

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Murman offered the following:

Substitute Amendment for Amendment (956975) (with directory and title amendments)

Between lines 2510 and 2511, and insert:

Section 55. (1) The Legislature finds that access to quality, affordable health care for all Floridians is a necessary goal for this state and that teaching hospitals play an essential role in providing access to comprehensive health care services. The Legislature finds that access to quality health care at teaching hospitals is enhanced when teaching hospitals affiliate and coordinate their common endeavors with medical schools. These affiliations have proved to be an integral part of the delivery of more efficient and economical health care services to patients of teaching hospitals by offering quality graduate medical education programs to resident physicians who provide patient services at teaching hospitals

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28 and clinics owned by such hospitals. These affiliations ensure
29 continued access to quality comprehensive health care services
30 for Floridians and, therefore, should be encouraged in order to
31 maintain and expand such services. The Legislature finds that
32 when teaching hospitals affiliate or enter into contracts with
33 medical schools to provide comprehensive health care services to
34 patients of teaching hospitals, teaching hospitals greatly
35 increase their exposure to claims arising out of alleged medical
36 malpractice and other allegedly negligent acts because some
37 public teaching hospital employees and agents do not have the
38 same level of protection against liability claims as colleges
39 and universities with medical schools and their employees
40 providing the same patient services to the same teaching
41 hospital patients. The Legislature finds that the high cost of
42 litigation, unequal liability exposure, and increased medical
43 malpractice insurance premiums have adversely impacted the
44 ability of some teaching hospitals to permit their employees to
45 provide patient services to patients of teaching hospitals. This
46 finding is consistent with the report issued in April 2002 by
47 the American Medical Association declaring Florida to be one of
48 12 states in the midst of a medical liability insurance crisis.
49 The crisis in the availability and affordability of medical
50 malpractice insurance is a contributing factor in the reduction
51 of access to quality health care in this state and has declined
52 significantly. If no corrective action is taken, this health
53 care crisis will lead to a continued reduction of patient
54 services in public teaching hospitals. The Legislature finds
55 that the state's teaching hospitals provide a majority of the
56 state's graduate medical education as reported in the 2001-2002

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57 Report on Graduate Medical Education in Florida: Findings and
58 Recommendations and that the teaching hospitals ensure the
59 state's future medical manpower. The Legislature finds that the
60 public is better served and will benefit from corrective action
61 to address the foregoing concerns. It is imperative that the
62 Legislature further the public benefit by conferring sovereign
63 immunity upon teaching hospitals and their employees and agents
64 when teaching hospitals elect to be agents of the Department of
65 Health as providers of the state's graduate medical education.
66 It is also the intent of the Legislature that employees of
67 teaching hospitals providing patient services to patients of a
68 teaching hospital be immune from lawsuits in the same manner and
69 to the same extent as employees and agents of the state, its
70 agencies, and political subdivisions, and further, that they
71 shall not be held personally liable in tort or named as a party
72 defendant in an action while performing patient services except
73 as provided in s. 768.28(9)(a).

74 Section 56. Paragraph (b) of subsection (9) of section
75 768.28, Florida Statutes, is amended to read:

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

80 (9)

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

82 1. "Employee" includes any volunteer firefighter.

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

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85 a. Any receiving facility designated under chapter 394 and
86 any persons operating as employees or agents of the receiving
87 facility when providing emergency treatment to a person who
88 presented himself or herself for examination and treatment in
89 accordance with chapter 394.

90 b. Any health care provider when providing services
91 pursuant to s. 766.1115, any member of the Florida Health
92 Services Corps, as defined in s. 381.0302, who provides
93 uncompensated care to medically indigent persons referred by the
94 Department of Health, and any public defender or her or his
95 employee or agent, including, among others, an assistant public
96 defender and an investigator.

97 c. Any hospital which is either:
98 (I) A teaching hospital, as defined in s. 408.07;
99 (II) A hospital participating under the provisions of s.
100 381.0403; or

101 (III) A hospital designated as a family practice teaching
102 hospital under the provisions of s. 395.806:

103
104 and any employee or agent of such hospital who provides patient
105 services to patients at the hospital facility or at a clinic or
106 other facility owned and operated by the hospital, which
107 hospital elects to be considered as an agent of the Department
108 of Health and indemnifies the state for the reasonable costs of
109 defense and indemnity payments, if any, up to the liability
110 limits set forth in this chapter.

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

113 Remove line 215, and insert:

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114 1, 2004; providing legislative findings and intent; amending s.
115 768.28, F.S.; revising the definition of the term "officer,
116 employee, or agent" to include certain receiving facilities and
117 certain teaching hospitals and employees or agents of such
118 facilities for purposes of limitation of liability in tort under
119 certain circumstances; providing severability; providing for