

CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Legislative findings and intent.--

22 (1) The Legislature finds that access to quality,  
23 affordable health care for all residents of this state is a

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24 | necessary goal for the state and that public hospitals play an  
25 | essential role in providing access to comprehensive health care  
26 | services.

27 | (2) The Legislature further finds that access to quality  
28 | health care at public hospitals is enhanced when public  
29 | hospitals affiliate and coordinate their common endeavors with  
30 | medical schools. These affiliations have proven to be an  
31 | integral part of the delivery of more efficient and economical  
32 | health care services to patients of public hospitals by offering  
33 | quality graduate medical education programs to resident  
34 | physicians who provide patient services at public hospitals.  
35 | These affiliations ensure continued access to quality  
36 | comprehensive health care services for residents of this state  
37 | and therefore should be encouraged in order to maintain and  
38 | expand such services.

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

49 | (4) The Legislature finds that the high cost of  
50 | litigation, unequal liability exposure, and increased medical  
51 | malpractice insurance premiums have adversely impacted the

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52 ability of some medical schools to permit their employees to  
53 provide patient services to patients of public hospitals. This  
54 finding is consistent with the report issued in April 2002 by  
55 the American Medical Association declaring this state to be one  
56 of 12 states in the midst of a medical liability insurance  
57 crisis. The crisis in the availability and affordability of  
58 medical malpractice insurance is a contributing factor in the  
59 reduction of access to quality health care in this state. In the  
60 past 15 years, the number of public hospitals in this state has  
61 declined significantly. In 1988, 33 hospitals were owned or  
62 operated by the state and local governments or established as  
63 taxing districts. In 1991, that number dropped to 28. In 2001,  
64 only 18 remained, 7 of these concentrated in 1 county. Thus, 11  
65 public hospitals serve the other 66 counties of this state. If  
66 no corrective action is taken, this health care crisis will lead  
67 to a continued reduction of patient services in public  
68 hospitals.

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

77 (6) It is the intent of the Legislature that colleges and  
78 universities that affiliate with public hospitals be granted  
79 sovereign immunity protection under s. 768.28, Florida Statutes,

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80 in the same manner and to the same extent as the state and its  
 81 agencies and political subdivisions. It is also the intent of  
 82 the Legislature that employees of colleges and universities who  
 83 provide patient services to patients of a public hospital be  
 84 immune from lawsuits in the same manner and to the same extent  
 85 as employees and agents of the state and its agencies and  
 86 political subdivisions and, further, that they shall not be held  
 87 personally liable in tort or named as a party defendant in an  
 88 action while performing patient services except as provided in  
 89 s. 768.28(9)(a), Florida Statutes.

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

92 766.1115 Health care providers; creation of agency  
 93 relationship with governmental contractors.--

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

104 Section 3. Paragraph (b) of subsection (9) of section  
 105 768.28, Florida Statutes, is amended, and paragraph (f) is added  
 106 to subsection (10) of said section, to read:

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107           768.28 Waiver of sovereign immunity in tort actions;  
108 recovery limits; limitation on attorney fees; statute of  
109 limitations; exclusions; indemnification; risk management  
110 programs.--

111           (9)

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

113           1. "Employee" includes any volunteer firefighter.

114           2. "Officer, employee, or agent" includes, but is not  
115 limited to:

116           a. Any health care provider when providing services  
117 pursuant to s. 766.1115.

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

121           c. ~~and~~ Any public defender or her or his employee or  
122 agent, including, among others, an assistant public defender and  
123 an investigator.

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

132           (II) Any faculty member or other health care professional,  
133 practitioner, or ancillary caregiver or employee of a college or  
134 university or its medical school that enters into an affiliation

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135 agreement or a contract to provide comprehensive health care  
 136 services with a public hospital or its governmental owner and  
 137 who provides such services to patients of public hospitals  
 138 pursuant to paragraph (10)(f).

139 (10)

140 (f)1. Any not-for-profit college or university with a  
 141 medical, dental, or nursing school, or any other academic  
 142 programs of medical education accredited by any association,  
 143 agency, council, commission, or accrediting body recognized by  
 144 this state as a condition for licensure of its graduates,  
 145 hereinafter collectively referred to as "medical school," that  
 146 has entered into an affiliation agreement or a contract to allow  
 147 its faculty, health care professionals, practitioners, and  
 148 ancillary caregivers and employees, hereinafter referred to as  
 149 "employees," to provide patient services to patients treated at  
 150 a public hospital, together with the employees of such medical  
 151 school, shall be deemed agents of the governmental entity for  
 152 purposes of this section and shall be immune from liability for  
 153 torts in the same manner and to the same extent as the state and  
 154 its agencies and subdivisions while providing patient services.

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

156 a. "Patient services" means:

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

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

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162        (III) Access to participation in medical research  
163 protocols.

164        b. "Public hospital" means a statutory teaching hospital  
165 and any other health care facility owned or used by the state, a  
166 county, a municipality, a public authority, a special taxing  
167 district with health care responsibilities, or any other local  
168 governmental entity, or at any location under contract with the  
169 governmental entity.

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

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