT DAMAGES FOR PAIN AND SUFFERING AWARDED IN A MEDICAL MALPRACTICE ACTION MAY NOT EXCEED THREE HUNDRED THOUSAND DOLLARS AND TO EXCLUDE FROM THIS AMOUNT PERMANENT DISABILITY, DISFIGUREMENT OR SCARRING, PARALYSIS, AND LOSS OF LIMB OR AN ORGAN AND TO AUTHORIZE THE STATE BOARD OF ECONOMIC ADVISERS TO ADJUST THIS LIMITATION BASED UPON INCREASES OR DECREASES IN THE CONSUMER PRICE INDEX; TO PROVIDE FOR COMPARATIVE FAULT TO BE INDIVIDUALLY ALLOCATED AMONG THE DEFENDANTS BASED UPON EACH DEFENDANT'S PERCENTAGE OF FAULT, TO AUTHORIZE THE COURT TO REALLOCATE UNCOLLECTIBLE DAMAGES AMONG THE REMAINING DEFENDANTS WHEN DAMAGES CANNOT BE RECOVERED FROM A DEFENDANT, AND TO PROVIDE THAT A DEFENDANT WHOSE LIABILITY IS REALLOCATED IS SUBJECT TO CONTRIBUTION; TO AUTHORIZE AND PRESCRIBE CIRCUMSTANCES FOR THE JOINDER OF THIRD PARTY DEFENDANTS WHEN OTHERWISE AN ACTION WOULD BE BARRED BY THE STATUTE OF LIMITATIONS; TO ADD SECTION 40-47-290 SO AS TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH FEES SUFFICIENT TO PERFORM ITS STATUTORY DUTIES AND RESPONSIBILITIES, INCLUDING CONDUCTING INQUIRIES BASED ON OPINIONS OF CLAIMS ISSUED BY A PANEL OF THE MEDICAL CLAIMS REVIEW OFFICE; TO AMEND SECTION 15-36-10, RELATING TO SANCTIONS FOR BRINGING A FRIVOLOUS ACTION, SO AS TO REQUIRE AN ATTORNEY OF RECORD TO SIGN EVERY DOCUMENT FILED ON BEHALF OF A PARTY, THEREBY CERTIFYING THAT THE DOCUMENT IS NOT FRIVOLOUS OR INTERPOSED FOR DELAY AND THAT IT IS FOR A PROPER PURPOSE; TO ADD SECTION 38-79-40 TO REQUIRE INSURERS PROVIDING HEALTHCARE PROVIDER MEDICAL MALPRACTICE INSURANCE TO OFFER A RANGE OF DEDUCTIBLES AND POLICY LIMITS; TO ADD SECTION 38-79-50, SO AS TO PROHIBIT A MEMBER OF THE BOARD OF THE JOINT UNDERWRITING ASSOCIATION OR THE BOARD OF GOVERNORS OF THE PATIENTS' COMPENSATION FUND FROM BEING EMPLOYED BY EITHER BOARD AND TO CLARIFY THAT THIS DOES NOT PROHIBIT AN INSURANCE AGENT FROM SELLING INSURANCE PRODUCTS TO THESE ENTITIES; TO AMEND SECTIONS 38-79-460 AND 38-79-470, BOTH RELATING TO THE MANAGEMENT OF THE PATIENTS' COMPENSATION FUND, SO AS TO PROVIDE THAT THE BOARD OF GOVERNORS OF THIS FUND, RATHER THAN THE STATE TREASURER, SHALL MANAGE THE FUND AND TO PROVIDE FOR THE TRANSFER OF THE MANAGEMENT OF THIS FUND; AND TO REPEAL SECTIONS 15-36-20 THROUGH 15-36-50, ALL RELATING TO FRIVOLOUS LAWSUITS.

**12/08/04 House Prefiled**

**12/08/04 House Referred to Committee on Judiciary**

**01/11/05 House Introduced and read first time HJ-46**

**01/11/05 House Referred to Committee on Judiciary HJ-48**

**01/19/05 House Member(s) request name added as sponsor: Brady**

**01/26/05 House Member(s) request name added as sponsor: Cato**