

CS/HB 385

2012

1 A bill to be entitled
2 An act relating to health care; providing legislative
3 findings and intent; amending s. 768.28, F.S.;
4 providing sovereign immunity to emergency health care
5 providers acting pursuant to obligations imposed by
6 specified statutes; providing an exception; providing
7 that emergency health care providers are agents of the
8 state and requiring them to indemnify the state up to
9 the specified liability limits; providing for
10 sanctions against emergency health care providers who
11 fail to comply with indemnification obligations;
12 providing definitions; providing that an emergency
13 medical provider may elect to not be an agent of the
14 state; providing for revocation of such election;
15 providing that elections and revocations are effective
16 upon receipt by the Department of Health; providing
17 applicability; providing an effective date.

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

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21 Section 1. Legislative findings and intent.—

22 (1) The Legislature finds and declares it to be of vital
23 importance that emergency services and care be provided by
24 hospitals, physicians, and emergency medical services providers
25 to every person in need of such care. The Legislature finds that
26 providers of emergency services and care are critical elements
27 in responding to disaster and emergency situations that may
28 affect local communities, the state, and the country. The

29 Legislature recognizes the importance of maintaining a viable
30 system of providing for the emergency medical needs of the
31 state's residents and visitors. The Legislature and the Federal
32 Government have required such providers of emergency medical
33 services and care to provide emergency services and care to all
34 persons who present themselves to hospitals seeking such care.

35 (2) The Legislature has further mandated that emergency
36 medical treatment may not be denied by emergency medical
37 services providers to persons who have or are likely to have an
38 emergency medical condition. Such governmental requirements have
39 imposed a unilateral obligation for providers of emergency
40 services and care to provide services to all persons seeking
41 emergency care without ensuring payment or other consideration
42 for provision of such care. The Legislature also recognizes that
43 providers of emergency services and care provide a significant
44 amount of uncompensated emergency medical care in furtherance of
45 such governmental interest.

46 (3) The Legislature finds that a significant proportion of
47 the residents of this state who are uninsured or are Medicaid or
48 Medicare recipients are unable to access needed health care on
49 an elective basis because health care providers fear the
50 increased risk of medical malpractice liability. The Legislature
51 finds that such patients, in order to obtain medical care, are
52 frequently forced to seek care through providers of emergency
53 medical services and care.

54 (4) The Legislature finds that providers of emergency
55 medical services and care in this state have reported
56 significant problems with respect to the affordability of

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57 professional liability insurance, which is more expensive in
58 this state than the national average. The Legislature further
59 finds that a significant number of specialist physicians have
60 resigned from serving on hospital staffs or have otherwise
61 declined to provide on-call coverage to hospital emergency
62 departments due to the increased exposure to medical malpractice
63 liability created by treating such emergency department
64 patients, thereby creating a void that has an adverse effect on
65 emergency patient care.

66 (5) It is the intent of the Legislature that hospitals,
67 emergency medical services providers, and physicians be able to
68 ensure that patients who may need emergency medical treatment
69 and who present themselves to hospitals for emergency medical
70 services and care have access to such needed services.

71 Section 2. Subsection (9) of section 768.28, Florida
72 Statutes, is amended to read:

73 768.28 Waiver of sovereign immunity in tort actions;
74 recovery limits; limitation on attorney fees; statute of
75 limitations; exclusions; indemnification; risk management
76 programs.—

77 (9) (a) No officer, employee, or agent of the state or of
78 any of its subdivisions shall be held personally liable in tort
79 or named as a party defendant in any action for any injury or
80 damage suffered as a result of any act, event, or omission of
81 action in the scope of her or his employment or function, unless
82 such officer, employee, or agent acted in bad faith or with
83 malicious purpose or in a manner exhibiting wanton and willful
84 disregard of human rights, safety, or property. However, such

85 officer, employee, or agent shall be considered an adverse
 86 witness in a tort action for any injury or damage suffered as a
 87 result of any act, event, or omission of action in the scope of
 88 her or his employment or function. The exclusive remedy for
 89 injury or damage suffered as a result of an act, event, or
 90 omission of an officer, employee, or agent of the state or any
 91 of its subdivisions or constitutional officers shall be by
 92 action against the governmental entity, or the head of such
 93 entity in her or his official capacity, or the constitutional
 94 officer of which the officer, employee, or agent is an employee,
 95 unless such act or omission was committed in bad faith or with
 96 malicious purpose or in a manner exhibiting wanton and willful
 97 disregard of human rights, safety, or property. The state or its
 98 subdivisions shall not be liable in tort for the acts or
 99 omissions of an officer, employee, or agent committed while
 100 acting outside the course and scope of her or his employment or
 101 committed in bad faith or with malicious purpose or in a manner
 102 exhibiting wanton and willful disregard of human rights, safety,
 103 or property.

