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1 A bill to be entitled

2 An act relating to medical malpractice; creating s.  
3 766.116, F.S., the "Access to Emergency Medical Services  
4 and Care Act"; providing legislative findings and intent;  
5 defining terms; providing requirements for contracts  
6 between providers of emergency services and care and  
7 governmental contractors for the purpose of providing  
8 emergency services and care; requiring hospitals that  
9 enter into such contracts to provide notice of the agency  
10 relationship with the governmental contractor; requiring a  
11 quality assurance program; requiring the Division of Risk  
12 Management of the Department of Insurance to compile an  
13 annual report and submit it to the Legislature; providing  
14 for malpractice litigation costs; providing liability  
15 limits; providing for rulemaking; providing applicability;  
16 amending s. 766.102, F.S.; replacing the term "emergency  
17 medical services" with the term "emergency medical  
18 services and care" and defining the new term; amending s.  
19 766.203, F.S.; providing requirements pertaining to a  
20 presuit investigation of medical negligence claims  
21 involving emergency medical services and care; amending s.  
22 768.13, F.S., the "Good Samaritan Act"; providing immunity  
23 from civil damages for providers of emergency medical  
24 services and care; defining terms; providing limitations  
25 on such immunity; providing for severability; providing  
26 applicability; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
29



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30 Section 1. Section 766.116, Florida Statutes, is created  
31 to read:

32 766.116 Emergency medical services and care providers;  
33 creation of agency relationship with governmental contractors.--

34 (1) POPULAR NAME.--This section may be known by the  
35 popular name the "Access to Emergency Medical Services and Care  
36 Act."

37 (2) FINDINGS AND INTENT.--The Legislature finds and  
38 declares it to be of vital importance that emergency medical  
39 services and care be provided by hospitals, physicians, and  
40 emergency medical services providers to every person in need of  
41 such care. The Legislature finds that providers of emergency  
42 medical services and care are critical elements in responding to  
43 disasters and emergencies that might affect our local  
44 communities, state, and country. The Legislature recognizes the  
45 importance of maintaining a viable system of providing for the  
46 emergency medical needs of this state's residents and visitors.  
47 The Legislature and the Federal Government have required such  
48 providers of emergency medical services and care to provide  
49 emergency medical services and care to all persons who present  
50 themselves at hospitals in search of such care. The Legislature  
51 has further mandated that emergency medical services providers  
52 may not deny prehospital emergency medical treatment or  
53 transport to persons who have or are likely to have an emergency  
54 medical condition. These governmental requirements have  
55 essentially provided a unilateral obligation for providers of  
56 emergency medical services and care to provide services to all  
57 persons seeking emergency care without ensuring payment or other  
58 consideration for the provision of such care. Accordingly, the  
59 Legislature recognizes that providers of emergency medical



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60 services and care provide a significant amount of uncompensated  
61 emergency medical care in furtherance of such governmental  
62 interests. The Legislature finds that a significant proportion  
63 of the residents of this state who are uninsured or are  
64 recipients of Medicaid or Medicare are unable to obtain needed  
65 health care because health care providers fear the increased  
66 risk of medical malpractice liability. The Legislature finds  
67 that, in order to obtain medical care, such patients, therefore,  
68 are frequently forced to seek care from providers of emergency  
69 medical services and care. The Legislature finds that providers  
70 of emergency medical services and care in this state have  
71 reported having significant problems with both availability and  
72 affordability of professional liability coverage. The  
73 Legislature finds that premiums for medical malpractice  
74 liability insurance have increased dramatically and a number of  
75 insurers have ceased providing medical malpractice coverage for  
76 emergency medical services and care in this state. This results  
77 in a functional unavailability of malpractice insurance for some  
78 providers of emergency medical services and care. The  
79 Legislature further finds that certain specialist physicians  
80 have resigned from serving on hospital staffs or have otherwise  
81 declined to provide on-call coverage to hospital emergency  
82 departments due to their perception that treating such emergency  
83 department patients increases the physicians' exposure to  
84 liability for medical malpractice. It is the intent of the  
85 Legislature that hospitals, emergency medical services  
86 providers, and physicians be able to ensure that patients who  
87 might need emergency medical services treatment or  
88 transportation or who seek emergency medical services and care  
89 from hospitals have access to such needed services.



