

**PROPOSED
CONSTITUTIONAL
AMENDMENTS TO BE
VOTED ON
NOVEMBER 2, 2004**



Florida Department of State
Division of Elections
Room 316, R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

NO. 1
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 22
(Legislative)

Ballot Title:

Parental Notification of a Minor's Termination of Pregnancy

Ballot Summary:

Proposing an amendment to the State Constitution to authorize the Legislature to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The amendment provides that the Legislature shall not limit or deny the privacy rights guaranteed to minors under the United States Constitution as interpreted by the United States Supreme Court. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the requirement for notification.

Full Text:

ARTICLE X
MISCELLANEOUS

SECTION 22. Parental notice of termination of a minor's pregnancy.—
The legislature shall not limit or deny the privacy right guaranteed to a
minor under the United States Constitution as interpreted by the United
States Supreme Court. Notwithstanding a minor's right of privacy provided
in Section 23 of Article I, the Legislature is authorized to require by general
law for notification to a parent or guardian of a minor before the termination
of the minor's pregnancy. The Legislature shall provide exceptions to such
requirement for notification and shall create a process for judicial waiver of
the notification.

NO. 2
CONSTITUTIONAL AMENDMENT
ARTICLE IV, SECTION 10
ARTICLE XI, SECTION 5
(Legislative)

Ballot Title:

Constitutional Amendments Proposed By Initiative

Ballot Summary:

Proposing amendments to the State Constitution to require the sponsor of a constitutional amendment proposed by citizen initiative to file the initiative petition with the Secretary of State by February 1 of the year of a general election in order to have the measure submitted to the electors for approval or rejection at the following November's general election, and to require the Florida Supreme Court to render an advisory opinion addressing the validity of an initiative petition by April 1 of the year in which the amendment is to be submitted to the electors.

Full Text:

ARTICLE IV
EXECUTIVE

SECTION 10. Attorney General.—The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI expeditiously.

ARTICLE XI
AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, ~~initiative petition~~ or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

~~(c)~~(b) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

~~(d)~~(e) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

~~(e)~~(d) If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

NO. 3
CONSTITUTIONAL AMENDMENT
ARTICLE I, SECTION 26
(Initiative)

Ballot Title:

The Medical Liability Claimant's Compensation Amendment

Ballot Summary:

Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000.00 in all damages received by the claimant, and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing.

Financial Impact Statement:

The direct financial impact this amendment will have on state and local government revenues and expenditures cannot be determined.

Full Text:

Section 1.

Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgement, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

Section 2.

This Amendment shall take effect on the day following approval by the voters.

Summary of Initiative Financial Information Statement:

The Medical Liability Claimant's Compensation Amendment entitles claimants in a medical liability case to recover 70 percent of the first \$250,000 in all damages received and 90 percent of all damages in excess of \$250,000 after reasonable and customary costs are deducted and before the claimant's attorneys' fees are deducted.

The Financial Impact Estimating Conference principals have found it difficult to determine the potential financial impact on state and local governments.

Terms such as “reasonable and customary costs,” “received by the claimant” and “all damages received” versus “all damages” are subject to varying definition and financial impacts.

Generally, when damages are recovered on behalf of a claimant, they are paid to the claimant’s attorney. They are then distributed to the various interests with claims on the funds before the remainder is paid to the claimant. Typical claims against these damages include such items as outstanding tax liabilities, Medicaid reimbursements, hospital liens, subrogated insurance claims, litigation costs, and attorneys’ fees. It is unclear which of these claims would fit within the definition of reasonable and customary costs.

Based on the information provided through public workshops, arguments before the Florida Supreme Court, and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment could have the following outcomes.

- The amendment may make collection of claims more difficult because the claimant will be entitled to a specific percent of the damages. The claimant would still be liable for the valid claims, but would not have to pay them out of the damages unless the claims are considered within the definition of “reasonable and customary costs.” If a claimant chooses not to pay the claims, then a separate collection action would be necessary to collect the claim. It is unlikely that all funds owed would be recovered through a collection action.
- If public assistance liens are within the definition of “reasonable and customary costs,” then there will not be a financial impact on state and local governments. If public assistance liens are not within the definition of “reasonable and customary costs,” then there may be a financial impact on state and local governments based on uncollected liens. The Financial Impact Estimating Conference principals are unable to determine the exact cost to state and local governments as a result of uncollected liens, but the state may face some unrecoverable Medicaid costs.
- The amendment may reduce the number of medical liability cases brought each year. This could result in two distinctly different financial impacts for the state and local governments. The amendment could restrain the growth of physician fee increases as they relate to medical liability, which would benefit state and local governments’ insurance plans. However, fewer cases brought each year could result in claimants using more public assistance programs or public hospitals providing more uncompensated care. This would have a negative impact on state and local governments, which cannot be determined.

