

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Murman offered the following:

Substitute Amendment for Amendment (224015) (with directory and title amendments)

Between line(s) 2510 and 2511, insert:

Section 55. (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 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

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

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

67 (2) The Legislature finds that access to quality,
68 affordable health care for all Floridians is a necessary goal
69 for this state and that teaching hospitals play an essential
70 role in providing access to comprehensive health care services.
71 The Legislature finds that access to quality health care at
72 teaching hospitals is enhanced when teaching hospitals affiliate
73 and coordinate their common endeavors with medical schools.
74 These affiliations have proved to be an integral part of the
75 delivery of more efficient and economical health care services
76 to patients of teaching hospitals by offering quality graduate
77 medical education programs to resident physicians who provide
78 patient services at teaching hospitals and clinics owned by such
79 hospitals. These affiliations ensure continued access to quality
80 comprehensive health care services for Floridians and,
81 therefore, should be encouraged in order to maintain and expand
82 such services. The Legislature finds that when teaching
83 hospitals affiliate or enter into contracts with medical schools
84 to provide comprehensive health care services to patients of
85 teaching hospitals, teaching hospitals greatly increase their

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86 exposure to claims arising out of alleged medical malpractice
87 and other allegedly negligent acts because some teaching
88 hospital employees and agents do not have the same level of
89 protection against liability claims as colleges and universities
90 with medical schools and their employees providing the same
91 patient services to the same teaching hospital patients. The
92 Legislature finds that the high cost of litigation, unequal
93 liability exposure, and increased medical malpractice insurance
94 premiums have adversely impacted the ability of some teaching
95 hospitals to permit their employees to provide patient services
96 to patients of teaching hospitals. This finding is consistent
97 with the report issued in April 2002 by the American Medical
98 Association declaring Florida to be one of 12 states in the
99 midst of a medical liability insurance crisis. The crisis in the
100 availability and affordability of medical malpractice insurance
101 is a contributing factor in the reduction of access to quality
102 health care in this state and has declined significantly. If no
103 corrective action is taken, this health care crisis will lead to
104 a continued reduction of patient services in teaching hospitals.
105 The Legislature finds that the state's 6 teaching hospitals
106 provide 70 percent of the state's graduate medical education as
107 reported in the 2001-2002 Report on Graduate Medical Education
108 in Florida: Findings and Recommendations and that the teaching
109 hospitals ensure the state's future medical manpower. The
110 Legislature finds that the public is better served and will
111 benefit from corrective action to address the foregoing
112 concerns. It is imperative that the legislature further the
113 public benefit by conferring sovereign immunity upon teaching
114 hospitals and their employees and agents when teaching hospitals

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115 elect to be agents of the Department of Health as providers of
116 the state's graduate medical education. It is also the intent of
117 the Legislature that employees of teaching hospitals providing
118 patient services to patients of a teaching hospital be immune
119 from lawsuits in the same manner and to the same extent as
120 employees and agents of the state, its agencies and political
121 subdivisions, and further, that they shall not be held
122 personally liable in tort or named as a party defendant in an
123 action while performing patient services except as provided in
124 s. 768.28(9)(a).

125 Section 56. Paragraph (b) of subsection (9) of section
126 768.28, Florida Statutes, is amended to read:

127 768.28 Waiver of sovereign immunity in tort actions;
128 recovery limits; limitation on attorney fees; statute of
129 limitations; exclusions; indemnification; risk management
130 programs.--

131 (9)

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

133 1. "Employee" includes any volunteer firefighter.

134 2. "Officer, employee, or agent" includes, but is not
135 limited to:

136 a. Any receiving facility designated under chapter 394 and
137 any persons operating as employees or agents of the receiving
138 facility when providing emergency treatment to a person who
139 presented himself or herself for examination and treatment in
140 accordance with chapter 394.

141 b. Any health care provider when providing services
142 pursuant to s. 766.1115, any member of the Florida Health
143 Services Corps, as defined in s. 381.0302, who provides

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144 uncompensated care to medically indigent persons referred by the
145 Department of Health, and any public defender or her or his
146 employee or agent, including, among others, an assistant public
147 defender and an investigator.