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90           (3) DEFINITIONS.--As used in this section, the term:  
 91           (a) "Contract" means an agreement executed in compliance  
 92 with this section between a provider of emergency medical  
 93 services and care and a governmental contractor. This contract  
 94 must allow the provider of emergency medical services and care  
 95 to provide such services and care as an agent of the  
 96 governmental contractor. The contract must state that services  
 97 will be provided for each patient who requests prehospital  
 98 treatment or transportation under the applicable local protocols  
 99 and for each patient to whom emergency medical services and care  
 100 are provided when such services and care are requested as  
 101 provided in s. 395.1041(3)(a).  
 102           (b) "Department" means the Department of Health.  
 103           (c) "Emergency medical services and care" means medical  
 104 screening, examination, and evaluation by a physician, or, to  
 105 the extent permitted by applicable law, by other appropriate  
 106 personnel under the supervision of a physician, to determine if  
 107 an emergency medical condition exists and, if it does, the care,  
 108 treatment, or surgery related to that emergency medical  
 109 condition which is provided by a physician or other provider of  
 110 emergency medical services and care until the patient is  
 111 discharged from the hospital. The term "emergency medical  
 112 services and care" also includes prehospital treatment and  
 113 transport and medically necessary interhospital transfers by  
 114 providers of emergency medical services who are licensed under  
 115 chapter 401 as provided in ss. 401.45 and 395.1041. The term  
 116 also includes all services provided by emergency physicians in a  
 117 hospital setting, services related to the emergency medical  
 118 condition which are provided by on-call physicians in response  
 119 to calls from the emergency department, and care provided by



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120 other health care professionals handling emergency care in a  
121 hospital or emergency medical services setting.

122 (d) "Governmental contractor" means the department, a  
123 county health department, a special taxing district that has  
124 health care responsibilities, a hospital owned and operated by a  
125 governmental entity, a municipality, a county, or a political  
126 subdivision.

127 (e) "Provider of emergency medical services and care"  
128 means:

129 1. An emergency medical services provider licensed under  
130 chapter 401.

131 2. A hospital licensed under chapter 395.

132 3. A physician or physician assistant licensed under  
133 chapter 458.

134 4. An osteopathic physician or osteopathic physician  
135 assistant licensed under chapter 459.

136 5. A chiropractic physician licensed under chapter 460.

137 6. A podiatric physician licensed under chapter 461.

138 7. An emergency medical technician or paramedic certified  
139 under chapter 401.

140 8. A registered nurse, nurse midwife, licensed practical  
141 nurse, or advanced registered nurse practitioner licensed or  
142 registered under part I of chapter 464.

143 9. A midwife licensed under chapter 467.

144 10. A health care professional association and its  
145 employees or a corporate medical group and its employees.

146 11. Any other health care professional practitioner,  
147 provider, or facility that is under contract with a governmental  
148 contractor, including, but not limited to, a student or medical  
149 resident who is enrolled in an accredited program that prepares



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150 the student for licensure or certification in any one of the  
151 professions listed in subparagraphs 3.-9.

152 (4) CONTRACT REQUIREMENTS.--A provider of emergency  
153 medical services and care which executes a contract with a  
154 governmental contractor to deliver emergency medical services  
155 and care after June 30, 2003, as an agent of the governmental  
156 contractor is an agent for purposes of s. 768.28(9) while acting  
157 within the scope of its duties under the contract. A provider of  
158 emergency medical services and care which is under contract with  
159 the state or with a governmental contractor may not be named as  
160 a defendant in any action arising out of emergency medical  
161 services or care, transport, or treatment provided after June  
162 30, 2003, pursuant to a contract entered into under this  
163 section. The contract must provide that:

164 (a) The governmental contractor retains the right of  
165 dismissal or termination of any provider of emergency medical  
166 services and care which is delivering services under the  
167 contract.

168 (b) The governmental contractor has access to the patient  
169 records of any provider of emergency medical services and care  
170 under the contract.

171 (c) The provider of emergency medical services and care  
172 shall report adverse incidents and information on treatment  
173 outcomes to the state as required by state law. Such incidents  
174 must also be reported to the governmental contractor if required  
175 by the contract. Reporting requirements imposed under this  
176 paragraph may not be construed to waive confidentiality as  
177 otherwise provided by state or federal law.