NO. 4
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 19
(Initiative)

Ballot Title:

Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities

Ballot Summary:

Authorizes Miami-Dade and Broward Counties to hold referenda on whether to authorize slot machines in existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai alai) that have conducted live racing or games in that county during each of the last two calendar years before effective date of this amendment. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide. Requires implementing legislation.

Financial Impact Statement:

This amendment alone has no fiscal impact on government. If slot machines are authorized in Miami-Dade or Broward counties, governmental costs associated with additional gambling will increase by an unknown amount and local sales tax-related revenues will be reduced by \$5 million to \$8 million annually. If the Legislature also chooses to tax slot machine revenues, state tax revenues from Miami-Dade and Broward counties combined would range from \$200 million to \$500 million annually.

Full Text:

Article X, Florida Constitution, is hereby amended to add the following as section 19:

SECTION 19. SLOT MACHINES –

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

Summary of Initiative Financial Information Statement:

There is no fiscal impact for state and local governments resulting from this amendment alone. However, significant costs and revenues may result for state government and for the governments of Miami-Dade and Broward counties, if the voters in one or both counties act favorably on the referendum, and if the Legislature chooses to tax the revenues resulting from the activity.

State Government Revenue Impact- Revenues to the state would result from the Legislature's decision to tax slot machine activity. It is estimated that by the third year of activity, the range of tax revenues raised would be from \$250 million to \$600 million, assuming that both counties pass the referenda, and that the Legislature taxes the activity at a typical tax rate between 30% and 50%. There would be a reduction in sales tax collections (between \$30 million and \$45 million), due to a shift in spending from items subject to the sales tax to spending on slot machines. Additionally, there would be a reduction in revenues from the sale of lottery tickets (between \$40 and \$55 million), as spending on slot machines displaces some spending on lottery tickets. The overall effect on state revenues is expected to be an increase in revenue ranging from \$200 million to \$500 million. Should only Miami-Dade County pass the referendum, the estimated increase would be between \$70 million and \$200 million. If only Broward County passes the referendum, the estimated increase would be between \$100 million and \$300 million.

Although the amendment contemplates taxation of slot machine revenues, should the Legislature choose not to tax this activity, there would be a state revenue loss of \$70 million to \$100 million from the sales tax and lottery.

Local Government Revenue Impact- Local governments statewide would experience a loss in revenues from the sales tax of between \$5 million and

\$8 million. Revenues to local governments in Miami-Dade and Broward counties would likely increase due to increased tourism and recreational activity. Nearby local governments would experience a reduction in tourism and recreational activity if the availability of slot machines makes Miami-Dade and Broward counties more attractive as tourism destinations. This effect would be reduced, however, if the availability of slot machines attracts tourists who would have otherwise chosen destinations outside of Florida, or who would have chosen day cruises or casinos located on Indian reservations as gambling destinations. The combined impact of these effects cannot be determined at this time.

State and Local Government Cost Impact- Anticipated costs to the state and to local governments in Miami-Dade and Broward counties would be twofold. There would be administrative costs associated with overseeing the operation of the facilities containing the slot machines. In addition, research indicates that when gambling becomes more accessible, there are typically increases in problem gambling. Costs associated with problem gambling, while not quantifiable, may be significant, and would come in the form of increased law enforcement costs, mental health and addiction treatment costs, and possible increases in unemployment compensation costs, among others.

NO. 5
CONSTITUTIONAL AMENDMENT
ARTICLE X
(Initiative)

Ballot Title:

Florida Minimum Wage Amendment

Ballot Summary:

This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney’s fees, and fines by the state. It forbids retaliation against employees for exercising this right.

Financial Impact Statement:

The impact of this amendment on costs and revenues of state and local governments is expected to be minimal.

Full Text:

A new section for Article X. is created

Florida Minimum Wage Amendment

(a) Public Policy. All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.

(b) Definitions. As used in this amendment, the terms “Employer,” “Employee” and “Wage” shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.

(c) Minimum Wage. Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of \$6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of

the allowable FLSA tip credit in 2003.

(d) Retaliation Prohibited. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) Enforcement. Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) Additional Legislation, Implementation & Construction. Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) Severability. If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons

or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

Summary of Initiative Financial Information Statement:

Florida has no minimum wage law. Employers in the state are covered by the Fair Labor Standards Act, a federal law that establishes a minimum wage of \$5.15 for most employers and employees. Certain employees are exempt from the minimum wage requirement, and these include farm workers employed on small farms, employees of certain seasonal amusement or recreational establishments, and casual babysitters and persons employed as companions, among others. The federal minimum wage for tipped employees is \$2.13 per hour, if the employee receives at least \$5.15 when the direct wages and the employee's tips are combined. The proposed amendment creates a Florida minimum wage of \$6.15 per hour. This analysis assumes that the amendment applies to all employees covered by the federal minimum wage. Each year the minimum wage will be adjusted for inflation.

