

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 title amendment)**

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

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

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

128 Section 56. Paragraph (b) of subsection (9) of section  
129 768.28, Florida Statutes, is amended to read:

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

134 (9)

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

136 1. "Employee" includes any volunteer firefighter.

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

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

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144 b. Any health care provider when providing services  
145 pursuant to s. 766.1115, any member of the Florida Health  
146 Services Corps, as defined in s. 381.0302, who provides  
147 uncompensated care to medically indigent persons referred by the  
148 Department of Health, and any public defender or her or his  
149 employee or agent, including, among others, an assistant public  
150 defender and an investigator.

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

160 (I) The term "provider of emergency medical services and  
161 care" means all persons and entities covered under or providing  
162 services pursuant to obligations imposed by s. 395.1041, s.  
163 395.401, or s. 401.45, including, but not limited to:

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

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

170 (C) A physician licensed under chapter 458, chapter 459,  
171 chapter 460, or chapter 461 or a dentist licensed under chapter  
172 466.

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173 (D) A physician assistant licensed under chapter 458 or  
174 chapter 459.

175 (E) A registered nurse, nurse midwife, licensed practical  
176 nurse, or advanced registered nurse practitioner licensed or  
177 registered under part I of chapter 464.

178 (F) A midwife licensed under chapter 467.

179 (G) A health care professional association and employees  
180 or agents of the association or a corporate medical group and  
181 employees or agents of such group.

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

189 (I) Any other person or entity that provides services  
190 pursuant to obligations imposed by s. 395.1041, s. 395.401, or  
191 s. 401.45.

192 (II) The term "emergency medical services" means ambulance  
193 assessment, treatment, or transport services provided pursuant  
194 to obligations imposed by s. 395.1041 or s. 401.45; all  
195 screening, examination, and evaluation performed by a physician,  
196 hospital, or other person or entity acting pursuant to  
197 obligations imposed by s. 395.1041 or s. 395.401; and any care,  
198 treatment, surgery, or other medical services provided, as  
199 outpatient or inpatient, to relieve or eliminate an emergency  
200 medical condition, including all medical services to eliminate  
201 the likelihood that the emergency medical condition will

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202 deteriorate or recur without further medical attention within a  
203 reasonable period of time.

204 d. Any public teaching hospital, as defined in s. 408.07,  
205 and any employee or agent of a public teaching hospital who  
206 provides patient services to patients at such facility or at a  
207 clinic or other facility owned and operated by the public  
208 teaching hospital, that elects to be considered as an agent of  
209 the Department of Health and indemnifies the state for the  
210 reasonable costs of defense and indemnity payments, if any, up  
211 to the liability limits set forth in this chapter.

212  
213 ===== T I T L E A M E N D M E N T =====

214 Remove line 215, and insert:

215 1, 2004; providing legislative findings and intent; amending s.  
216 768.28, F.S.; revising the definition of the term "officer,  
217 employee, or agent" to include certain receiving facilities and  
218 employees or agents of such facilities, providers of emergency  
219 medical services and care, and certain public teaching hospitals  
220 for purposes of limitation of liability in tort under certain  
221 circumstances; providing that providers of emergency medical  
222 services and care are deemed agents of the Department of Health  
223 for certain purposes; requiring such providers to indemnify the  
224 state for certain reasonable defense and indemnity costs within  
225 certain limitations; specifying certain persons as providers of  
226 emergency medical services and care; defining emergency medical  
227 services; providing severability; providing for