

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

.
.
.

Representative Green offered the following:

Amendment (with title amendment)

Between line 2510 and 2511, insert:

Section 55. 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 of this state and visitors to this state. The Legislature and the Federal Government have required such providers of emergency medical services and care to provide emergency services and care to all persons who present themselves to hospitals seeking such

Amendment No. (for drafter's use only)

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

224015

Amendment No. (for drafter's use only)

57 malpractice liability exposure created by treating such
58 emergency department patients. It is the intent of the
59 Legislature that hospitals, emergency medical services
60 providers, and physicians be able to ensure that patients who
61 might need emergency medical services treatment or
62 transportation or who present themselves to hospitals for
63 emergency medical services and care have access to such needed
64 services.

65 Section 56. Paragraph (b) of subsection (9) of section
66 768.28, Florida Statutes, is amended to read:

67 768.28 Waiver of sovereign immunity in tort actions;
68 recovery limits; limitation on attorney fees; statute of
69 limitations; exclusions; indemnification; risk management
70 programs.--

71 (9)

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

73 1. "Employee" includes any volunteer firefighter.

74 2. "Officer, employee, or agent" includes, but is not
75 limited to:7

76 a. Any health care provider when providing services
77 pursuant to s. 766.1115, any member of the Florida Health
78 Services Corps, as defined in s. 381.0302, who provides
79 uncompensated care to medically indigent persons referred by the
80 Department of Health, and any public defender or her or his
81 employee or agent, including, among others, an assistant public
82 defender and an investigator.

83 b. Any provider of emergency medical services and care
84 acting pursuant to obligations imposed by s. 395.1041, s.
85 395.401, or s. 401.45. Except for persons or entities that are

Amendment No. (for drafter's use only)

86 otherwise covered under this section, providers of emergency
87 medical services and care shall be considered agents of the
88 Department of Health and shall indemnify the state for the
89 reasonable costs of defense and indemnity payments, if any, up
90 to the liability limits set forth in this chapter. For purposes
91 of this sub-subparagraph:

92 (I) The term "provider of emergency medical services and
93 care" means all persons and entities covered under or providing
94 services pursuant to obligations imposed by s. 395.1041, s.
95 395.401, or s. 401.45, including, but not limited to:

96 (A) An emergency medical services provider licensed under
97 part III of chapter 401 and persons operating as employees or
98 agents of such provider or an emergency medical technician or
99 paramedic certified under part III of chapter 401.

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

102 (C) A physician licensed under chapter 458, chapter 459,
103 chapter 460, or chapter 461 or a dentist licensed under chapter
104 466.

105 (D) A physician assistant licensed under chapter 458 or
106 chapter 459.

107 (E) A registered nurse, nurse midwife, licensed practical
108 nurse, or advanced registered nurse practitioner licensed or
109 registered under part I of chapter 464.

110 (F) A midwife licensed under chapter 467.

111 (G) A health care professional association and employees
112 or agents of the association or a corporate medical group and
113 employees or agents of such group.

Amendment No. (for drafter's use only)

114 (H) Any student or medical resident who is enrolled in an
115 accredited program or licensed program that prepares the student
116 for licensure or certification in any one of the professions
117 listed in sub-sub-sub-subparagraphs (C)-(G), the program that
118 prepares the student for licensure or certification, and the
119 entity responsible for the training of the student or medical
120 resident.

121 (I) Any other person or entity that provides services
122 pursuant to obligations imposed by s. 395.1041, s. 395.401, or
123 s. 401.45.

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

136
137 ===== T I T L E A M E N D M E N T =====

138 Remove line 215, and insert:

139 1, 2004; providing legislative findings and intent; amending s.
140 768.28, F.S.; revising the definition of the term "officer,
141 employee, or agent" to include providers of emergency medical
142 services and care for purposes of limitation of liability in

Amendment No. (for drafter's use only)

143 | tort under certain circumstances; providing that providers of
144 | emergency medical services and care are deemed agents of the
145 | Department of Health for certain purposes; requiring such
146 | providers to indemnify the state for certain reasonable defense
147 | and indemnity costs within certain limitations; specifying
148 | certain persons as providers of emergency medical services and
149 | care; defining emergency medical services; providing
150 | severability; providing for