104 (b) As used in this subsection, the term:

- 105 1. "Employee" includes any volunteer firefighter.
- 106 2. "Officer, employee, or agent" includes, but is not
 107 limited to:7

- 108 a. Any health care provider when providing services
 109 pursuant to s. 766.1115; any member of the Florida Health
 110 Services Corps, as defined in s. 381.0302, who provides
 111 uncompensated care to medically indigent persons referred by the
 112 Department of Health; any nonprofit independent college or

113 university located and chartered in this state which owns or
114 operates an accredited medical school, and its employees or
115 agents, when providing patient services pursuant to paragraph
116 (10) (f); and any public defender or her or his employee or
117 agent, including, among others, an assistant public defender and
118 an investigator.

119 b. Any emergency health care provider acting pursuant to
120 obligations imposed by s. 395.1041 or s. 401.45, except for
121 persons or entities that are otherwise covered under this
122 section.

123 (c)1. Emergency health care providers are agents of the
124 state and shall indemnify the state for any judgments,
125 settlement costs, or other liabilities incurred, only up to the
126 liability limits in subsection (5).

127 2. Any emergency health care provider who is licensed by
128 the state and who fails to indemnify the state after reasonable
129 notice and written demand to do so is subject to an emergency
130 suspension order of the regulating authority having jurisdiction
131 over the licensee.

132 3. The Department of Health shall issue an emergency order
133 suspending the license of any licensee under its jurisdiction or
134 any licensee of a regulatory board within the Department of
135 Health who fails to comply within 30 days after receipt by the
136 department of a notice from the Division of Risk Management of
137 the Department of Financial Services that the licensee has
138 failed to satisfy her or his obligation to indemnify the state
139 or enter into a repayment agreement with the state for costs
140 under this subsection. The terms of such agreement must provide

141 assurance of repayment of the obligation which is satisfactory
 142 to the state. For licensees within the Division of Medical
 143 Quality Assurance of the Department of Health, failure to comply
 144 with this paragraph constitutes grounds for disciplinary action
 145 under each respective practice act and under s. 456.072(1)(k).

146 4. As used in this subsection, the term:

147 a. "Emergency health care provider" means a physician
 148 licensed under chapter 458 or chapter 459.

149 b. "Emergency medical services" means all screenings,
 150 examinations, and evaluations by a physician, hospital, or other
 151 person or entity acting pursuant to obligations imposed by s.
 152 395.1041 or s. 401.45, and the care, treatment, surgery, or
 153 other medical services provided to relieve or eliminate the
 154 emergency medical condition, including all medical services to
 155 eliminate the likelihood that the emergency medical condition
 156 will deteriorate or recur without further medical attention
 157 within a reasonable period of time.

158 5. An emergency health care provider may affirmatively
 159 elect in writing not to be considered an agent of the state by
 160 submitting a form to that effect to the Department of Health. An
 161 emergency health care provider who makes such election may
 162 revoke the election by submitting a form revoking the election.
 163 An election or revocation is effective upon filing with the
 164 department. Any emergency health care provider who declines the
 165 status conferred by sub-subparagraph b. shall not be considered
 166 an agent of the state.

167 (d) ~~(e)~~ For purposes of the waiver of sovereign immunity
 168 only, a member of the Florida National Guard is not acting

169 within the scope of state employment when performing duty under
170 the provisions of Title 10 or Title 32 of the United States Code
171 or other applicable federal law; and neither the state nor any
172 individual may be named in any action under this chapter arising
173 from the performance of such federal duty.

174 (e)~~(d)~~ The employing agency of a law enforcement officer
175 as defined in s. 943.10 is not liable for injury, death, or
176 property damage effected or caused by a person fleeing from a
177 law enforcement officer in a motor vehicle if:

178 1. The pursuit is conducted in a manner that does not
179 involve conduct by the officer which is so reckless or wanting
180 in care as to constitute disregard of human life, human rights,
181 safety, or the property of another;

182 2. At the time the law enforcement officer initiates the
183 pursuit, the officer reasonably believes that the person fleeing
184 has committed a forcible felony as defined in s. 776.08; and

185 3. The pursuit is conducted by the officer pursuant to a
186 written policy governing high-speed pursuit adopted by the
187 employing agency. The policy must contain specific procedures
188 concerning the proper method to initiate and terminate high-
189 speed pursuit. The law enforcement officer must have received
190 instructional training from the employing agency on the written
191 policy governing high-speed pursuit.

192 Section 3. This act shall take effect upon becoming a law,
193 and shall apply to any cause of action accruing on or after that
194 date.