

Bill No. CS for SB 2-B

Amendment No. \_\_\_\_ Barcode 892196

CHAMBER ACTION

Senate

House

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Senator Saunders moved the following amendment:

**Senate Amendment (with title amendment)**

On page 138, line 25-29, delete those lines

and insert:

Section 65. Legislative findings and intent.--The  
Legislature finds and declares it to be of vital importance  
that emergency services and care be provided by hospitals,  
physicians, and emergency medical services providers to every  
person in need of such care. The Legislature finds that

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1 mandated that prehospital emergency medical treatment or  
2 transport may not be denied by emergency medical services  
3 providers to persons who have or are likely to have an  
4 emergency medical condition. Such governmental requirements  
5 have imposed a unilateral obligation for emergency services  
6 and care providers to provide services to all persons seeking  
7 emergency care without ensuring payment or other consideration  
8 for provision of such care. The Legislature also recognizes  
9 that emergency services and care providers provide a  
10 significant amount of uncompensated emergency medical care in  
11 furtherance of such governmental interest. The Legislature  
12 finds that a significant proportion of the residents of this  
13 state who are uninsured or are Medicaid or Medicare recipients  
14 are unable to access needed health care because health care  
15 providers fear the increased risk of medical malpractice  
16 liability. The Legislature finds that such patients, in order  
17 to obtain medical care, are frequently forced to seek care  
18 through providers of emergency medical services and care. The  
19 Legislature finds that providers of emergency medical services  
20 and care in this state have reported significant problems with  
21 both the availability and affordability of professional  
22 liability coverage. The Legislature finds that medical  
23 malpractice liability insurance premiums have increased  
24 dramatically, and a number of insurers have ceased providing  
25 medical malpractice insurance coverage for emergency medical  
26 services and care in this state. This results in a functional  
27 unavailability of medical malpractice insurance coverage for  
28 some providers of emergency medical services and care. The  
29 Legislature further finds that certain specialist physicians  
30 have resigned from serving on hospital staffs or have  
31 otherwise declined to provide on-call coverage to hospital

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1 emergency departments due to increased medical malpractice  
 2 liability exposure created by treating such emergency  
 3 department patients. It is the intent of the Legislature that  
 4 hospitals, emergency medical services providers, and  
 5 physicians be able to ensure that patients who might need  
 6 emergency medical services treatment or transportation or who  
 7 present to hospitals for emergency medical services and care  
 8 have access to such needed services.

9           Section 66. Subsection (2) of section 768.13, Florida  
 10 Statutes, is amended to read:

11           768.13 Good Samaritan Act; immunity from civil  
 12 liability.--

13           (2)(a) Any person, including those licensed to  
 14 practice medicine, who gratuitously and in good faith renders  
 15 emergency care or treatment either in direct response to  
 16 emergency situations related to and arising out of a public  
 17 health emergency declared pursuant to s. 381.00315, a state of  
 18 emergency which has been declared pursuant to s. 252.36 or at  
 19 the scene of an emergency outside of a hospital, doctor's  
 20 office, or other place having proper medical equipment,  
 21 without objection of the injured victim or victims thereof,  
 22 shall not be held liable for any civil damages as a result of  
 23 such care or treatment or as a result of any act or failure to  
 24 act in providing or arranging further medical treatment where  
 25 the person acts as an ordinary reasonably prudent person would  
 26 have acted under the same or similar circumstances.

27           (b)1. Any health care provider, including a hospital  
 28 licensed under chapter 395, providing emergency services  
 29 pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s.  
 30 395.401, or s. 401.45 any employee of such hospital working in  
 31 a clinical area within the facility and providing patient

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1 ~~care, and any person licensed to practice medicine who in good~~  
2 ~~faith renders medical care or treatment necessitated by a~~  
3 ~~sudden, unexpected situation or occurrence resulting in a~~  
4 ~~serious medical condition demanding immediate medical~~  
5 ~~attention, for which the patient enters the hospital through~~  
6 ~~its emergency room or trauma center, or necessitated by a~~  
7 ~~public health emergency declared pursuant to s. 381.00315~~  
8 shall not be held liable for any civil damages as a result of  
9 such medical care or treatment unless such damages result from  
10 providing, or failing to provide, medical care or treatment  
11 under circumstances demonstrating a reckless disregard for the  
12 consequences so as to affect the life or health of another. A  
13 health care provider under this paragraph does not include a  
14 licensed health care practitioner who is providing emergency  
15 services to a person with whom the practitioner has an  
16 established provider-patient relationship outside of the  
17 emergency room setting.

18           2. The immunity provided by this paragraph applies  
19 ~~does not apply~~ to damages as a result of any act or omission  
20 of providing medical care or treatment, including diagnosis:

21           a. Which occurs prior to the time ~~after~~ the patient is  
22 stabilized and is capable of receiving medical treatment as a  
23 nonemergency patient, unless surgery is required as a result  
24 of the emergency within a reasonable time after the patient is  
25 stabilized, in which case the immunity provided by this  
26 paragraph applies to any act or omission of providing medical  
27 care or treatment which occurs prior to the stabilization of  
28 the patient following the surgery; and or

29           b. Related ~~Unrelated~~ to the original medical  
30 emergency.

31           3. For purposes of this paragraph, "reckless

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1 disregard" as it applies to a given health care provider  
2 rendering emergency medical services shall be such conduct  
3 ~~that which~~ a health care provider knew or should have known,  
4 at the time such services were rendered, created an  
5 unreasonable risk of injury so as to affect the life or health  
6 of another, and such risk was substantially greater than that  
7 which is necessary to make the conduct negligent. ~~would be~~  
8 ~~likely to result in injury so as to affect the life or health~~  
9 ~~of another, taking into account the following to the extent~~  
10 ~~they may be present;~~

11 a. ~~The extent or serious nature of the circumstances~~  
12 ~~prevailing.~~

13 b. ~~The lack of time or ability to obtain appropriate~~  
14 ~~consultation.~~

15 c. ~~The lack of a prior patient-physician relationship.~~

16 d. ~~The inability to obtain an appropriate medical~~  
17 ~~history of the patient.~~

18 e. ~~The time constraints imposed by coexisting~~  
19 ~~emergencies.~~

20 4. Every emergency care facility granted immunity  
21 under this paragraph shall accept and treat all emergency care  
22 patients within the operational capacity of such facility  
23 without regard to ability to pay, including patients  
24 transferred from another emergency care facility or other  
25 health care provider pursuant to Pub. L. No. 99-272, s. 9121.  
26 The failure of an emergency care facility to comply with this  
27 subparagraph constitutes grounds for the department to  
28 initiate disciplinary action against the facility pursuant to  
29 chapter 395.

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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 15, line 7, after the semicolon,

4

5 insert:

6            providing legislative intent and findings with

7            respect to the provision of emergency medical

8            services and care by care providers;

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