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178 (d) Providers of emergency medical services and care must  
179 accept all patients who request such services in the manner  
180 provided in s. 395.1041(3)(a) or s. 401.45.

181 (e) The provider is subject to supervision and regular  
182 inspection by the governmental contractor.

183  
184 A governmental contractor that is also a health care provider  
185 need not enter into a contract under this section with respect  
186 to the health care services delivered by its employees or  
187 agents. The provisions of this section which apply to the  
188 governmental contractor also apply to the employees or agents of  
189 the governmental contractor.

190 (5) NOTICE OF AGENCY RELATIONSHIP.--Each hospital that has  
191 a contract under this section shall place conspicuously in the  
192 emergency services area a sign providing notice that the  
193 hospital is a provider of emergency medical services and care,  
194 that its employees and agents are agents of the governmental  
195 contractor, and that the exclusive remedy for injury or damages  
196 suffered as the result of any act or omission of the provider or  
197 of any employee or agent thereof acting within the scope of its  
198 duties under the contract is by commencement of an action under  
199 s. 768.28. With respect to an emergency medical services  
200 provider, such notice must be given in a manner provided under  
201 the contract with the governmental contractor.

202 (6) QUALITY ASSURANCE PROGRAM.--The governmental  
203 contractor shall establish or require a quality assurance  
204 program to monitor services delivered under any contract with a  
205 provider of emergency medical services and care under this  
206 section.



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207       (7) RISK MANAGEMENT REPORT.--The Division of Risk  
208       Management of the Department of Insurance annually shall compile  
209       a report of all claims statistics for all entities participating  
210       in the risk management program administered by the division,  
211       which must include the number and total of all claims pending  
212       and paid and the defense and handling costs associated with all  
213       claims brought against contract providers under this section.  
214       The division shall forward this report to the department and  
215       shall include it in the annual report submitted to the  
216       Legislature under this section.

217       (8) MALPRACTICE LITIGATION COSTS.--In the absence of a  
218       specific contractual provision, providers of emergency medical  
219       services and care and governmental contractors are responsible  
220       for their own costs and attorney's fees for malpractice  
221       litigation arising out of health care services delivered under  
222       this section. Responsibility for the payment of such costs may  
223       be addressed specifically in the contract between the provider  
224       of emergency medical services and care and the governmental  
225       contractor.

226       (9) LIMITS ON LIABILITY.--Solely for the purposes of this  
227       section, the liability limits of the state and its agencies and  
228       subdivisions shall be as provided in s. 768.28(5) for tort  
229       claims, except that the state or its agencies or subdivisions  
230       are not liable for a claim or a judgment by any one person which  
231       exceeds the sum of \$200,000 or for any claim or judgment, or  
232       portions thereof, which, when totaled with all other claims or  
233       judgments paid by the state or its agencies or subdivisions  
234       arising out of the same incident or occurrence, exceeds the sum  
235       of \$400,000. This section does not modify liability limits  
236       provided in s. 768.28(5) for the state or for its agencies and





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237 subdivisions that possessed sovereign immunity before July 1,  
 238 2003.

239 (10) RULES.--The department may adopt rules for  
 240 administering this section in a manner consistent with its  
 241 purpose to provide and facilitate access to emergency medical  
 242 services and care and to maintain health care quality.

243 (11) APPLICABILITY.--This section applies to incidents  
 244 that occur on or after July 1, 2003. This section does not  
 245 reduce or limit the rights of the state or of any of its  
 246 agencies or subdivisions to any benefit provided under s. 768.28  
 247 on that date.

248 Section 2. Subsection (6) of section 766.102, Florida  
 249 Statutes, is amended to read:

250 766.102 Medical negligence; standards of recovery.--

251 (6)(a) In any action for damages involving a claim of  
 252 negligence against a physician licensed under chapter 458,  
 253 osteopathic physician licensed under chapter 459, podiatric  
 254 physician licensed under chapter 461, or chiropractic physician  
 255 licensed under chapter 460 providing emergency medical services  
 256 in a hospital emergency department, the court shall admit expert  
 257 medical testimony only from physicians, osteopathic physicians,  
 258 podiatric physicians, and chiropractic physicians who have had  
 259 substantial professional experience within the preceding 5 years  
 260 while assigned to provide emergency medical services and care in  
 261 a hospital emergency department.