148 c. Any provider of emergency medical services and care
149 acting pursuant to obligations imposed by s. 395.1041, s.
150 395.401, or s. 401.45. Except for persons or entities that are
151 otherwise covered under this section, providers of emergency
152 medical services and care shall be considered agents of the
153 Department of Health and shall indemnify the state for the
154 reasonable costs of defense and indemnity payments, if any, up
155 to the liability limits set forth in this chapter. For purposes
156 of this sub-subparagraph:

157 (I) The term "provider of emergency medical services and
158 care" means all persons and entities covered under or providing
159 services pursuant to obligations imposed by s. 395.1041, s.
160 395.401, or s. 401.45, including, but not limited to:

161 (A) An emergency medical services provider licensed under
162 part III of chapter 401 and persons operating as employees or
163 agents of such provider or an emergency medical technician or
164 paramedic certified under part III of chapter 401.

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

167 (C) A physician licensed under chapter 458, chapter 459,
168 chapter 460, or chapter 461 or a dentist licensed under chapter
169 466.

170 (D) A physician assistant licensed under chapter 458 or
171 chapter 459.

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172 (E) A registered nurse, nurse midwife, licensed practical
173 nurse, or advanced registered nurse practitioner licensed or
174 registered under part I of chapter 464.

175 (F) A midwife licensed under chapter 467.

176 (G) A health care professional association and employees
177 or agents of the association or a corporate medical group and
178 employees or agents of such group.

179 (H) Any student or medical resident who is enrolled in an
180 accredited program or licensed program that prepares the student
181 for licensure or certification in any one of the professions
182 listed in sub-sub-sub-subparagraphs (C)-(G), the program that
183 prepares the student for licensure or certification, and the
184 entity responsible for the training of the student or medical
185 resident.

186 (I) Any other person or entity that provides services
187 pursuant to obligations imposed by s. 395.1041, s. 395.401, or
188 s. 401.45.

189 (II) The term "emergency medical services" means ambulance
190 assessment, treatment, or transport services provided pursuant
191 to obligations imposed by s. 395.1041 or s. 401.45; all
192 screening, examination, and evaluation performed by a physician,
193 hospital, or other person or entity acting pursuant to
194 obligations imposed by s. 395.1041 or s. 395.401; and any care,
195 treatment, surgery, or other medical services provided, as
196 outpatient or inpatient, to relieve or eliminate an emergency
197 medical condition, including all medical services to eliminate
198 the likelihood that the emergency medical condition will
199 deteriorate or recur without further medical attention within a
200 reasonable period of time.

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- 201 d. Any hospital which is either:
- 202 (I) A teaching hospital, as defined in s. 408.07;
- 203 (II) A hospital participating under the provisions of s.
- 204 381.0403; or
- 205 (III) A hospital designated as a family practice teaching
- 206 hospital under the provisions of s. 395.806:

207

208 and any employee or agent of such hospital who provides patient

209 services to patients at the hospital facility or at a clinic or

210 other facility owned and operated by the hospital, which

211 hospital elects to be considered as an agent of the Department

212 of Health and indemnifies the state for the reasonable costs of

213 defense and indemnity payments, if any, up to the liability

214 limits set forth in this chapter.

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

217 Remove line 215, and insert:

218 1, 2004; providing legislative findings and intent; amending s.

219 768.28, F.S.; revising the definition of the term "officer,

220 employee, or agent" to include certain receiving facilities and

221 employees or agents of such facilities, providers of emergency

222 medical services and care, and certain hospitals for purposes of

223 limitation of liability in tort under certain circumstances;

224 providing that providers of emergency medical services and care

225 are deemed agents of the Department of Health for certain

226 purposes; requiring such providers to indemnify the state for

227 certain reasonable defense and indemnity costs within certain

228 limitations; specifying certain persons as providers of

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229 emergency medical services and care; defining emergency medical
230 services; providing severability; providing for
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