

HB 1639

2004

A bill to be entitled

An act relating to sovereign immunity; providing legislative findings and intent; amending s. 766.1115, F.S.; specifying nonapplicability to certain affiliation agreements or contracts to provide certain comprehensive health care services protected by sovereign immunity; amending s. 768.28, F.S.; expanding a definition to include certain health care providers; including under sovereign immunity protection provisions certain colleges, universities, and medical schools providing comprehensive health care services to patients at public hospitals under certain circumstances; providing definitions; providing an exception; providing an effective date.

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

Section 1. Legislative findings and intent.--

(1) The Legislature finds that access to quality, affordable health care for all residents of this state is a necessary goal for the state and that public hospitals play an essential role in providing access to comprehensive health care services.

(2) The Legislature further finds that access to quality health care at public hospitals is enhanced when public hospitals affiliate and coordinate their common endeavors with medical schools. These affiliations have proven to be an integral part of the delivery of more efficient and economical health care services to patients of public hospitals by offering quality graduate medical education programs to resident physicians who

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30 provide patient services at public hospitals. These affiliations
 31 ensure continued access to quality comprehensive health care
 32 services for residents of this state and therefore should be
 33 encouraged in order to maintain and expand such services.

34 (3) The Legislature finds that when medical schools
 35 affiliate or enter into contracts with public hospitals to
 36 provide comprehensive health care services to patients of public
 37 hospitals, they greatly increase their exposure to claims arising
 38 out of alleged medical malpractice and other allegedly negligent
 39 acts because some colleges and universities and their medical
 40 schools and employees do not have the same level of protection
 41 against liability claims as governmental entities and their
 42 public employees providing the same patient services to the same
 43 public hospital patients.

44 (4) The Legislature finds that the high cost of litigation,
 45 unequal liability exposure, and increased medical malpractice
 46 insurance premiums have adversely impacted the ability of some
 47 medical schools to permit their employees to provide patient
 48 services to patients of public hospitals. This finding is
 49 consistent with the report issued in April 2002 by the American
 50 Medical Association declaring this state to be one of 12 states
 51 in the midst of a medical liability insurance crisis. The crisis
 52 in the availability and affordability of medical malpractice
 53 insurance is a contributing factor in the reduction of access to
 54 quality health care in this state. In the past 15 years, the
 55 number of public hospitals in this state has declined
 56 significantly. In 1988, 33 hospitals were owned or operated by
 57 the state and local governments or established as taxing
 58 districts. In 1991, that number dropped to 28. In 2001, only 18

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59 remained, 7 of these concentrated in 1 county. Thus, 11 public
 60 hospitals serve the other 66 counties of this state. If no
 61 corrective action is taken, this health care crisis will lead to
 62 a continued reduction of patient services in public hospitals.

63 (5) The Legislature finds that the public is better served
 64 and will benefit from corrective action to address the foregoing
 65 concerns. It is imperative that the Legislature further the
 66 public benefit by conferring sovereign immunity upon colleges and
 67 universities, their medical schools, and their employees when,
 68 pursuant to an affiliation agreement or a contract to provide
 69 comprehensive health care services, they provide patient services
 70 to patients of public hospitals.

71 (6) It is the intent of the Legislature that colleges and
 72 universities that affiliate with public hospitals be granted
 73 sovereign immunity protection under s. 768.28, Florida Statutes,
 74 in the same manner and to the same extent as the state and its
 75 agencies and political subdivisions. It is also the intent of the
 76 Legislature that employees of colleges and universities who
 77 provide patient services to patients of a public hospital be
 78 immune from lawsuits in the same manner and to the same extent as
 79 employees and agents of the state and its agencies and political
 80 subdivisions and, further, that they shall not be held personally
 81 liable in tort or named as a party defendant in an action while
 82 performing patient services except as provided in s.
 83 768.28(9)(a), Florida Statutes.

