



HB 0031B

2003

A bill to be entitled

An act relating to providers of emergency medical services and care; providing legislative findings and intent; amending s. 768.28, F.S.; revising the definition of "officer, employee, or agent" to include providers of emergency medical services and care for purposes of limitation of liability in tort under certain circumstances; providing that providers of emergency medical services and care are deemed agents of the Department of Health for certain purposes; requiring such providers to indemnify the state for certain reasonable defense and indemnity costs within certain limitations; specifying certain persons as providers of emergency medical services and care; defining emergency medical services; providing for construction of the act in pari materia with laws enacted during the 2003 Regular Session or the 2003 Special Session A of the Legislature; providing application; providing an effective date.

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

Section 1. 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 providers of emergency medical services and care are critical elements in responding to disaster and emergency situations that might affect our local communities, state, and country. The Legislature recognizes the importance of maintaining a viable system of providing for the emergency medical needs of residents



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31 of this state and visitors to this state. The Legislature and  
32 the Federal Government have required such providers of emergency  
33 medical services and care to provide emergency services and care  
34 to all persons who present themselves to hospitals seeking such  
35 care. The Legislature has further mandated that prehospital  
36 emergency medical treatment or transport may not be denied by  
37 emergency medical services providers to persons who have or are  
38 likely to have an emergency medical condition. Such governmental  
39 requirements have imposed a unilateral obligation for providers  
40 of emergency medical services and care to provide services to  
41 all persons seeking emergency care without ensuring payment or  
42 other consideration for provision of such care. The Legislature  
43 also recognizes that providers of emergency medical services and  
44 care provide a significant amount of uncompensated emergency  
45 medical care in furtherance of such governmental interest. A  
46 significant proportion of the residents of this state who are  
47 uninsured or are Medicaid or Medicare recipients are unable to  
48 access needed health care because health care providers fear the  
49 increased risk of medical malpractice liability. Such patients,  
50 in order to obtain medical care, are frequently forced to seek  
51 care through providers of emergency medical services and care.  
52 Providers of emergency medical services and care in this state  
53 have reported significant problems with both the availability  
54 and affordability of professional liability coverage. Medical  
55 malpractice liability insurance premiums have increased  
56 dramatically and a number of insurers have ceased providing  
57 medical malpractice coverage for emergency medical services and  
58 care in this state. This results in a functional unavailability  
59 of malpractice coverage for some providers of emergency medical  
60 services and care. The Legislature further finds that certain



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61 specialist physicians have resigned from serving on hospital  
62 staffs or have otherwise declined to provide on-call coverage to  
63 hospital emergency departments due to increased medical  
64 malpractice liability exposure created by treating such  
65 emergency department patients. It is the intent of the  
66 Legislature that hospitals, emergency medical services  
67 providers, and physicians be able to ensure that patients who  
68 might need emergency medical services treatment or  
69 transportation or who present themselves to hospitals for  
70 emergency medical services and care have access to such needed  
71 services.

72 Section 2. Paragraph (b) of subsection (9) of section  
73 768.28, Florida Statutes, is amended to read:

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

78 (9)

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

80 1. "Employee" includes any volunteer firefighter.

81 2. "Officer, employee, or agent" includes, but is not  
82 limited to:

83 a. Any health care provider when providing services  
84 pursuant to s. 766.1115, any member of the Florida Health  
85 Services Corps, as defined in s. 381.0302, who provides  
86 uncompensated care to medically indigent persons referred by the  
87 Department of Health, and any public defender or her or his  
88 employee or agent, including, among others, an assistant public  
89 defender and an investigator.



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90 b. Any provider of emergency medical services and care  
91 acting pursuant to obligations imposed by s. 395.1041, s.  
92 395.401, or s. 401.45. Except for persons or entities that are  
93 otherwise covered under this section, providers of emergency  
94 medical services and care shall be considered agents of the  
95 Department of Health and shall indemnify the state for the  
96 reasonable costs of defense and indemnity payments, if any, up  
97 to the liability limits set forth in this chapter. For purposes  
98 of this sub-subparagraph:

99 (I) The term "provider of emergency medical services and  
100 care" means all persons and entities covered under or providing  
101 services pursuant to obligations imposed by s. 395.1041, s.  
102 395.401, or s. 401.45, including, but not limited to:

103 (A) An emergency medical services provider licensed under  
104 part III of chapter 401 and persons operating as employees or  
105 agents of such provider or an emergency medical technician or  
106 paramedic certified under part III of chapter 401.

107 (B) A hospital licensed under chapter 395 and persons  
108 operating as employees or agents of such hospital.

109 (C) A physician licensed under chapter 458, chapter 459,  
110 chapter 460, or chapter 461 or a dentist licensed under chapter  
111 466.

112 (D) A physician assistant licensed under chapter 458 or  
113 chapter 459.

114 (E) A registered nurse, nurse midwife, licensed practical  
115 nurse, or advanced registered nurse practitioner licensed or  
116 registered under part I of chapter 464.

117 (F) A midwife licensed under chapter 467.

118 (G) A health care professional association and employees  
119 or agents of the association or a corporate medical group and



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120 employees or agents of such group.

121 (H) Any student or medical resident who is enrolled in an  
 122 accredited program or licensed program that prepares the student  
 123 for licensure or certification in any one of the professions  
 124 listed in sub-sub-sub-subparagraphs (C)-(G), the program that  
 125 prepares the student for licensure or certification, and the  
 126 entity responsible for the training of the student or medical  
 127 resident.

128 (I) Any other person or entity that provides services  
 129 pursuant to obligations imposed by s. 395.1041, s. 395.401, or  
 130 s. 401.45.

131 (II) "Emergency medical services" means ambulance  
 132 assessment, treatment, or transport services provided pursuant  
 133 to obligations imposed by s. 395.1041 or s. 401.45; all  
 134 screening, examination, and evaluation performed by a physician,  
 135 hospital, or other person or entity acting pursuant to  
 136 obligations imposed by s. 395.1041 or s. 395.401; and any care,  
 137 treatment, surgery, or other medical services provided, as  
 138 outpatient or inpatient, to relieve or eliminate an emergency  
 139 medical condition, including all medical services to eliminate  
 140 the likelihood that the emergency medical condition will  
 141 deteriorate or recur without further medical attention within a  
 142 reasonable period of time.

143 Section 3. If any law amended by this act was also amended  
 144 by a law enacted at the 2003 Regular Session of the Legislature  
 145 or at the 2003 Special Session A of the Legislature, such laws  
 146 shall be construed as if they had been enacted at the same  
 147 session of the Legislature, and full effect shall be given to  
 148 each if possible.



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149           Section 4. This act shall take effect upon becoming a law  
150 and applies to any cause of action filed on or after that date.