

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Judiciary offered the following:

13 **Amendment (with title amendment)**

14 On page 5, line 29, through page 9, line 6,
15 remove from the bill: all of the said lines

17 and insert in lieu thereof:

19 (c) The Legislature finds that the state has
20 traditionally provided foster care services to children who
21 have been the responsibility of the state. As such, foster
22 children have not had the right to recover for injuries beyond
23 the limitations specified in s. 768.28. The Legislature has
24 determined that foster care and related services need to be
25 privatized pursuant to s. 409.1671 and that the provision of
26 such services is of paramount importance to the state. The
27 purpose for such privatization is to increase the level of
28 safety, security and stability of children who are or become
29 the responsibility of the state. One of the components
30 necessary to secure a safe and stable environment for such
31 children is that private providers maintain liability

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1 insurance. As such, insurance needs to be available and remain
2 available to non-governmental foster care and related services
3 providers without the resources of such providers being
4 significantly reduced by the cost of maintaining such
5 insurance.

6 The Legislature further finds that, by requiring the
7 following minimum levels of insurance, children in privatized
8 foster care and related services will gain increased
9 protection and rights of recovery in the event of injury than
10 provided for in s. 768.28.

11 (d) Any eligible lead community-based provider, as
12 defined in paragraph (b), or its employees or officers, except
13 as otherwise provided in paragraph (e), must, as a part of its
14 contract, obtain a minimum of \$1,000,000 per claim/\$3 million
15 per incident in general liability insurance coverage. In any
16 tort action brought against such an eligible lead
17 community-based provider, net economic damages shall be
18 limited to \$1 million per claim, including, but not limited
19 to, past and future medical expenses, wage loss, and loss of
20 earning capacity, offset by any collateral source payment paid
21 or payable. In any tort action brought against such an
22 eligible lead community-based provider, non-economic damages
23 shall be limited to \$200,000 per claim. This paragraph does
24 not preclude the filing of a claims bill pursuant to s. 768.28
25 by the claimant for any amount exceeding the limits specified
26 in this paragraph. Any offset of collateral source payments
27 made as of the date of the settlement or judgment shall be in
28 accordance with s. 768.76. The lead community-based provider
29 shall not be liable in tort for the acts or omissions of its
30 subcontractors or the officers, agents, or employees of its
31 subcontractors.

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1 (e) The liability of an eligible lead community-based
2 provider described in this section shall be exclusive and in
3 place of all other liability of such provider. The same
4 immunities from liability enjoyed by such providers shall
5 extend as well to each employee of the provider when such
6 employee is acting in furtherance of the provider's business.
7 Such immunities shall not be applicable to a provider or an
8 employee who acts in a culpably negligent manner or with
9 willful and wanton disregard or unprovoked physical aggression
10 when such acts result in injury or death or such acts
11 proximately cause such injury or death; nor shall such
12 immunities be applicable to employees of the same provider
13 when each is operating in the furtherance of the provider's
14 business, but they are assigned primarily to unrelated works
15 within private or public employment. The same immunity
16 provisions enjoyed by a provider shall also apply to any sole
17 proprietor, partner, corporate officer or director,
18 supervisor, or other person who is in the course and scope of
19 his or her duties act in a managerial or policymaking capacity
20 and the conduct which caused the alleged injury arose within
21 the course and scope of said managerial or policymaking
22 duties. Culpable negligence is defined as reckless
23 indifference or grossly careless disregard of human life.

24 (f) Any subcontractor of an eligible lead
25 community-based provider, as defined in paragraph (b), which
26 is a direct provider of foster care and related services to
27 children and families, and its employees or officers, except
28 as otherwise provided in paragraph (e), must, as a part of its
29 contract, obtain a minimum of \$1,000,000 per claim/\$3 million
30 per incident in general liability insurance coverage. In any
31 tort action brought against such subcontractor, net economic

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1 damages shall be limited to \$1 million per claim, including,
2 but not limited to, past and future medical expenses, wage
3 loss, and loss of earning capacity, offset by any collateral
4 source payment paid or payable. In any tort action brought
5 against such subcontractor, non-economic damages shall be
6 limited to \$200,000 per claim. This paragraph does not
7 preclude the filing of a claims bill pursuant to section s.
8 768.28 by the claimant for any amount exceeding the limits
9 specified in this paragraph. Any offset of collateral source
10 payments made as of the date of the settlement or judgment
11 shall be in accordance with s. 768.76.

12 (g) The liability of a subcontractor of an eligible
13 lead community-based provider which is a direct provider of
14 foster care and related services as described in this section
15 shall be exclusive and in place of all other liability of such
16 provider. The same immunities from liability enjoyed by such
17 subcontractor provider shall extend as well to each employee
18 of the subcontractor when such employee is acting in
19 furtherance of the subcontractor's business. Such immunities
20 shall not be applicable to a subcontractor or an employee who
21 acts in a culpably negligent manner or with willful and wanton
22 disregard or unprovoked physical aggression when such acts
23 result in injury or death or such acts proximately cause such
24 injury or death; nor shall such immunities be applicable to
25 employees of the same subcontractor when each is operating in
26 the furtherance of the subcontractor's business, but they are
27 assigned primarily to unrelated works within private or public
28 employment. The same immunity provisions enjoyed by a
29 subcontractor shall also apply to any sole proprietor,
30 partner, corporate officer or director, supervisor, or other
31 person who in the course and scope of his or her duties acts

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1 in a managerial or policymaking capacity and the conduct which
2 caused the alleged injury arose within the course and scope of
3 said managerial or policymaking duties. Culpable negligence is
4 defined as reckless indifference or grossly careless disregard
5 of human life.

6 (h) The Legislature is cognizant of the increasing
7 costs of goods and services each year and recognizes that
8 fixing a set amount of compensation actually has the effect of
9 a reduction in compensation each year. Accordingly, the
10 conditional limitations on damages in this section shall be
11 increased at the rate of 5 percent each year, prorated from
12 the effective date of this paragraph to the date at which
13 damages subject to such limitations are awarded by final
14 judgment or settlement.

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