84 Section 2. Subsection (11) of section 766.1115, Florida
 85 Statutes, is amended to read:

86 766.1115 Health care providers; creation of agency
 87 relationship with governmental contractors.--

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88 (11) APPLICABILITY.--This section applies to incidents
 89 occurring on or after April 17, 1992. This section does not
 90 apply to any health care contract entered into by the Department
 91 of Corrections which is subject to s. 768.28(10)(a). This
 92 section does not apply to any affiliation agreement or contract
 93 entered into by a medical school to provide comprehensive health
 94 care services to patients at public hospitals which is subject to
 95 s. 768.28(10)(f). Nothing in this section in any way reduces or
 96 limits the rights of the state or any of its agencies or
 97 subdivisions to any benefit currently provided under s. 768.28.

98 Section 3. Paragraph (b) of subsection (9) of section
 99 768.28, Florida Statutes, is amended, and paragraph (f) is added
 100 to subsection (10) of said section, to read:

101 768.28 Waiver of sovereign immunity in tort actions;
 102 recovery limits; limitation on attorney fees; statute of
 103 limitations; exclusions; indemnification; risk management
 104 programs.--

105 (9)

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

- 107 1. "Employee" includes any volunteer firefighter.
- 108 2. "Officer, employee, or agent" includes, but is not
 109 limited to:

110 a. Any health care provider when providing services
 111 pursuant to s. 766.1115.

112 b. Any member of the Florida Health Services Corps, as
 113 defined in s. 381.0302, who provides uncompensated care to
 114 medically indigent persons referred by the Department of Health.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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115 c.7 ~~and~~ Any public defender or her or his employee or
 116 agent, including, among others, an assistant public defender and
 117 an investigator.

118 d.(I) Any college or university or its medical school that
 119 enters into an affiliation agreement or a contract to allow its
 120 employees to provide comprehensive health care services to
 121 patients treated at public statutory teaching hospitals, any
 122 other health care facilities owned or used by a governmental
 123 entity, or other locations under contract with the governmental
 124 entity to provide comprehensive health care services to public
 125 hospital patients pursuant to paragraph (10)(f).

126 (II) Any faculty member or other health care professional,
 127 practitioner, or ancillary caregiver or employee of a college or
 128 university or its medical school that enters into an affiliation
 129 agreement or a contract to provide comprehensive health care
 130 services with a public hospital or its governmental owner and who
 131 provides such services to patients of public hospitals pursuant
 132 to paragraph (10)(f).

133 (10)

134 (f)1. Any not-for-profit college or university with a
 135 medical, dental, or nursing school, or any other academic
 136 programs of medical education accredited by any association,
 137 agency, council, commission, or accrediting body recognized by
 138 this state as a condition for licensure of its graduates,
 139 hereinafter collectively referred to as "medical school," that
 140 has entered into an affiliation agreement or a contract to allow
 141 its faculty, health care professionals, practitioners, and
 142 ancillary caregivers and employees, hereinafter referred to as
 143 "employees," to provide patient services to patients treated at a

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144 public hospital, together with the employees of such medical
 145 school, shall be deemed agents of the governmental entity for
 146 purposes of this section and shall be immune from liability for
 147 torts in the same manner and to the same extent as the state and
 148 its agencies and subdivisions while providing patient services.

149 2. For purposes of this paragraph, the term:

150 a. "Patient services" means:

151 (I) Any comprehensive health care services, as defined in
 152 s. 641.19(4), including related administrative services to
 153 patients of a public hospital.

154 (II) Supervision of interns, residents, and fellows
 155 providing any patient services to patients of a public hospital.

156 (III) Access to participation in medical research
 157 protocols.

158 b. "Public hospital" means a statutory teaching hospital or
 159 any other health care facility owned or used by the state, a
 160 county, a municipality, a public authority, a special taxing
 161 district with health care responsibilities, or any other local
 162 governmental entity, or at any location under contract with the
 163 governmental entity.

164 3. No such employee or agent of such colleges or
 165 universities or their medical schools shall be personally liable
 166 in tort or named as a party defendant in any action arising from
 167 the provision of any patient services to patients of a public
 168 hospital, except as provided in paragraph (9)(a).

169 Section 4. This act shall take effect upon becoming a law.