Based on the information provided through public workshops and staff research, the Financial Impact Estimating Conference expects that the proposed amendment will have the following financial effects:

- State and local government costs will increase, as wages paid by state and local governments to employees currently earning less than \$6.15 per hour are increased to that amount. In addition, wages paid to employees earning at or slightly above \$6.15 are likely to increase, as the impact of the higher minimum wage ripples upward on prevailing wage rates. Compared to the total employee compensation paid by state and local governments, the impact of this amendment is very small, approximately three-hundredths of one percent (0.03%).
- The impact of this amendment on state and local government revenues is also expected to be small. The costs of goods and services sold in Florida may rise as wages paid by private-sector employers to low-wage employees increase. Consequently, state sales tax revenues may increase slightly. However, if businesses react to the higher minimum wage by hiring fewer workers, the increased tax revenue may not materialize.

NO. 6
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 19
(Initiative)

Ballot Title:

Repeal of High Speed Rail Amendment

Ballot Summary:

This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

Financial Impact Statement:

The probable financial impact of passage of this amendment is a state cost savings ranging from \$20 billion to \$25 billion over the next 30 years. This estimate assumes the repeal of associated laws, the use of state bonds to finance construction, and could be reduced by federal or private sector funding.

Full Text:

Article X, Section 19, Florida Constitution, is hereby repealed in its entirety.

Summary of Initiative Financial Information Statement:

In 2000, voters approved an amendment to the state Constitution requiring development and operation of a high speed ground transportation system capable of achieving a minimum speed of 120 miles per hour and linking the state's five largest urban areas as determined by the Legislature. The proposed amendment would eliminate the constitutional requirement for such a system.

In order to determine the impact of repealing the high speed rail constitutional requirement, the Financial Impact Estimating Conference held public workshops. Presentations were given by Derail the Bullet Train (DEBT), the Florida High Speed Rail Authority, the Division of Bond Finance, and the Department of Transportation. The Conference concluded that the direct financial impact of the proposed amendment is related to savings the state would experience by not developing and operating the mandated high speed rail system.

This impact required four major assumptions to be made:

- Because there are currently no federal programs which provide direct assistance for the actual construction of a high speed

passenger rail system, the state would be responsible for all construction costs and would finance construction from the sale of state tax-supported bonds;

- The scope of the service area comprising the high speed rail system project would not be the statewide system as defined in statute, but a more narrow system consistent with the Constitution, using the five largest urban areas as defined by the U.S. Bureau of the Census: Miami-Ft. Lauderdale-Palm Beach, Orlando, Tampa-St. Petersburg, Jacksonville, and Sarasota;
- Because the project is envisioned to require many years to develop, the period of the analysis should be long enough to reflect the full implementation of the system; and
- If the amendment passes and the requirement to develop and operate a high speed rail system is removed from the Constitution, the Legislature will also repeal the law which provides for the system.

From these major assumptions, the Conference developed a probable system cost ranging between \$20 billion and \$25 billion over the next 30 years.

Elements of consideration in the cost calculation included the route; the construction, maintenance, financing and operational costs for each phase; and associated revenues. The Conference agrees that if federal or private sector funding can be obtained, the cost to the state to build the system would be reduced. The Conference acknowledged that if the system is not built, some positive economic benefits would not materialize; however, the state may choose to fund transportation or other infrastructure projects which would provide similar benefits to Florida's economy.

The Conference also considered the implications to the state's overall financial health. Current law establishes a target ceiling on debt service payments as a share of state revenues at 7 percent. A sale of bonds large enough to pay for the construction of just phases 1 and 2 (Tampa-Orlando-Miami), in addition to already existing state programs financed from the sale of bonds, would raise the share beyond the target ceiling, to 7.2 percent.

NO. 7
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 22
(Initiative)

Ballot Title:

Patients' Right to Know About Adverse Medical Incidents

Ballot Summary:

Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, including those which could cause injury or death. Provides that patients' identities should not be disclosed.

Financial Impact Statement:

The direct financial impact this amendment will have on state and local government revenues and expenditures cannot be determined, but is expected to be minimal. State agencies will incur some additional costs to comply with public records requirements of the amendment, but these costs will be generally offset by fees charged to the persons requesting the information.