262 (b) For the purposes of this subsection:

263 1. The term "emergency medical services and care" means  
 264 medical screening, examination, and evaluation by a physician,  
 265 or, to the extent permitted by applicable law, by other  
 266 appropriate personnel under the supervision of a physician, to



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267 determine if an emergency medical condition exists and, if it  
 268 does, the care, treatment, or surgery by a physician which is  
 269 necessary to relieve or eliminate the emergency medical  
 270 condition ~~those medical services required for the immediate~~  
 271 ~~diagnosis and treatment of medical conditions which, if not~~  
 272 ~~immediately diagnosed and treated, could lead to serious~~  
 273 ~~physical or mental disability or death.~~

274 2. "Substantial professional experience" shall be  
 275 determined by the custom and practice of the manner in which  
 276 emergency medical coverage is provided in hospital emergency  
 277 departments in the same or similar localities where the alleged  
 278 negligence occurred.

279 Section 3. Section 766.203, Florida Statutes, is amended  
 280 to read:

281 766.203 Presuit investigation of medical negligence claims  
 282 and defenses by prospective parties.--

283 (1) Presuit investigation of medical negligence claims and  
 284 defenses pursuant to this section and ss. 766.204-766.206  
 285 applies ~~shall apply~~ to all medical negligence, including dental  
 286 negligence, claims, and defenses. This includes ~~shall include~~:

287 (a) Rights of action under s. 768.19 and defenses thereto.

288 (b) Rights of action involving the state or its agencies  
 289 or subdivisions, or the officers, employees, or agents thereof,  
 290 pursuant to s. 768.28 and defenses thereto.

291 (2) Prior to issuing notification of intent to initiate  
 292 medical malpractice litigation pursuant to s. 766.106, the  
 293 claimant shall conduct an investigation to ascertain that there  
 294 are reasonable grounds to believe that:

295 (a) Any named defendant in the litigation was negligent in  
 296 the care or treatment of the claimant; and



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297 (b) Such negligence resulted in injury to the claimant.

298

299 Corroboration of reasonable grounds to initiate medical  
 300 negligence litigation must ~~shall~~ be provided by the claimant's  
 301 submission of a verified written medical expert opinion from a  
 302 medical expert as defined in s. 766.202(5) and, with respect to  
 303 claims involving emergency medical services and care as defined  
 304 in s. 766.102, from an expert who has the qualifications  
 305 required under s. 766.102, at the time the notice of intent to  
 306 initiate litigation is mailed, which statement must ~~shall~~  
 307 corroborate reasonable grounds to support the claim of medical  
 308 negligence.

309 (3) Prior to issuing its response to the claimant's notice  
 310 of intent to initiate litigation, during the time period for  
 311 response authorized pursuant to s. 766.106, the defendant or the  
 312 defendant's insurer or self-insurer shall conduct an  
 313 investigation to ascertain whether there are reasonable grounds  
 314 to believe that:

315 (a) The defendant was negligent in the care or treatment  
 316 of the claimant; and

317 (b) Such negligence resulted in injury to the claimant.

318

319 Corroboration of lack of reasonable grounds for medical  
 320 negligence litigation must ~~shall~~ be provided with any response  
 321 rejecting the claim by the defendant's submission of a verified  
 322 written medical expert opinion from a medical expert as defined  
 323 in s. 766.202(5) and, with respect to claims involving emergency  
 324 medical services and care as defined in s. 766.102, from an  
 325 expert who has the qualifications required under s. 766.102, at  
 326 the time the response rejecting the claim is mailed, which



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327 statement must ~~shall~~ corroborate reasonable grounds for lack of  
 328 negligent injury sufficient to support the response denying  
 329 negligent injury.

330 (4) The medical expert opinions required by this section  
 331 must ~~shall~~ specify whether any previous opinion by the same  
 332 medical expert has been disqualified and, if so, the name of the  
 333 court and the case number in which the ruling was issued.