Full Text:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

1) Statement and Purpose:

The Legislature has enacted provisions relating to a patients' bill of rights and responsibilities, including provisions relating to information about practitioners' qualifications, treatment and financial aspects of patient care. The Legislature has, however, restricted public access to information concerning a particular health care provider's or facility's investigations, incidents or history of acts, neglects, or defaults that have injured patients or had the potential to injure patients. This information may be important to a patient. The purpose of this amendment is to create a constitutional right for a patient or potential patient to know and have access to records of a health care facility's or provider's adverse medical incidents, including medical malpractice and other acts which have caused or have the potential to cause injury or death. This right to know is to be balanced against an individual patient's rights to privacy and dignity, so that the information available relates to the practitioner or facility as opposed to individuals who may have been or are patients.

2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

“Section 22. Patients’ Right to Know About Adverse Medical Incidents.

“(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

“(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

“(c) For purposes of this section, the following terms have the following meanings:

“(1) The phrases “health care facility” and “health care provider” have the meaning given in general law related to a patient’s rights and responsibilities.

“(2) The term “patient” means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

“(3) The phrase “adverse medical incident” means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

“(4) The phrase “have access to any records” means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be “provided” by reference to the location at which the records are publicly available.”

3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

Summary of Initiative Financial Information Statement:

Information about most adverse medical incidents is currently collected by the Agency for Health Care Administration, Department of Health, and to some degree the Department of Insurance Regulation. Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, including those which could cause injury or death. Patients' identities are precluded from being disclosed and any privacy restrictions imposed by federal law are required to be maintained.

Based on the information provided through public workshops, arguments before the Florida Supreme Court, and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment will have the following financial effects:

- The number of public information requests will significantly increase. The costs for public records will generally be recoverable from requestors.
- Administrative costs could increase if this amendment were applied retroactively. The fiscal impact is indeterminate, but would be funded from licensure fees.
- Increased availability of adverse incident reports may enhance the discovery process by giving potential litigants more data. A stronger basis for lawsuits and additional opportunities for class action litigation may be created. This may increase the general cost of health care and, therefore, public expenditures for Medicaid and government employee health insurance could increase. The fiscal impact is indeterminate.
- Making additional medical records public may cause the quality of peer reviews to decline and increase the risk of lower quality physician services. This may lead to more malpractice incidents and lawsuits thus increasing the general cost of health care. The fiscal impact is indeterminate.

NO. 8
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 20
(Initiative)

Ballot Title:

Public Protection from Repeated Medical Malpractice

Ballot Summary:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Financial Impact Statement:

The direct financial impact on state and local governments resulting from the proposed initiative would be minimal. There will likely be additional costs to the state of less than \$1 million per year, but these costs will be offset by licensure fees.

Full Text:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

a) Statement and Purpose:

Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.

b) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

”Section 20. Prohibition of Medical License After Repeated Medical Malpractice.

“a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

“b) For purposes of this section, the following terms have the following meanings:

“i) The phrase “medical malpractice” means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized

in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

"ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court or law, final administrative agency decision, or decision of binding arbitration."

c) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

Summary of Initiative Financial Information Statement:

The Department of Health (DOH) currently licenses medical practitioners and has discretion to revoke these licenses when physicians are found to have committed "gross or repeated malpractice." Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This proposed constitutional amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida. This "three strikes" initiative supplements current law and requires the Department to take action to remove licenses based on final findings by the courts, administrative agencies and binding arbitration. The discretion of the Department not to act in these types of cases is removed by this proposed amendment.

Based on the information provided through public workshops, arguments before the Florida Supreme Court, and information collected through staff research, the Financial Impact Estimating Conference principals expect that the proposed amendment will have the following financial effects:

- Medicaid fee-for-service costs may increase because there will potentially be fewer physicians, particularly specialists, available in the marketplace. This fiscal impact is indeterminate.
- Costs to determine confirmed malpractice incidents will increase. There will be increased costs associated with business activities required to review and research records to determine confirmed malpractice incidents. DOH estimates recurring costs for initial applicants of \$311,523 for allopathic physicians and nonrecurring costs for existing licensees of \$292,830 for a total cost of \$604,353. These costs will be funded through increases to licensure fees because the cost of professional regulation is fee supported.

- Requests for Administrative Hearings may increase. The Division of Administrative Hearings (DOAH) anticipates an increase in the number of requests for administrative hearings from doctors who fear blemishes on their records. Additionally, there may also be a greater number of challenges to preliminary decisions of the Board of Medicine rather than settlements. Total fiscal impact can likely be absorbed by the Division.
- Binding arbitration cases may increase. DOAH estimates an increase in the number of claimants agreeing to proceed through the binding arbitration process rather than in circuit court. Total fiscal impact can likely be absorbed by the Division.
- Costs for maintaining databases of binding arbitration cases may increase. The DOH estimates that there are few cases decided by binding arbitration and the costs for researching and analyzing data will be negligible. Total fiscal impact is insignificant according to the DOH.