334 Section 4. Section 768.13, Florida Statutes, is amended to  
 335 read:

336 (Substantial rewording of section. See  
 337 s. 768.13, F.S., for present text.)

338 768.13 Good Samaritan Act; immunity from civil  
 339 liability.--

340 (1) This act may be cited as the "Good Samaritan Act."

341 (2)(a) Any provider of emergency medical services and care  
 342 which in good faith renders emergency medical services and care  
 343 may not be held liable for any civil damages as a result of such  
 344 services and care unless such damages result from providing or  
 345 failing to provide medical care or treatment under circumstances  
 346 demonstrating intentional wrongdoing and intent to detrimentally  
 347 affect the life or health of another.

348 (b) The immunity provided by this subsection does not  
 349 apply to damages resulting from any act or omission in providing  
 350 medical care or treatment which:

351 1. Does not constitute emergency medical services and  
 352 care;

353 2. Occurs after the patient is discharged from the  
 354 hospital and is capable of receiving medical treatment as a  
 355 nonemergency patient unless surgery is required as a result of  
 356 the emergency within a reasonable time after the patient has



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357 been discharged from the hospital, in which case the immunity  
 358 provided by this paragraph applies to any act or omission in  
 359 providing medical care or treatment which occurs before the  
 360 stabilization of the patient following the surgery; or

361 3. Is unrelated to the original emergency medical  
 362 condition.

363 (c) As used in this subsection, the term:

364 1. "Emergency medical services and care" means medical  
 365 screening, examination, and evaluation by a physician, or, to  
 366 the extent permitted by applicable law, by other appropriate  
 367 personnel under the supervision of a physician, to determine if  
 368 an emergency medical condition exists and, if it does, the care,  
 369 treatment, or surgery related to that emergency medical  
 370 condition which is provided by a physician or other provider of  
 371 emergency medical services and care until the patient is  
 372 discharged from the hospital. The term "emergency medical  
 373 services and care" also includes prehospital treatment and  
 374 transport and medically necessary interhospital transfers by  
 375 providers of emergency medical services who are licensed under  
 376 chapter 401 as provided in ss. 401.45 and 395.1041. The term  
 377 also includes all services provided by emergency physicians in a  
 378 hospital setting, services related to the emergency medical  
 379 condition which are provided by on-call physicians in response  
 380 to calls from the emergency department, and care provided by  
 381 other health care professionals handling emergency care in a  
 382 hospital or emergency medical services setting.

383 2. "Provider of emergency medical services and care"  
 384 means:

385 a. An emergency medical services provider licensed under  
 386 chapter 401.



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- 387 b. A hospital licensed under chapter 395.
- 388 c. A physician or physician assistant licensed under
- 389 chapter 458.
- 390 d. An osteopathic physician or osteopathic physician
- 391 assistant licensed under chapter 459.
- 392 e. A chiropractic physician licensed under chapter 460.
- 393 f. A podiatric physician licensed under chapter 461.
- 394 g. An emergency medical technician or paramedic certified
- 395 under chapter 401.
- 396 h. A registered nurse, nurse midwife, licensed practical
- 397 nurse, or advanced registered nurse practitioner licensed or
- 398 registered under part I of chapter 464.
- 399 i. A midwife licensed under chapter 467.
- 400 j. A health care professional association and its
- 401 employees or a corporate medical group and its employees.
- 402 k. Any other health care professional practitioner,
- 403 provider, or facility that is under contract with a governmental
- 404 contractor, including, but not limited to, a student or medical
- 405 resident who is enrolled in an accredited program that prepares
- 406 the student for licensure or certification in any one of the
- 407 professions listed in subparagraphs c.-i.

408 3. "Intentional wrongdoing," as it applies to a given

409 health care provider rendering emergency medical services and

410 care, means conduct that a health care provider knew, at the

411 time he or she rendered the services, would result in injury

412 affecting the life or health of another.

413 Section 5. If any provision of this act or its application

414 to any person or circumstance is held invalid, the invalidity

415 does not affect other provisions or applications of this act

416 which can be given effect without the invalid provision or



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417 application, and to this end the provisions of this act are  
418 severable.

419 Section 6. This act shall take effect July 1, 2003, and  
420 applies to any cause of action filed after June 30, 2003.